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for the Defence of Human Rights - Clínica
internacional de defensa de los derechos humanos de la
UQAM



DOCUMENT IN SUPPORT OF THE GENERAL HEARING ON THE STATUS OF
FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION IN CANADA
AND THE RIGHT TO LIBERTY, SECURITY AND INTEGRITY OF THE PERSON

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UQAM International Clinic for the Defence of Human Rights, Ligue des droits et
libertés, International Federation for Human Rights, applicants

FOREWORD

1. The purpose of this document is to complement the general hearing regarding the events of June 2010 surrounding the G20 meetings in Toronto on the status of the right to freedom of expression, assembly, association and movement in Canada and the right to liberty, security and integrity of the person. The hearing will take place on October 25, 2010, as part of the 140th Ordinary Period of Sessions of the Inter-American Commission on Human Rights, in accordance with Article 66 of the IACHR rules adopted at the 137th Ordinary Period of Sessions.

2. This hearing is presented by the UQAM (University of Quebec at Montreal) International Clinic for the Defence of Human Rights, the Ligue des droits et libertés, and the International Federation for Human Rights, applicants.

3. The UQAM International Clinic for the Defence of Human Rights is an academic association founded in 2005 and based in Montreal, Canada, that comprises professors and students who work to promote and defend human rights around the world. The clinic helps victims and human rights advocacy groups by working with international organizations and institutions.

4. The Ligue des droits et libertés is an independent, non-partisan, not-for-profit organization that was founded in 1963 and is based in Montreal. Its objectives are to defend and promote the rights recognized in the *International Charter of Human Rights*, which it supports for its universality and indivisibility. The Ligue des droits et libertés is a member of the International Federation for Human Rights.

5. The International Federation for Human Rights is a non-governmental organization based in Paris, France, whose mission is to take tangible measures to ensure respect for all human rights. The Federation was created in 1922 by a group of human rights defence leagues. It currently has 164 members in more than 100 countries. It coordinates and supports the actions of its member leagues and provides them with international liaison. The Federation and its member leagues are non-partisan, non-denominational and independent of all governments. Their mission is all-encompassing: they defend all human, civil and political rights, which are inextricably bound to economic, social and cultural rights. They work in their respective countries to remedy violations of basic rights and freedoms.

6. This document addresses the issue of the criminalization of social protest in Canada and the repression of demonstrations, particularly those which take place during international meetings. It also discusses human rights violations in light of the applicable legal framework. It concludes with a series of recommendations.

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1. CRIMINALIZATION OF SOCIAL PROTEST IN CANADA AND REPRESSION OF DEMONSTRATIONS, PARTICULARLY THOSE WHICH TAKE PLACE DURING INTERNATIONAL MEETINGS

7. For two decades, Canada has been witnessing a general trend toward the criminalization of dissidence and the suppression of social protest, particularly in connection with international meetings.

1.1 INTERNATIONAL CRITICISM

8. The Ligue des droits et libertés (the Ligue), the International Federation for Human Rights (IFHR) and the UQAM's International Clinic for the Defence of Human Rights (CIDDHU) have criticized internationally the strategic plans used by law enforcement authorities to deal with protests during international meetings: surveillance and infiltration of groups prior to events; use of agents provocateurs; use of chemical weapons and gases; large-scale precautionary arrests; and improper detention of arrestees.

9. The strategies used by law enforcement authorities jeopardize the right of protestors and other social communicators to exercise their freedom of expression, peaceful assembly and association. They attack the integrity of the person and lead to arbitrary arrests and illegal detention.

1.1.1 Recommendations of the UN Committee against Torture and UN Human Rights Committee

10. In 2005, the Ligue made representations to the United Nations (UN) Committee against Torture about the inappropriate and dangerous use by law enforcement authorities of chemical, irritant, incapacitating and mechanical weapons such as taser guns and plastic bullets by law enforcement authorities in the context of crowd control, primarily during the Summit of the Americas held in Quebec City in 2001. In response to persistent allegations, the UN Committee against Torture made the following recommendation:¹

The State party should conduct a public and independent study and a policy review of the crowd control methods, at federal and provincial levels, described in paragraph 4 (i), above [inappropriate use of chemical, irritant, incapacitating and mechanical weapons by law enforcement authorities in the context of crowd control].

11. In 2006, in a report submitted to the UN Human Rights Committee responsible for application of the *International Covenant on Civil and Political Rights* (the

¹ UN, Committee against Torture, 31st Session, *Conclusions and Recommendations of the Committee against Torture: Canada*, 07/07/2005. CAT/C/CR/34/CAN, 5. h).

Covenant),² the Ligue gave an account of the large number arrests – almost 1,400 – made during political, student and anti-globalization protests in Quebec between 1999 and 2004.

12. In its April 2006 concluding observations regarding Canada,³ the UN Human Rights Committee stated that it was “concerned about information that the police, in particular in Montreal, have resorted to large-scale arrests of demonstrators.” Noting Canada’s response that none of the arrests in Montreal were arbitrary since they were conducted on a legal basis, the Committee recalled that “arbitrary detention can also occur when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by the Covenant, in particular under articles 19 and 21 (arts. 9, 19, 21 and 26),” that is, freedom of expression, the right to peaceful assembly and security of the person, and the right to equality before the law. The Committee recommended:

The State party should ensure that the right of persons to peacefully participate in social protests is respected, and ensure that only those committing criminal offences during demonstrations are arrested. The Committee also invites the State party to conduct an inquiry into the practices of the Montreal police forces during demonstrations, and wishes to receive more details about the practical implementation of section 63 of the Criminal Code relating to unlawful assembly.

1.1.2 Report on social protest submitted to the Inter-American Commission on Human Rights

13. In a report submitted to the Inter-American Commission on Human Rights (the Commission) in October 2006,⁴ the IFHR criticized Canada for allowing police to make unwarranted large-scale arrests and use dangerous weapons during peaceful protests between 1999 and 2004. The IFHR was also critical of the vague and non-specific nature of the offence of unlawful assembly prescribed in section 63 of the *Criminal Code*⁵ and condemned the systematic use of that offence as a means of repressing and criminalizing political action. It also pointed out that the policing methods violated freedom of expression, freedom of peaceful assembly, the right to equality without discrimination based on political beliefs and the right to protection against arbitrary detention.

14. The IFHR called on the Commission to examine the issue of the criminalization of the right to protest and the disproportionate use of force against protesters, and to share

² *International Covenant on Civil and Political Rights*, December 19, 1966, 999 UNTS 171 (in force on March 23, 1976, ratified by Canada on May 19, 1976) [ICCPR].

³ UN, Human Rights Committee, 85th Session, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant*, Concluding observations of the Human Rights Committee: Canada, online:
[http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf).

⁴ International Federation for Human Rights (IFHR), *La protesta social pacífica: ¿Un derecho en las Américas?*, No. 460/3, Paris, 2006, pp. 31-34, online:
<http://www.cidh.uqam.ca/documents/Site%20web%202/FIDH%20Protestation%20sociale%20dans%20les%20Ameriques.pdf> [IFHR, *La protesta social*].

⁵ *Criminal Code*, RSC 1985, c. C-46, s. 63.

its findings with the member states of the OAS.⁶ Generally, it was looking for the following matters to be investigated: improper prosecution of persons taking part in social protests in the Americas and improper and unlawful use of emergency measures to dissuade members of the public from exercising their right to protest. It also called for police and military authorities to use dialogue rather than force and repressive weapons during peaceful demonstrations.

