# AMNESTY INTERNATIONAL VS. CANADA

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**Category:** Opinions

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Human rights is a pillar of Keghart's philosophy. As well, Armenians, with their long history of persecution and later genocide by Turkey, are particularly sensitive to human rights issues. With those considerations in mind, below we have published the exchange between Amnesty International and Hon. Kenney.--**Editor**

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**Open Letter to Ministers Toews and Kenney about 30 "Wanted by the CBSA"**

## Overview

Amnesty International Canada has written to Ministers Toews and Kenney in an open letter about thirty individuals accused of war crimes and crimes against humanity believed to be residing in Canada who are "Wanted by the CBSA". Amnesty International is concerned that the initiative does not conform to Canada's obligations with respect to human rights and international justice. Amnesty International strongly supports efforts to bring them to justice through criminal law rather than immigration enforcement measures. They should be extradited to face justice not deported. If they are just deported they may not face any further investigation or criminal charges. And they cannot be deported under Canada's international human rights obligations if they face the possibility of serious human rights violations. In those cases, when they cannot be returned, under the principle of universal jurisdiction for these serious crimes they should be brought to justice in Canada.

## Full Text

The Honourable Vic Toews , Minister of Public Safety
The Honourable Jason Kenney,  Minister of Citizenship and Immigration

August 2, 2011
Dear Ministers,

We are writing this open letter to express Amnesty International's concern about the approach the government has adopted to dealing with the cases of thirty individuals who have been accused of having committed war crimes or crimes against humanity and who are believed to be residing in Canada.  Their cases, including their names and photos, have been widely publicized on a government web-site, "Wanted by the CBSA".  Five of the thirty men have since been arrested. Amnesty International is concerned that the initiative does not conform to Canada's obligations with respect to human rights and international justice.

These individuals have all, apparently, been found ineligible for entry into Canada on the basis of these accusations, and have been ordered deported.  They did not, however, present themselves to Canadian officials for deportation.  It is not known publicly how long any of these individuals have been in Canada.  Similarly none of the details about the nature, basis or seriousness of the accusations against them have been made public.

Amnesty International does strongly support efforts by governments to ensure that individuals who have committed war crimes, crimes against humanity and other serious human rights violations are brought to justice and held accountable.  We have long highlighted that deeply entrenched impunity for human rights violations in countries around the world is one of the major obstacles to ensuring stronger human rights protection.  We have actively campaigned for strengthened international laws and institutions in the area of international justice, including creation of the International Criminal Court.

We have also actively pressed for the adoption and enforcement of human rights treaties that clearly establish that through the principle of universal jurisdiction all governments have a shared responsibility to ensure that individuals who have committed such serious acts as war crimes, crimes against humanity and torture are brought to justice, regardless of their nationality or where they committed their crimes.  We welcomed Canadian law reform initiatives that have enshrined universal jurisdiction in the Canadian justice system, including amendments to the Criminal Code in the late 1980's dealing with torture and passage of the Crimes against Humanity and War Crimes Act in 2000.

Over the past decade Amnesty International has frequently raised concern about the fact that Canada overwhelmingly resorts to immigration enforcement measures rather than the criminal law,

when faced with the attempted entry into or presence in Canada of individuals who are alleged to have committed war crimes, crimes against humanity or torture. We have highlighted that an immigration response is problematic for two key reasons:

* It fails to ensure that such individuals will in fact face justice. An official process of extradition or surrender would ensure that individuals are going to be dealt with under criminal proceedings in another jurisdiction. Deportation does not. All the deportation guarantees is that the person concerned will be removed from Canada. It is entirely possible that the individual, once deported, will not face any further investigation or criminal charges.

* It also fails to adequately safeguard against the possibility that in some cases, the individual concerned might be at risk of serious human rights violations. Canada's international human rights obligations are clear – no person should be deported if he or she faces a serious risk of such grave human rights violations as torture, extrajudicial execution or enforced disappearance. This extends to individuals who may themselves have been responsible for grave human rights violations. There are no exceptions.

In addition to these overarching considerations Amnesty International is concerned about the fact that these cases have been so widely publicized in the context of the lower standards of proof and less rigorous rules of evidence that apply in immigration proceedings. Given that no information is publicly available about the specifics of the allegations in these cases, including the source of the allegations or the seriousness of the charges, the fact that these individuals' faces and names have been so widely publicized is of particular concern. In addition to reputational harm, it may increase the risk they face upon deportation or put their relatives at risk.

Ministers, with these concerns in mind Amnesty International urges you to reassess the approach you have adopted in dealing with these cases and ensure that:

- Safeguards are put in place to ensure that the privacy of individuals concerned is protected unless the reliability and seriousness of the charges they face clearly warrants a more public approach and all other enforcement measures have been tried unsuccessfully.

- No individual is deported to a country where they would be at serious risk of grave human rights violations such as torture, the death penalty or extrajudicial execution.

- Prioritizing charging individuals with relevant criminal offences, if warranted by the evidence, in Canada or another jurisdiction where a fair trial would be guaranteed.

We would welcome an opportunity to meet with you to discuss our concerns further.
Sincerely,

Alex Neve
Secretary General

Béatrice Vaugrante
Directrice Générale

Amnesty International Canada
(English branch)

Amnistie internationale Canada
francophone

## Response to Open Letter from Amnesty International

August 9, 2011

Dear Mr Neve and Mrs Vaugrante,
I must confess that my first reaction upon reading your open letter to Minister Toews and myself was one of surprise and joy. For your organization to muster its formidable powers of suasion against the orderly and innoxious proceedings of the Canadian immigration system must mean that the world's most truculent regimes have discharged their last political prisoners and advocates of democracy are free to march in the streets of Tehran and Pyongyang. I have since learned this is not the case, leaving me puzzled as to why Amnesty International (AI) would waste its time and resources opposing the legal deportation of war criminals and serious human rights violators from Canada.

