

# New hope for the victims of torture



A new UN ruling means Canada must rewrite its laws to allow torture victims to sue their torturers, says human-rights lawyer **DAVID MATAS**

At the United Nations, breakthroughs are hard to achieve but, just last week, the UN Committee against Torture reached a pioneering conclusion, a conclusion of global significance.

The context and the cause was Canada. Houshang Bouzari, an Iranian-born businessman, was abducted and tortured while on a trip to Iran in 1993 after he ran afoul of the son of the country's president. Mr. Bouzari became a Canadian permanent resident in 1998 and a citizen in 2001. He sued Iran in Canadian courts in 2000 for compensation for his torture, but without success.

The courts held that Canada's State Immunity Act was a bar to Mr. Bouzari's lawsuit. The act, which provides that states are not subject to other state's jurisdictions, has certain exceptions, but liability for torture is not one of them, the courts ruled.

But Canada is a signatory to the UN Convention against Torture. The Convention obligates signatories to provide victims of torture with a right to compensation. In his lawsuit, Mr. Bouzari argued that this obligation meant Canadian courts had a duty to give him a right to compensation against Iran.

The Canadian courts disagreed, holding that the duty to compensate for torture set out in the Convention applied only to torture inflicted in Canada, not to torture inflicted abroad.

Now all that is changed.

Last Friday, the UN Committee against Torture released its latest comments and conclusions about Canada's compliance with the Convention against Torture.

The committee was well aware of what had happened to Mr. Bouzari, and stated its concern at "the absence of effective measures to provide civil compensation to victims of torture in all cases." It recommended that "the state party (i.e., Canada) should review its position under Article 14 of the Convention to ensure the provision of compensation through its civil jurisdiction to all victims of torture." (Article 14 sets out the right to compensation for torture.)

Note the reference to "all cases" and "all victims of torture." It is

plain that what the committee had in mind, especially in light of the Bouzari case, was victims of torture inflicted abroad.

This is the first time in the history of this UN committee that this point of view has been expressed, not just about Canada but about any country. It is not just a statement about what Canada should do. It is a statement about what all countries should do, about what the Convention against Torture means. And what it means is that the obligation to provide a right to compensation for torture does not just refer to torture inflicted at home — it applies to torture anywhere. As a result, an individual such as Mr. Bouzari should be able to successfully obtain a judgment against a state such as Iran (and then have such a court order executed against Iranian property in Canada).

By its conclusions, the committee has made clear that state im-

munity is no bar to such a proceeding. The duty to provide a right to compensation trumps state immunity. Canada cannot allow Iran to get away from a lawsuit for torture by claiming sovereign immunity.

Individual torture victims in Canada can petition the Committee against Torture and ask it to find Canada in violation of the Convention against Torture when Canada fails to provide a remedy for torture inflicted abroad. Given that the committee has just written in its conclusions about the Canadian situation, there is little doubt what the committee's answer to such a question would be.

Now that the Canadian courts have ruled that our State Immunity Act does not allow for compensation for foreign torture, Canada must change the act to allow an exception for compensation for foreign torture. Otherwise, Canada would be violating a human-rights treaty it has promised to uphold.



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Every other country that is party to the Convention against Torture must do the same. Every country that has signed and ratified the Convention against Torture must allow victims of torture to seek redress for torture inflicted abroad.

All of this could have a profound effect on other cases of compensation for torture, including that of Maher Arar, as well as that of Zahra Kazemi, the murdered Canadian photojournalist, whose estate might now be able to sue Iran.

Canadian foreign policy is based on promotion of respect for human rights. Canada cannot, at one and the same time, ask other states to combat torture and ignore the committee's conclusion that Canada must ensure the provision of compensation to "all victims of torture," wherever they may have been tortured.

David Matas, a Winnipeg lawyer, represented Houshang Bouzari in his lawsuit against Iran.