Conclusion

15. Canada did not follow up any of the recommendations. There was no public or official inquiry. The same type of strategy, with some variations in the choice of means, has been used since 2004. One example is the actions taken by the Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police and the Sûreté du Québec during the Montebello Summit on August 20, 2007, which dealt with the *Security and Prosperity Partnership*. The actions taken by the authorities disrupted the protests and inappropriately restricted the protestors' ability to express their political views: use of members of police forces as agents provocateurs, contact with Montebello residents prior to the event aimed at discrediting the protestors, and large-scale use of tear gas without cause when the organizers of the protest had given the call to disperse. Following these events, many civil society organizations, including the Ligue, the British Columbia Civil Liberties Association and the Communications, Energy and Paperworkers Union of Canada, urged political leaders to hold an independent public inquiry. Once again, the request fell on deaf ears.

16. Despite the recommendations made by human rights advocacy groups over the past decade and the criticisms made by UN experts, people who exercise their right to freedom of expression in the context of peaceful protests encounter to this day large-scale arrests, criminalization of dissidence, the use of infiltration tactics and the use of chemical, irritant, incapacitating and mechanical weapons. Not only has Canada failed to act on the recommendations made by UN committees, but the events that occurred during the G20 Summit in downtown Toronto in June 2010 should that there has been a significant loss of ground in this area. The violation by law enforcement authorities of the rights of protestors during the G20 Summit took on historic proportions.

1.2 A BAD SITUATION MADE WORSE: EVENTS SURROUNDING THE G20 SUMMIT IN DOWNTOWN TORONTO IN JUNE 2010

17. On June 26 and 27, 2010, the City of Toronto hosted the G20 Summit, a meeting of the heads of state of the world's most economically powerful countries. The Government of Canada spent an unprecedented \$1 billion to ensure personal security and the protection of property during the event.⁷ The RCMP set up the Integrated Security

⁶ IFHR, *La protesta social, supra*, note 4, p. 82.

⁷ The estimated cost of security was \$1 billion. See G8 et G20 : la vérificatrice générale se penchera sur les coûts", *La Presse canadienne*, (May 30, 2010), online: <http://www.cyperpresse.ca/acualites/quebec-canada/national/201005/30/01-4285214-g8-et-g20-la-verificatrice-generale-se-penchera-sur-les-couts.php>.

Unit (ISU), which comprised members of the Canadian Forces, the RCMP, the Toronto Police, the Peel Regional Police and a number of other security experts.⁸

18. As has been the case for more than a decade, the meeting attracted many protestors seeking to voice their disagreement with the G20 as an institution or express specific political views which they hold dear. Over the two days of the Summit, law enforcement authorities carried out large-scale precautionary arrests in numbers never before seen in recent Canadian history. Some 1,105 people were arrested in Toronto, compared with 497 during the October Crisis in 1970 (Canada had suspended rights and freedoms by enforcing the *War Measures Act*) and 463 during the Summit of the Americas in 2001.⁹

19. In its preliminary report on field observations made during the G20 Summit in Toronto, the Canadian Civil Liberties Association (CCLA) described the conduct of police forces as “disproportionate, arbitrary and excessive.”¹⁰ Media coverage in just about every part of the country reflected a similar view. In response to the magnitude of the repression, many rights advocacy groups, such as the CCLA, Amnesty International, the IFHR and the Ligue, publicly denounced the violation of the rights and freedoms of the protestors, who were simply exercising their freedom of expression and their right to peaceful assembly guaranteed by the *Canadian Charter of Rights and Freedoms*¹¹ (the Canadian Charter). Jurists and university professors added their voices to the call for an independent public inquiry.¹² Everyone questioned the effective exercise of guaranteed rights and freedoms, both in Canadian law and in international instruments on the protection of rights that are binding on Canada.

Arrests

20. According to the accounts released to the public and those gathered by the Ligue, many people, protestors and ordinary citizens alike, were arrested while taking part in peaceful demonstrations or walking about city streets and parks far from the security perimeter. Riot police on foot or bicycle rounded them up and made arbitrary arrests

⁸ Government of Canada, “Security Governance” (June 2010), online: www.g8-g20isu.ca/g20/secur-fra.htm.

⁹ Canadian Civil Liberties Association, “G20 mass arrests by the numbers” (July 7, 2010), online: <http://ccla.org/wordpress/2010/07/07/g-20-mass-arrests-by-the-numbers>.

¹⁰ Canadian Civil Liberties Association, *A Breach of the Peace: A Preliminary Report of Observations during the 2010 G20 Summit*, Toronto, p. 4, online: <http://ccla.org/wordpress/wp-content/uploads/2010/06/CCLA-Report-A-Breach-of-the-Peace-Preliminary-report-updated-July-8.pdf>.

¹¹ *Canadian Charter of Rights and Freedoms*, Part 1 of the *Constitution Act, 1982*, enacted as Schedule B of the *Canada Act, 1982*, (U.K.), 1982, c. 11 (*Canadian Charter*).

¹² Many lawyers and law professors have demanded an inquiry in order to shed light on the actions of the ISU during the G20 Summit. See Collectif d’auteurs, *Sommet du G20 – “Nous réclamons une enquête”*, *Le Devoir* [Montreal], (July 8, 2010), online: <http://www.ledevoir.com/societe/justice/292139/sommet-du-g20-nous-reclamons-une-enquete>. See Also Maria Babbage, “Lawyers, politicians demand public inquiry into G20, 100 days after summit”, *Winnipeg Free Press* (October 5, 2010), online: <http://www.winnipegfreepress.com/canada/breakingnews/lawyers-politicians-demand-public-inquiry-into-g20-100-days-after-summit-104342534.html>.

without a warrant and without giving specific reasons.¹³ Journalists and press photographers in particular were arrested while covering the G20 protests and held for several hours even after they provided proof of accreditation issued by their employers.¹⁴ Some police officers told people who demanded to know why they were being arrested or to see an arrest warrant that they had no rights and/or that it was martial law.

21. In some cases, the police displayed brutality in making arrests, using both verbal and physical force. Some people who gave no resistance were hit in the face and head and on their legs and feet, thrown against a wall or to the ground and handcuffed and had their personal effects confiscated (cell phones, cameras, address books, lasses, black clothes, shoes, etc.). We also identified one case where a person was injured by horses when mounted police officers moved into a crowd of people who were in an area designated by police as an area where demonstrations were permitted.

22. A number of videos are available on the Internet. One shows an absolutely peaceful march, the route for which had been discussed with police in advance, being cut short without cause by a brutal charge by law enforcement officers using plastic bullets, force and forcible arrest.¹⁵ Another shows a police officer blasting a canister of tear gas at the chest of a peaceful protestor.¹⁶ These and other videos are on the disk produced at the hearing.

23. Close to 100 people, most of them young Francophone students from Quebec, were arrested around 8:45 on Sunday morning, June 27, while they were asleep in the gymnasium at the University of Toronto.¹⁷ An agreement had been struck with the graduate students association to allow the protestors to sleep in the gym. Law enforcement authorities, police officers from Quebec among them, entered the gym on Sunday morning. One Francophone officer ordered those present to not move and added that they were all under arrest for taking part in a riot. The Anglophone officer referred to “unlawful assembly”. During this mass arrest, the police officers brandished weapons in order to scare the people under arrest, which was unnecessary considering the situation and the number of police officers present. Moreover, the police did not inform the people of their judicial guarantees.

