

Are Canadians complicit in torture overseas?

By Reem Bahdi

May 15 2009 - The Lawyers Weekly

Once again, we must question whether Canadian officials facilitated the overseas detention and torture of Arab Muslim men.

Abousfian Abdelrazik, a Canadian citizen, was arrested in Sudan in 2003 while visiting his ailing mother. Documents reveal that Sudanese officials arrested him at Canada's request. Abdelrazik indicates that he was tortured in custody. He remains exiled in Sudan because our government refuses to issue him a passport so that he can return to Canada.

The government argues that the Charter only guarantees the rights of citizens to enter Canada once they present themselves at the border, and since Abdelrazik is not at the Canadian border, he has no rights — an untenable argument. Even before the Charter, our Bill of Rights prohibited the arbitrary exile of Canadian citizens. Exile is not defined by where one happens to be, but rather by where one is prevented from being.

Several weeks ago, Foreign Affairs Minister Canon implied without elaboration that Abdelrazik could not return to Canada because he had connections to Al Qaeda. Even though both CSIS and the RCMP had previously cleared Abdelrazik, the government is now alleging that Abdelrazik was in fact a senior al-Qaeda operative. This new round of allegations was released to the press on April 29, on the eve of an anticipated motion by MP Paul Dewar requiring Abdelrazik to appear before the Standing Committee on Foreign Affairs.

According to media reports, the Conservative government has labelled Abdelrazik an Al Qaeda operative on the basis of a confession by Abu Zubaydah, the man whom former President Bush had identified as an Al-Qaeda leader. But the most recent information from the U.S. indicates that Abu Zubaydah was not an important Al Qaeda figure and the confessions he gave at Guantanamo were fabricated for the purpose of ending the torture. Abu Zubaydah's lawyer, Brent Mickum, has noted that his client endured torture so harsh that the CIA destroyed their interrogation tapes of it.

Abdelrazik's story needs to be understood alongside that of Benamar Benatta. Answers to pressing questions on the role of Canadian officials in both their sagas remain unexamined. Both their stories, moreover, reveal an official willingness to resort to stereotyping and labelling, although both the O'Connor and Iacobucci inquiries forcefully cautioned against such practices. They also suggest a disturbing acceptance by Canada of torture as a counterterrorism strategy, coupled with a refusal to take fundamental human rights seriously.

Benatta, an Algerian aeronautics engineer, presented himself as a refugee-claimant at the border in Niagara Falls on Sept. 5, 2001. He was detained by Canadian immigration authorities while they tried to ascertain his identity. On Sept. 12, however, Canadian officials hustled Benatta into the back of a car and, without his knowledge or consent, handed him over to Americans as a Sept. 11 terrorist suspect.

In the U.S., Benatta was held incommunicado and tortured. The FBI cleared him of connections to terrorism within a few months. However, he remained in jail for about five years on trumped-up immigration charges. The American magistrate who reviewed his case called the immigration charges “a sham” contrived by American officials who did not want to leave a paper trail to document their illegal acts.

Canadian officials also appeared reluctant to leave a paper trail. There is a shocking paucity of information about Benatta’s transfer to American officials.

Canadian officials argue in court documents that they had the authority to turn Benatta over pursuant to the “direct back” provisions of immigration legislation. But these arguments do not make sense on the facts. The direct back provisions were designed for case management. When immigration officials are unable to process a claim of someone who has not yet entered Canada, they direct them back to the U.S. with instructions to “come back later.” Benatta had been in Canadian custody for seven days when he was handed over to the Americans. The direct back provision cannot apply to someone who is already in Canadian custody and control.

Abdelrazik and Benatta have both turned to Canadian courts for justice. The Harper government has not recognized the wrongs committed against either of them, but appears committed to the premise that unsubstantiated national security concerns trump fundamental human rights.

The current government appears out of step with recent developments. For example, the Federal Court recently affirmed that governments must respect their duties to individuals within Canada by ordering the repatriation of Omar Khadr.

Stereotyping, torture and ex post facto justifications are no substitute for thoughtful intelligence and the rule of law. Abousifian Abdelrazik and Benamar Benatta want nothing more than recognition of their rights and assurances that what happened to them will not happen to others. We all need such assurances. Canadians cannot accept race-based exceptions to the rule of law or that two more innocent Arab Muslim men have been tortured in our names.

Reem Bahdi teaches access to justice and torts at the University of Windsor’s Faculty of Law. She is a board member of the B.C. Civil Liberties Association and will be teaching a course on torture and national security in the upcoming academic year.