When I joined AI in high school, it was to defend the rights of political dissidents like Andrei Sakharov and to oppose brutal regimes, including those still doing bloody business in Iran and North Korea. I am disappointed to learn you are now squandering the moral authority accrued in those campaigns on targeting one of the most generous immigration systems in the world, and protesting the actions of Canadian public servants applying rules and laws that far exceed our international obligations.

I will take your points in order. You begin by expressing "concern" that the government published the names and photos of individuals "who have been accused of having committed war crimes or crimes against humanity who are believed to be residing in Canada." Let me pause here to correct a common misconception, one shared by many in the press. These men are not merely "accused" or "alleged" human rights violators; the Immigration and Refugee Board (IRB) does not make allegations or accusations – it makes formal findings of fact and its decisions may be appealed to the federal courts. Every one of these men was found to be inadmissible to Canada under section 35 of the Immigration and Refugee Protection Act. This means that the IRB found that "there are reasonable grounds to believe" that each of these men committed "an offence referred to in sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*," *i.e.*, they were complicit in genocide, crimes against humanity or a war crime. These findings were based on evidence – including, in many cases, voluntary admissions – after formal proceedings during which these men had the right to be represented by counsel.

You are further "concerned that the initiative does not conform to Canada's obligations with respect to human rights and international justice." Poppycock. The due process these individuals have already been afforded exceeds both the requirements of the Charter and Canada's international treaty obligations. Individuals are not lightly or easily deported in Canada; it typically involves

multiple levels of review and appeal and can take years or even decades. Casually asserting that this generous system violates "human rights and international justice," without elaboration or specific citations, is sloppy and irresponsible. In fact, this is precisely the slander you wrongly accuse the government of directing at the deportees. More troubling, it dilutes the meaning of the words "human rights and international justice," the moral authority of which is threatened by such reckless imprecision and promiscuous misapplication by self-proclaimed "human rights" organizations.

You correctly note that these men have "been found ineligible for entry into Canada on the basis of these accusations, and have been ordered deported" (though the snide preface "apparently" is unnecessary and unworthy), but you object that "the details about the nature, basis or seriousness of the accusations against them have been made public." This is not entirely true and, where true, not fair.

Where the individuals have made their records public, either voluntarily or in federal court, the details of their cases are well known. For example, we know that one of the 30 men still at large, Jose Domingo Malaga Arica, admitted to participating in helicopter raids on villages in which women and children were machine-gunned indiscriminately and to transporting accused criminals to be tortured. We know this because his federal court record is public. However, in cases where no exception to the Privacy Act applies, the government has not revealed such detailed information. What would AI's reaction be if we did? I think I can guess from your demand at the end of your letter that we do more to "safeguard" the "privacy" of these scofflaws. You can't have it both ways: you can't protest that we have not revealed enough information about these men at the same time you oppose our identifying them at all. Is it your position that the Canadian public does not deserve to know that these men are hiding among us unless or until each of them has signed a privacy waiver allowing details of their complicity in crimes against humanity to be made public? If so, I respectfully disagree. I believe the Canadian public deserves better.

You also complain that we have chosen to deport these men, instead of trying them for war crimes or crimes against humanity. Our primary duty as a government is to protect Canada and Canadians. Deporting these men discharges this duty and ensures Canada will not become a sanctuary for international war criminals and serious human rights abusers. We are not obligated to conduct full-blown trials, at the cost of millions of taxpayer dollars, to prosecute every inadmissible individual for crimes committed in distant countries, often decades ago. In addition to the extraordinary time and cost this would require, it would burden an already-strained legal system and clog our courts with foreign criminals. Moreover, in many cases the lack of accessible evidence, local witnesses and a meaningful connexion between Canada and the crimes committed would make prosecution a quixotic proposition. That said, where an individual is the subject of a warrant from a foreign court or tribunal, we will consider turning him over to the appropriate authorities. Our preeminent goal, however, is defending Canada and upholding the integrity of our immigration system by enforcing these outstanding deportation orders.

On one point, at least, I am pleased to be able to allay your concerns. You fear that these individuals "might be at risk of serious human rights violations," such as "torture, extrajudicial execution or enforced disappearance," when they are returned to their home countries. As you know, every one of these men is entitled to a pre-removal risk assessment (PRRA), which ensures that Canada complies with its existing treaty obligations and does not *refoule* even the worst of offenders to face "torture, extrajudicial execution or enforced disappearance." They are also entitled to apply for judicial review by the federal courts of a negative PRRA decision, providing for multiple layers of protection.

Finally, you claim to be "concerned about the fact that these cases have been so widely publicized" given the "reputational harm" it may cause these men and the hypothetical risk it may impose on them or their relatives. No doubt such exquisitely burnished sympathy does you credit. However, as a former AI member, may I suggest that ostentatious hand-wringing over the good name of war criminals and human rights violators may sit uneasily with those AI members who, perhaps naively, believe your compassion should be reserved for their victims.

The Canadian public understandably wants war criminals and human rights violators kept out of Canada. When they sneak in or escape before they can be sent home, the public wants us to find them and remove them. Not coincidentally, this is also what the law requires. Your calls for more time, more process, more deference and more protection for war criminals and serious human rights violators, by contrast, come across as self-congratulatory moral preening. I have listened to your concerns, and, frankly, I prefer the common sense of the people and the law.

Sincerely,

The Hon. Jason Kenney, M.P., P.C.