24. The day before, none of the people arrested in the gym had been bothered by law enforcement authorities while taking part in peaceful demonstrations. The words “riot”

¹³ See also the story of 20 people arrested during the G20 Summit. They include freelance journalists, a lawyer and a Toronto mayoral candidate: “I will not forget what they have done to me”, *The Star* (June 28, 2010), online: <http://www.thestar.com/news/gta/torontog20summit/article/829921--i-will-not-forget-what-they-have-done-to-me>.

¹⁴ “Sommet du G20 : Plus de 600 arrestations”, *Radio-Canada* (June 27, 2010), online: <http://www.radio-canada.ca/nouvelles/International/2010/06/27/001-manif-g20-toronto-Dimanche.shtml>.

¹⁵ “Police open fire on peaceful protestors at G20”, YouTube (June 2010), online: http://www.youtube.com/watch?v=KiLt40d_AbU&feature=player_embedded.

¹⁶ “G20 Toronto Police State: Police fire muzzle blast at woman and peaceful protestors”, YouTube (June 2010), online: <http://www.youtube.com/watch?v=pw2TokwsmKQ&NR=1>.

¹⁷ See video of the mass arrest: “Image des arrestations lors du G20”, *Cyberpresse* (July 1, 2010), online: <http://www.cyberpresse.ca/videos/?mediaid=730221#go>.

and “unlawful assembly” were never uttered by law enforcement authorities during the peaceful demonstrations in which the people had taken part on Saturday. We now know that none of those people was formally charged with taking part in a riot or unlawful assembly; most of the charges were “conspiracy to commit mischief over \$5,000”. To our knowledge, all of the charges laid against the people who were arrested in the gymnasium were ultimately dropped in the first two weeks of October, almost four months later.

25. The arrests made elsewhere in Toronto also seem to have been random and motivated not by the commission of an offence, but by the subjective perceptions of police officers based on the way people were dressed, their appearance, their language, possession of a book on anarchism, contact information for a lawyer written on their arm, or membership in a student association.

26. These precautionary mass arrests of peaceful protestors and ordinary citizens were illegal because they were made without reasonable cause and for the sole purpose of preventing demonstrations. One person who asked a police officer why he was being arrested was told “that it was a precaution and they did not want any protestors on the site the next day”.

27. The proof that these mass arrests were purely precautionary, arbitrary and illegal is that of the 1,105 people arrested, 800 were released without being charged, charges were dropped in some 150 cases, including people arrested in the gym, and charges were stayed in many cases. By October 14, 2010, more than 100 days after the Summit, only six people had been convicted and between 40 and 100 people were still facing charges.¹⁸ Some of the people who were released without being charged were enjoined not to take part in demonstrations.

28. The reality is that between 3.6% and 9% of the people arrested in Toronto on June 26 and 27, 2010, face charges. which clearly shows that the arrest were not made because a crime had been committed, but were intended to prevent those protestors from taking part in future demonstrations.

Comments by police officers

29. The people who were arrested generally reported that the law enforcement officers made vulgar, hateful and sometimes racist or sexist comments to them. Several were told they were terrorists, criminals who had come to destroy the city. The Quebeckers who were arrested were subject to discriminatory remarks and rude

¹⁸ According to the Ontario Ministry of Justice, approximately 100 cases are still before the courts; the protestors put the number at about 40. There is a chance that other charges will be dropped or the people will be acquitted, as the Crown prosecutor assigned to the cases cautiously stated publicly, “We believe there is a reasonable prospect of charges in the other cases.” See Daphné Cameron, “G20 : les accusations tombent massivement”, *La Presse* [Montreal] (October 14, 2010), online: http://www.cyberpresse.ca/dossiers/sommets-du-g8-g20201010/14/01-4332470-g20-les-accusations-tombent-massivement.php?utm_categorieinterne=traficdrivers&utm_contenyinterne=cyberpresse_vous_suggere_4332582_article_POS2.

comments about Francophones (“French shit” and “if you were English, you’d be out [of temporary custody] by now”). Homosexuals reported that they were subject to homophobic comments and sexual intimidation (during a strip search: “Do you often take it up the ass?” and “You’re fucking disgusting, I won’t touch your clothes, just throw them on the floor.”) One female journalist was told that rape and gang bangs were common in prison.¹⁹

30. Some people also reported that court officials, too, made totally inappropriate comments. One judge told someone who was appearing before him that he and the others were extremists, not students, and that they “should be grateful to us, because in many countries, they would languish in prison with rats for months.”

31. The people who were arrested were intimidated and even frightened by these comments. They also felt humiliated, demeaned and stripped of their dignity because their comments were based on their language, their political beliefs, their ethnic origin, their sex or their sexual orientation.

Detention

32. The people who were arrested were incarcerated in Toronto in a former movie studio converted to a temporary detention centre where as many as 15, 20 or 30 were packed into metal cages 7 metres by 4 metres with a concrete floor.²⁰ They were held for a long time, three days in some cases, and kept in handcuffs until they made a court appearance. Many were held in the centre for two days then transferred to the Maplehurst women’s prison or the Vanier men’s prison, then to cells at the courthouse. Several reported that they were not permitted to inform relatives that they were being held.

33. Each cage had a chemical toilet with no door. The detainees had to relieve themselves, still handcuffed, in front of the other detainees in the cell and the police officers moving about the corridors. Some had to ask for toilet paper and were given a small quantity. The women had trouble getting sanitary napkins and had to leave them on the floor because there was no appropriate receptacle.

34. The temperature in the cells was very cold, and the detainees were denied warm clothes or blankets, yet it was subsequently found that those items were available. People had to sleep on the cold concrete floor, lying on top of each other in an attempt to stay warm. The fluorescent lights were on all the time, and that, coupled with the intense cold and fear, made it impossible for the people to sleep.

35. There was not enough food or fresh water. Several detainees said they were given one sandwich after being in custody for eight hours and another six hours later. The

¹⁹ “G20 Toronto Police Rape Threats + Strip Searched – Amy Miller”, YouTube (June 2010), online: http://www.youtube.com/watch?v=RcXhEd_mDt4.

²⁰ See official photographs of the detention center (one of which is attached): “Inside the G20 Eastern Avenue Detention Centre” *BlogTo* (June 2010), online: http://www.blogto.com/city/2010/06/inside_the_g20_eastern_avenue_detention_centre

detainees had to shout for water, and some said the quality of the water was questionable. One dehydrated detainee had to be given an IV solution.

36. Most of the people detained were strip searched, some as many as four times. The searches were conducted after several hours of detention and not always in private, which meant police officers of the other sex had full view. The searches were very traumatic for the detainees. In the men's prison, a female nurse gave injections (tuberculosis vaccine or screening?) to several people without their consent and without explaining the vaccination or test. Needless to say, the process caused the detainees concerned a great deal of stress.

37. Being detained was particularly bad for people with health problems like diabetes and asthma who required treatment or medication. They were denied access to their drugs on grounds that they were sealed. Some detainees said that they did not see a doctor after asking several times for one. People with mental health problems who were deprived of their medication had panic attacks and were transferred to hospital in handcuffs and shackles. They were handcuffed to their hospital bed and police officers stood guard in the room.

Judicial guarantees

38. Several witnesses said that they did not have access to counsel at any time during their detention, others only after several hours. It was subsequently found that there were lawyers at the detention centre, but that they were not told that the detainees had asked to see them. Not until they appeared in court were many of them able to talk to a lawyer from legal aid. Some Francophone detainees had no choice but to consult a unilingual Anglophone lawyer, yet did not have access to an interpreter. The police officers and guards discouraged the detainees from asking to be served in their mother tongue, saying that it would drag out the process and keep them in detention longer.

39. Some detainees waited up to 50 to 60 hours to appear before a judge, whereas under Canadian law, a person must appear not more than 24 hours after being arrested, otherwise the detention is unlawful.

40. The bail conditions set by the court were harsh and in some cases unconstitutional, such as the order to refrain from taking part in any demonstrations. One of the protestors charged, Alex Hundert, was arrested in October for breach of conditions simply because he took part in a discussion panel on the G20 at Ryerson University. His bail was set at CDN\$100,000. He was released again with very strict conditions, including a requirement to refrain from expressing any political opinions to the media or on the Internet.

Conclusion

41. The way the protestors, many of them very young, were treated – arrest without cause; rude remarks; length and conditions of detention; failure to respect rights; and lack

of information about what was going to happen to them – had very significant physical and mental impact. They rightly felt that they were being collectively punished for simply expressing their opinion. Some were left disillusioned. “I’ll never again think of this as a beautiful democratic country where human dignity is respected,” one young woman wrote in her testimony. Another person said bitterly, “A lot of people will never get over this incident; it will affect them for the rest of their lives.” “I was afraid I was going to die,” said a third. The impact of being criminally charged, even if the charge is subsequently dropped, is significant. The stigma and psychological trauma aside, a criminal charge has serious legal implications. It is important to know that for many countries, the mere fact that a person has been charged with a criminal offence makes it harder to get a travel or student visa or to perform certain duties or occupations.

2. VIOLATION OF HUMAN RIGHTS WITH RESPECT TO THE APPLICABLE LEGAL FRAMEWORK

42. Under domestic law and pursuant to its obligations under international human rights law, Canada is required to ensure that every person in Canada has and is able to exercise freedom of expression, association and assembly. It is also required to protect the right to security and liberty of the person and ensure various judicial guarantees.

2.1 APPLICABLE LEGAL FRAMEWORK

43. Canada has been a member of the OAS since January 8, 1990, the date it ratified the *OAS Charter*.²¹ Within the inter-American human rights protection system, the government is therefore bound by the *OAS Charter* and certain provisions of the *American Declaration of the Rights and Duties of Man*²² (the American Declaration). The Declaration can be interpreted in light of the pertinent provisions of the *American Convention on Human Rights* (the American Convention),²³ in accordance with

²¹ *Charter of the Organization of American States*, 119 UNTS 3, amended by 721 UNTS 324, OAS Treaty Series, No. 1-A; OAS Treaty Series No. 66, 25 ILM 527; an1-E Rev. OAS Official Records OAS/Ser.A/2 Add. 4 (SEPF), 33 ILM 1009 (OAS 1948) (OAS Charter).

²² *American Declaration of the Rights and Duties of Man*, 1948, Res. XXX. Final Act, Ninth International Conference of American States, OAS Off. Rec. OSA Ser.LVII.23/Doc 21 rev. 6 (1979) (American Declaration). See OAS, Inter-American Commission on Human Rights, *Report on Terrorism and Human Rights*, OAS/Ser.L/V/II.116 Doc. 5 rev. 1 err. (2002), p. 39. See also resolutions GA/RES 314 (VII-0/77), 370 (VII-0/78) and 1829 (XXXI-0/01) of the OAS General Assembly. See also *James Terry Roach and Jay Pinkerton* (United States) (1987), *Annual Report of the IACHR: 1986-87*, Res. 3/87, Case 9647, paragraphs 46-49; *Michael Edwards et al. (Bahamas)* (2000), *Annual Report of the IACHR: 2000*, Report No. 48/01, Case 12.067, paragraph 107. See also *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights* (1989), Advisory Opinion OC-19/89, Inter-Am. Ct. HR (Ser. A), No. 10, paragraphs 29-47.

²³ *American Convention on Human Rights*, 199, OASTS No. 36 1114 UNTS 123 (American Convention).

Commission case law,²⁴ and certain provisions of the *Declaration of Principles on Freedom of Expression* adopted by the Commission.²⁵

44. Under article 18 of the *Statute of the Inter-American Commission on Human Rights* (the Statute)²⁶ and under the Commission's *Rules of Procedure* (the Rules), the Commission can ask the Government of Canada to inform it of measures taken in the area of human rights (art. 18(d) of the Statute), produce a general or special report on the status of human rights in Canada (art. 18(c) of the Statute and art. 60 of the Rules) and conduct on-site observations with its permission (art. 18(g) and art. 53 to 57 of the Rules).²⁷ Article 20 of the Statute states that in relation to those member states of the Organization that are not parties to the American Convention, the Commission shall pay particular attention to the observance of the human rights referred to in articles I, II, III, IV, XVIII, XXV, and XXVI of the American Declaration. Those articles refer to the right to liberty, security and integrity of the person, the right to freedom of opinion and expression, and the right to protection against arbitrary detention.

45. The American Declaration guarantees freedom of expression (art. 4), the right to freedom of assembly (art. 21), the right to life, liberty and security of the person and judicial guarantees (art. 1, 18 and 26) and protection against arbitrary arrest and imprisonment and humane treatment while in custody (art. 1, 25 and 26).

46. Canada has ratified many international human rights protection instruments, including the *International Covenant on Civil and Political Rights* (the Covenant)²⁸ in 1976. Consequently, Canada is committed to respect the right to freedom and security of the person and guaranteeing protection against arbitrary arrest and detention (art. 9.1). The Covenant also guarantees every person the right to be informed of the reasons for his or her arrest (art. 9.2), the right to be brought before a judge promptly (art. 9.3) and the right to compensation for unlawful arrest (art. 9.5). Article 10.1 states that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Finally, the Covenant guarantees the right to freedom of expression (art. 19) and peaceful assembly (art. 21) and states that all persons have the right to hold opinions without interference. The rights provided for in the Covenant are also guaranteed in Canadian constitutional law.

²⁴ See, for example, Case 2141 (United States) (1981), *Annual Report of the IACHR: 1980-981*, Res. 23/81.

²⁵ *Declaration of Principles on Freedom of Expression*, 108th Ordinary Period of Sessions, October 19, 2000, online: <http://www.cidh/oas.org/Basicos/French/s.expression.htm> (Declaration of Principles on Freedom of Expression).

²⁶ *Statute of the Inter-American Commission on Human Rights*, adopted by the General Assembly of the OAS, OAS Res. 447 (IX-0/79), OAS Off. Rec. OAS/Ser.P/IX.0.2/80, amended by GA/RES. 1098 (XXI-0/91).

²⁷ *Rules of Procedure of the Inter-American Commission on Human Rights* adopted by the Commission at its 137th Ordinary Period of Sessions, October 28 to November 13, 2009.

²⁸ ICCPR, *supra*, note 2.

47. The Canadian Charter²⁹ is the primary instrument for the protection of rights and freedoms in Canada. Because it is entrenched in the Canadian constitution, the Canadian Charter has constitutional status; “any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.”³⁰ Canadian courts have reiterated many times that the nature of guaranteed rights must be interpreted broadly and liberally in order to ensure full enjoyment of the protection afforded by the Canadian Charter.³¹ The rights and freedoms set out in the Canadian Charter are guaranteed subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.³² The Canadian Charter applies to the actions of all governments – federal, provincial and municipal. The actions and conduct of the members of government police forces are also subject to the Charter.

2.2 VIOLATION OF RIGHTS

48. The rights and freedoms at play in social demonstrations such as the G20 Summit in Toronto must be analysed from three different perspectives under the Canadian Charter and international instruments to which Canada is a party: fundamental freedoms; the right to security and liberty of the person and judicial guarantees; and protection against arbitrary arrest and imprisonment and inhumane conditions of detention.

²⁹ *Canadian Charter, supra*, note 11.

³⁰ *Constitution Act, 1982*, enacted as Schedule B of the *Canada Act, 1982*, (U.K.), 1982, c. 11, s. 52.

³¹ See *Law Society of Upper Canada v. Skapinker*, [1984] 1 R.C.S. 357; *R. c. Big M Drug Mart Ltd.*, [1985] 1 R.C.S. 295; *Hunter c. Southam Inc.*, [1984] 2 S.C.R. 145.

³² *Canadian Charter, supra*, note 11, s. 1.

2.2.1 Fundamental freedoms: freedom of expression, assembly and association

Freedom of expression

49. Freedom of expression is a basic right entrenched in the American Declaration (art. 4), the American Convention (art. 13) and the *Declaration of Principles on Freedom of Expression*. The right to freedom of assembly is guaranteed by the American Declaration (art. 21) and the American Convention (art. 15). Finally, the right to freedom of association is guaranteed by the American Declaration (art. 22) and the American Convention (art. 16).

50. Paragraph 2(b) of the Canadian Charter guarantees freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication. The Canadian Charter also guarantees freedom of peaceful assembly (paragraph 2(c)) and freedom of association (paragraph 2(d)). These freedoms are guaranteed by articles 19 and 21 of the Covenant and are set out in the American Declaration (art. 14 and 15), the American Convention (art. 13) and the *Declaration of Principles on Freedom of Expression*.

51. According to the Supreme Court of Canada, “Freedom of expression is fundamental to freedom. It is the foundation of any democratic society. [...] It is one of the fundamental concepts that has formed the basis for the historical development of the political, social and educational institutions of western society.”³³ The highest court in the land wrote, “Freedom of expression was entrenched in our Constitution and is guaranteed in the Quebec *Charter* so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or contrary to the mainstream.”³⁴

52. According to the Commission, “any obstacle to the free discussion of ideas and opinions limits freedom of expression and the effective development of a democratic process.”³⁵ “Freedom of expression in all its forms and manifestations is a fundamental and inalienable right of all individuals. Additionally, it is an indispensable requirement for the very existence of a democratic society.”³⁶

53. These statements are consistent with the principles set out in the *Inter-American Democratic Charter*³⁷ recognized and endorsed by the Canadian government. These principles have been reiterated repeatedly by the Inter-American Court of Human Rights (the Inter-American Court), which wrote in *Palamara Iribarne v. Chile* and its *Advisory Opinion No. 5*:

³³ *UFCW Local 1518 v. Kmart Canada Ltd.*, [1999] 2 SCR 1083, at paragraphs 21 and 23.

³⁴ *Irwin Toy v. Quebec (Attorney General)*, [1989] 1 SCR 927.

³⁵ *Declaration of Principles on Freedom of Expression*, *supra*, note 25, preamble. See also principles 4 and 12.

³⁶ *Ibid.* principle 1.

³⁷ *Inter-American Democratic Charter*, OAS Doc. OAS/erP/GA/Res.1 (2001); 28th Spec. Sess., OAS Doc. OAS/Ser.P/GA/Res.1 (XXVIII-E/01) (OAS General Assembly) (Sept. 11, 2001), 40 ILM 1289 (2001).

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade unions, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.³⁸

54. In its *General Observation No. 25*,³⁹ the UN Committee on Human Rights took the same view and reiterated that the right to participate in public debate is a cornerstone of the right to freedom of expression and freedom of association. It assumes free flow of information and freedom of the press. States have a duty to adopt legislation to ensure that citizens are able to fully exercise that right. One of the principles of modern democracy is that not only should there be free elections, but States must protect the various forms of mobilization and social challenge.

55. As the Commission has stated many times, the right to freedom of expression comprises two fundamental aspects: the right to express ideas, and the right of the public to obtain information.⁴⁰ That right must be guaranteed without discrimination, including discrimination based on political opinions or language, social origin, economic status or any other social condition.⁴¹ The State cannot directly or indirectly restrict the exercise of that right and must foster its enjoyment, particularly for individuals who are vulnerable or traditionally excluded from public debate.⁴²

56. The Inter-American Court has stated that this right can be exercised not only by journalists, but also by any social communicator,⁴³ including protestors and groups politically opposed to the State.⁴⁴ Information, ideas and opinions, even if they are unpopular, shocking or offensive to the State, must be guaranteed in a spirit of pluralism, tolerance and open-mindedness.⁴⁵ Individuals have the right to share their opinions,

³⁸ *Palamara Iribarne v. Chile* (2005), Inter-Am. Ct. H.R. (Ser. C) No. 135, paragraph 112 (Palamara Iribarne). See also *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Articles 13 and 29 of the American Convention on Human Rights)* (1985), Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (Ser. A), No. 5, paragraph 70 (Advisory Opinion OC-5/85).

³⁹ UN, Committee on Human Rights, *General Observation No. 25*, CCPR/C/1/Rev.1/Add.7, July 12, 1996.

⁴⁰ *Ivcher Bronstein (Peru)* (2001), Inter-Am. Ct. H.R. (Ser. C) No. 74.

⁴¹ *Declaration of Principles on Freedom of Expression*, *supra*, note 35, principle 2.

⁴² *Perozo et al. (Venezuela)* (2009), Inter-Am. Ct. H.R. (Ser. C) No. 195, paragraph 118.

⁴³ *Tristán-Donoso (Panama)* (2009), Inter-Am. Ct. H.R. (Ser. C) No. 193, paragraph 91.

⁴⁴ *Manuel Cepeda Vargas (Colombia)* (2010), Inter-Am. Ct. H.R. (Ser. C) No. 213, paragraph 173.

⁴⁵ *Olmedo Bustos et al. (Chile)* (2001), Inter-Am. Ct. H.R. (Ser. C) No. 73, paragraph 69 [*The Last Temptation of Christ*], citing Eur. Court H.R., *Handyside case*, judgment of 7 Decmbe 1976, Series A, No. 24, paragraph 49; Eur. Court H.R., *The Sunday Times case*, judgment of 26 April 1979, Series A, No. 30, paragraphs 59 and 65; Eur. Court H.R., *Barthold* judgment of 25 March 1985, Series A, No. 90, paragraph 55; Eur. Court H.R., *Lingens* judgment of b July 1986, Series A, No. 103, paragraph 41; Eur. Court H.R., *Muller and Others* judgment of 24 May 1988, Series A, No. 133, paragraph 33; and Eur. Court H.R., *Otto-Preminger-Institut v. Austria* judgment of 20 September 1994, Series A, No. 295-A, paragraph 49.

express their positions and coordinate action plans within the framework of public meetings or demonstrations, as the Commission has pointed out.⁴⁶

57. The relevance of the right to freedom of expression is fullest in the context of social protestation, including peaceful demonstrations. As the Commission has noted, use of the public forum must not stand in the way of that right being exercised.⁴⁷ The Commission confirmed this principle by endorsing the opinion of the Constitutional Court of Spain, which wrote that “in a democratic society, urban space is meant to be used not only for circulation, but also for participation.”⁴⁸ According to the Commission, “direct or indirect interference in or pressure exerted upon any expression, opinion or information transmitted through any means of communication must be prohibited by law.”⁴⁹

58. Finally, it should be noted that by addressing the challenges of the next decade regarding freedom of expression, the Commission’s Office of the Special Rapporteur for Freedom of Expression pointed out that the notion of national security has historically been overused to impose restrictions on freedom of expression. The Special Rapporteur is concerned by the use of vague terms related to public security in order to limit social protest that in no way incites violence.⁵⁰

59. It is established law in Canada that constitutional protection extends not only to the content of the message, but also to the means by which the message is conveyed, be it the distribution of tracts, picketing, posters, boycotting or demonstration. Only messages conveyed by violence are exempt from the constitutional guarantee. Restrictions on freedom of expression that are deemed by the country’s highest court to be warranted and reasonable include the criminalization of hate literature, defamation and the distribution of obscene material.

60. Participation in peaceful demonstrations is a form of expression which is constitutionally protected by paragraphs 2(b) and 2(c) of the Canadian Charter. Canada, like all States, has a duty to protect this form of social protest in order to ensure that the right to freedom of expression as interpreted by the Supreme Court of Canada and international bodies is respected.

61. At the G20 Summit, law enforcement authorities not only failed to carry out their duty to protect freedom of expression and peaceful assembly, but in fact violated those rights by arresting people without just cause and using repressive measures against members of the public who were peacefully protesting. This amounts to the criminalization of social protest.

⁴⁶ OAS, *Report on the Situation of Human Rights Defenders in the Americas*, March 2006, OAS/Ser.L/V/II.124, Doc. 5 rev. 1, p. 14.

⁴⁷ *Ibid.*, p. 15.

⁴⁸ *Ibid.*

⁴⁹ *Declaration of Principles on Freedom of Expression*, *supra*, note 35, principle 5.

⁵⁰ OAS, Office of the Special Rapporteur for Freedom of Expression, *Ten Key Challenges to Freedom of Expression in the Next Decade*, online:
<http://www.cidh.oas.org/relatoria/showarticle.asp?artID=784&IID=1>

62. In the Inter-American system, any form of censorship is a violation of freedom of expression and is prohibited.⁵¹ Censorship violates not only the right to express ideas, but also the right of the public to obtain information.⁵²

63. Massive precautionary arrests and detention are clearly a form of censorship because they prevent individuals from being present at the time and in the vicinity of a political event and from expressing their opinions verbally or physically. This type of censorship is similar to banning a film,⁵³ closing a television station,⁵⁴ arresting a journalist⁵⁵ or seizing and barring the publication of a newspaper or book.⁵⁶

64. Further, the measures used have a chilling effect⁵⁷ on the people affected, who will no doubt be reluctant to protest another time or continue to express their views.

65. It must be remembered that attacks on social communicators and violations of their freedom or physical integrity are violations of their right to freedom of expression.⁵⁸ “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression.”⁵⁹ Indeed,

Article 13 of the Convention prohibits restricting freedom of expression by indirect methods or means. The punitive measures resulting from certain statements could, in some cases, be considered an indirect means of restricting freedom of expression. The inhibiting effect of the punitive measure can generate self-censorship in the individual who wishes to speak out, which produces almost the same effect as direct censorship: “opinions do not circulate”.⁶⁰

66. Finally, it must be remembered that when a State publicly describes or labels a person using terms intended to discredit the person and/or justify government actions (by portraying protestors as irresponsible, delinquent or a threat to peace, for example), it not

⁵¹ *Steve Clark et al. (Grenada)* (1996), *Annual Report of the IACHR: 1995*, Report No. 2/96, Case 10.325; *Francisco Martorell (Chile)* (1996), *Annual Report of the IACHR: 1995*, Report No. 11/96, Case 11.230; Advisory Opinion OC-5/85, *supra*, note 38; *The Last Temptation of Christ*, *supra*, note 45; *Palamara Iribarne*, *supra*, note 38.

⁵² *Ivcher Bronstein*, *supra*, note 40.

⁵³ *The Last Temptation of Christ*, *supra*, note 45.

⁵⁴ *Ivcher Bronstein*, *supra*, note 40.

⁵⁵ *Tristán Donoso*, *supra*, note 43.

⁵⁶ *Palamara Iribarne*, *supra*, note 38.

⁵⁷ See OAS, Office of the Special Rapporteur on Freedom of Expression, *2002 Annual Report*, chapter 6. See also Eur. Court H.R., *Goodwin v. United Kingdom*, judgment of March 27, 1996, Reports of Judgments and Decisions, No. 7 1996-II, 483, paragraph 39. See also, IACHR, *Report on the Situation of Human Rights in Argentina* (1980), OAS/Ser.L/V/II.49, Doc. 19, at 251-254.

⁵⁸ *Huilca-Tecse (Peru)* (2005), Inter-Am. Ct. H.R., (Ser. C) No. 121, paragraph 70. See also *Comadres (El Salvador)* (1996), *Annual Report of the IACHR: 1995*, Report No. 13/96, Case 10.948, paragraph 25. See also *Carlos Ranferi Gómez López (Guatemala)* (1996), *Annual Report of the IACHR: 1996*, Report No. 29/96, Case 110303. See also *Situation of Human Rights Defenders*, *supra*, note 46, p. 11.

⁵⁹ *Declaration of Principles on Freedom of Expression*, *supra*, note 25, principle 9.

⁶⁰ *Ricardo Canese (Paraguay)* (2004), Inter-Am. Ct. H.R. (Ser. C) No. 111, paragraph 72(g).

only produces this chilling effect, but also attacks the honour and reputation of those individuals,⁶¹ which are rights guaranteed by the American Declaration (art. 5) and the American Convention (art. 11).

67. Canada will perhaps try to justify the restriction of rights on grounds of protecting national security and maintaining public order. That rationale *a posteriori* is unacceptable because such a restriction was not prescribed by law and because the means used are disproportionate and unreasonable.

68. It must be remembered that this type of restriction has to be evaluated using an extremely rigorous test. The restriction must be justified in relation to the government's objectives, which, because of their significance, must clearly exceed the pressing social need for full enjoyment of the right to freedom of expression. The restriction must be proportional and closely linked to the attainment of legitimate government objectives.⁶²

69. The Inter-American Court has stated that the concept of public order in a democratic society requires a guarantee of free flow of ideas, news and opinions and free access to information.⁶³ In the situation under examination, the measures in fact helped reduce the free flow of ideas and opinions. According to the Inter-American Court, the standard of proof is very high when, as in this case, the issue is the censorship of political opinions:

Free discussion and political debate are essential for consolidating democracy in society. Given the urgent social interest surrounding "this type of debate", the justifications for the State to restrict freedom of expression in this context are much stricter and more limited, because the right to freedom of expression and information is one of society's principal mechanisms for exercising democratic control of those responsible or matters of public interest.⁶⁴

70. If the Canadian government's objective of security or public order during international meetings is a pressing and legitimate objective, the means used to attain it, namely precautionary or unlawful arrests and imprisonment of protestors, are not justified and do not constitute a reasonable suspension of protestors' freedom of expression and other rights.

Freedom of reunion and association

71. The American Declaration guarantees the right to freedom of assembly (art. 21) and the right to freedom of association (art. 22). These rights are also provided for in the American Convention (art. 15 and 16 respectively).

⁶¹ See *Loren Laroye Riebe Star, Jorge Barón Guttlein and Rodolfo Izal Elorz (Mexico)* (1999), *Annual Report of the IACHR: 1998*, Report No. 49/99, Case 11.610, paragraph 95. See also *José Francisco Gallardo (Mexico)* (1996), *Annual Report of the IACHR: 1996*, Report No. 43/96, Case 11.430, paragraph 76.

⁶² Advisory Opinion OC-5/85, *supra*, note 38, paragraph 46.

⁶³ *Palamara Iribarne*, *supra*, note 38, paragraph 112. See also Advisory Opinion, *ibid.*, paragraph 70.

⁶⁴ *Ricardo Canese*, *supra*, note 60, paragraph 72(b).

72. Under Inter-American law, the State must not only refrain from interfering arbitrarily with the activities of groups exercising their right to freedom of expression, assembly and association, but also has a *positive* duty to protect groups exercising their right to peaceful assembly.⁶⁵

73. Article 15 of the American Convention recognizes the right of peaceful assembly without arms and sets out the only conditions under which that right can be restricted: where legislation has been enacted to regulate the right of assembly and related restrictions; and in situations where individuals exercising the right of assembly would jeopardize the effective operation of a democratic society, national security, public safety or public order, or protection of the rights or freedoms of others. Nothing in the facts surrounding the G20 events in Toronto indicates that the measures used met these conditions.

74. In that regard, international case law on the use of force against persons exercising their right of assembly is pertinent. The International Labour Organization's Committee on Freedom of Association, for example, has stated that intervention should be proportionate to the threat to public and governments should take measures to ensure that the competent authorities are given appropriate instructions in order to eliminate the risk of undue violence when controlling demonstrations.⁶⁶ The Committee also notes that intervention by security forces must be strictly limited to maintaining public order when it is genuinely threatened or the situation is serious.⁶⁷

75. As the Commission stated in its 2009 report on the situation of human rights in Honduras:

[State] agents may impose reasonable restraints on demonstrators to ensure that they are peaceful or to contain those who are violent, as well as to disperse demonstrations that become violent and obstructive.⁶⁸ However, the actions of the security forces should protect, rather than discourage, the right to assembly and therefore, the reasons for dispersing the demonstration must be based upon the duty to protect people. The law enforcement officer deployed in such contexts must contemplate the safest and quickest methods of dispersal that cause the least harm to the demonstrators.⁶⁹

⁶⁵ *Situation of Human Rights Defenders, supra*, note 46, p. 15. See also IACHR, *Ärzte für das Leben v. Austria*, judgment of June 21, 1988, Series A No. 139, at 12, paragraph 32.

⁶⁶ ILO, 278th Report of the Committee on Freedom of Association, Case No. 1541, Vol. LXXIV, 1991, Series B. No. 2, complaint against the Government of Peru by the General Confederation of Workers of Peru (CGTP).

⁶⁷ See, for example, a complaint against the Government of India: ILO, 234th Session, (1996), Case No. 1227, paragraph 312.

⁶⁸ *Situation of Human Rights Defenders in the Americas, supra*, note 46, citing the United States Court of Appeal, *Washington Mobilization Committee v. Cullinane*, judgment of April 12, 1977, 566 F.2d 107, 184 U.S. App. D.C. 215, p. 119.

⁶⁹ OAS, *Report on Honduras: Human Rights and the Coup d'Etat*, OAS/Ser.L/V/II.Doc.55, December 30, 2009, online: <http://www.cidh.oas.org/pdf%20files/HONDURAS2009ENG.pdf>.

76. Massive precautionary arrest of peaceful protestors has nothing to do with the objectives of protecting national security, public safety, public order, public health or the rights and freedoms of others as prescribed by international case law.⁷⁰ Its sole purpose is to block social protest.

77. The right to freedom of assembly is closely related to the right to freedom of association. Gathering and expressing ideas and opinions are the most important objective and the primary activity of many groups or associations.

78. In its report *Situation of Human Rights Defenders in the Americas*, the Commission established that the right of association protects the right of individuals to join together and lawfully set and meet goals without authorities pressuring them or interfering with the attainment of their objectives.⁷¹

79. In the situation under examination, the applicants take the view that as a result of the magnitude, severity and effect of the measures taken by authorities, the State prevented protest groups, political opponents of the government, and groups of artists and students from exercising their right of association. The State thus pressured those groups and prevented them from attaining their objective, namely to express their ideas and opinions, which is why they were in Toronto during the G20 Summit. In so doing, Canada interfered with the groups' public demonstrations instead of playing an active role in planning protection for the participants.

2.2.2 Right to security and liberty of the person and judicial guarantees

80. Articles 1, 18 and 26 of the American Declaration and articles 7, 8, 9 and 15 of the American Convention guarantee the right to security and liberty of the person and judicial guarantees.

81. Generally, the Commission and the Inter-American Court have clearly established that no person can be deprived of his or her liberty other than in the circumstances prescribed by law, and any deprivation of liberty must follow to the letter the procedures set out in such legislation.⁷² The Inter-American Court has stated that except in situations where a person is caught committing a crime, any deprivation of liberty requires a warrant issued by a competent legal authority.⁷³

82. In all cases, when an arrest is made, the State has a duty to supervise detention and ensure the well-being of persons placed under the exclusive control of State

⁷⁰ See *Baena Ricardo y otros (Panama)* (2001), Inter-Am. Ct. H.R. (Ser. C) No. 72, paragraphs 169-173. See also IACHR, *Report on Terrorism and Human Rights*, OAS, supra note 22, p. 360, online: <http://www.cidh.org/terrorism/eng/toc.htm>.

⁷¹ *Situation of Human Rights Defenders*, supra, note 46, p. 20.

⁷² See, for example, IACHR, *Fifth Report on the Situation of Human Rights in Guatemala*, OAS/Ser.L/V/II.111 Doc. 21 rev. 6, April 6, 2001, paragraph 37. IACHR, *Report on Guatemala*, 2001, citing *Jorge Alberto Giménex (Argentina)*, 11.425, Report No. 12/96, IACHR, Annual Report, 1995, I/A Court H.R., *Suarez Rosero (Ecuador)* (199), Inter-Am Ct. H.R. (Ser. C) No. 35, paragraph 43.

⁷³ *Suarez Rosero*, supra, note 72, paragraph 44.

officers.⁷⁴ Every person deprived of liberty must be informed promptly of the reasons for arrest.⁷⁵

83. Every person deprived of liberty must be able to approach court authorities to determine the legality of his or her arrest and detention by way of *habeas corpus*. The person must have the opportunity to contact counsel and/or relatives, and must be brought before a judge promptly or allowed to contact a court authority without delay.⁷⁶

84. The right to liberty and security of the person is guaranteed by section 7 of the Canadian Charter. According to the Supreme Court of Canada, the term “security” includes protection against the threat of bodily restraint and restraint itself⁷⁷ and applies to both physical and mental integrity.⁷⁸

85. Under that section, the State is barred from depriving any person of his or her liberty without respecting the principles of fundamental justice and the judicial guarantees set out in sections 8 to 14. Every person detained by the State is protected against unlawful search and seizure (s. 8), must be informed of his or her rights (s. 10(a)), must be able to retain and instruct counsel before being questioned by police (s. 10(b)), and must be able to have the validity of the detention verified by way of *habeas corpus* and be released if the detention is not lawful (s. 10(c)). In Canada, a person who is

⁷⁴ *Jorge Luis Bronstein and others (Argentina)*, 11.205, Report No. 2/97, Annual Report of the Inter-American Court, 1997, paragraph 11. See *Damion Thomas (Jamaica)*, 12.069, Report No. 50/01, Annual Report of the Inter-American Court, 2000, paragraphs 37 and 38.

⁷⁵ *American Convention*, *supra*, note 23, art. 7.4.

⁷⁶ See Inter-American Commission on Human Rights, *Ten Years of Activities, 1971-1981*, Washington, D.C., General Secretariat, Organization of American States, 1982, paragraphs 317-318, 342; OAS, General Assembly, 6th Session, *Annual Report and Special Reports of the Inter-American Commission on Human Rights*, Off. Rec. OAS/Ser.P/GA/Doc.510/13 (1980) reproduced in OAS, Inter-American Commission on Human Rights, *Annual Report of the Inter-American Commission on Human Rights 1980-1981*, Off. Rec. OAS/Ser.L/V/II.54/Doc.9, rev. 1 (1981); OAS, Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in Argentina*, Off. Rec. OAS/Ser.L/V/II.49/Doc.19 (1980), paragraphs 24-27; OAS, Inter-American Commission on Human Rights, *Report on the Situation of Human Rights in the Republic of Colombia*, Off. Rec. OAS/Ser.L/V/II.53/Doc.22 (1981), paragraphs 15-18. See also *General Comment No. 29: States of Emergency (article 4)*, Off. Rec. CCPR, 2001, Supp. No. 11, Doc. NU CCPR/C/21/Rev.1, paragraph 16; International Commission of Jurists, *States of Emergency: Their Impact on Human Rights*, Geneva, 1983, pages 461-463, No. 21, 22, 23, 24, 26, 29, 34, 36; International Law Association, *Paris Minimum Standards of Human Rights Norms in a State of Emergency*, in *Report of the 61st Conference held August 26 to September 1, 1984, in Paris, 1984*, reproduced in R. Lillich, *Current Developments: The Paris Minimum Standards of Human Rights in a State of Emergency*, (1985) 79 Am. J. Int'l L. 651, p. 75; *The Siracusa Principles on the Limitation and Derogation Provisions of the ICCPR*, (1985) 7:1 Hum. Rgts. Q., pp. 3-130, Principle 70 (e)-(g); Nicole Questiaux, *Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency*, United Nations Commission on Human Rights, ECOSOC, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1982/15, July 27, 1982, p. 45.

⁷⁷ *Singh v. Minister of Employment and Immigration*, [1985] 1 SCR 177.

⁷⁸ *R. v. Milne*, [1987] 2 SCR 512.

arrested must, under section 503 of the *Criminal Code*,⁷⁹ be brought before a judge within 24 hours, otherwise the detention is unlawful.

86. In Canada, subsection 495(1) of the *Criminal Code* states that a peace officer may arrest without a warrant a person who has committed or is about to commit a crime or a person who is caught committing a crime. Outside the situations provided for in that section, a properly issued arrest warrant is required. Arrests that do not meet that requirement are unlawful.

87. At the G20 Summit, the persons arrested without grounds or a warrant were arrested arbitrarily and their detention was unlawful. The arrests were not made while a crime was being committed, but rather because of profiling based on such grounds of discrimination as language, appearance, age and political beliefs. The protestors were arrested because of what they appeared to be, not what they did.

88. Regarding the arrest of the students sleeping in the gymnasium at the University of Toronto, they were apparently arrested after a blanket warrant was issued, which by any measure raises serious concerns about the principle of individual criminal liability.⁸⁰ That principle is particularly important in the context of social protest where individuals can be arrested on grounds that they are part of a group. In *Baena Ricardo v. Panama*, the Inter-American Court ruled that the State had breached that principle because it failed to provide individualized information to the persons arrested and judged the victims as a group.⁸¹

89. The use of excessive force, threats of mistreatment and actual mistreatment, arbitrary arrests and improper conditions of detention, including the administration of vaccines without the person's consent, are a violation of liberty and security of the person.

90. Arresting a person without reading the person his or her rights, failing to allow a person to retain counsel before being questioned by police and detaining a person for 40 hours or longer before he or she is brought before a judge are breaches of the judicial guarantees set out in section 10 of the Canadian Charter and articles 1, 18 and 26 of the American Declaration. Searching the protestors and confiscating their personal effects without reasonable grounds for believing they had committed an offence was a violation of their right to protection against unlawful search and seizure.

⁷⁹ *Criminal Code*, *supra*, note 5.

⁸⁰ See American Convention, *supra*, note 23, 5.3. See *Report on Terrorism*, *supra*, note 70, p. 149. See also IACHR, No. 133-99, 11.725, *Carmelo Soria Espinoza v. Chile*, November 19, 1999, paragraph 140.

⁸¹ *Baena Ricardo*, *supra*, note 70, paragraph 142.

2.2.3 Protection against arbitrary imprisonment and improper conditions of detention

91. Because the precautionary arrest of the protestors was arbitrary and unlawful, their detention was also arbitrary and unlawful. Moreover, the conditions in which the prisoners were detained were undeniably improper and a shame on Canada; the right to dignity and the right to be treated humanely were violated repeatedly. The conditions in which the protestors were detained were inhumane and punitive, particularly by Canadian standards.

92. Being kept in very cold and crowded cells, not being properly fed, having to ask for drinking water, being forced to sleep on the bare concrete floor without a blanket, having the lights on 24 hours a day, having to deal with the stress of not knowing when the ordeal would end, being strip searched, being kept in handcuffs for days, having to hear rude and sarcastic remarks, and being vaccinated without consent are evidence of a blatant lack of compassion on the part of authorities toward the young detainees and a desire to punish them in order to teach them a lesson. According to several detainees, the strip searches were conducted in a room that opened onto a corridor in which men and women were moving about, which contravenes section 24 of the provincial regulations, which states, “Any person conducting a search during which an inmate is required to undress shall conduct the search in a place and manner such that the inmate is not subject to embarrassment or humiliation.”⁸²

93. All of these elements are violations of the right to be treated humanely and with dignity. Taken together, they could even be described as cruel and unusual punishment. The right to not be subjected to needlessly harsh or cruel and unusual conditions of detention is a universally recognized right guaranteed under section 12 of the Canadian Charter.

94. The United Nations Standard Minimum Rules for the Treatment of Prisoners⁸³ (the Minimum Rules), which Canada endorsed in 1975, clearly establish the right of prisoners to be treated humanely. The Commission and the Inter-American Court have used the Minimum Rules in a number of cases.⁸⁴ The Commission has also made similar recommendations to the States Member of the OAS in Resolution 1/08, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*.

95. The Minimum Rules state that prisoners have the right to inform their family of their detention (Rule 92), to sleep singly in separate rooms (Rule 86), to be provided with food of adequate nutritional value and drinking water whenever needed (Rule 20), to have at least one hour of exercise in the open air daily (Rule 21) and to have

⁸² RRO 1990, Regulation 778, enacted under the *Ministry of Correctional Services Act*, RSO 1990, c. M-22.

⁸³ Office of the United Nations High Commissioner for Human Rights, *Standard Minimum Rules for the Treatment of Prisoners*, Resolution of the first United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, August 30, 1955, online: <http://www2.ohchr.org/english/law/treatmentprisoners.htm>.

⁸⁴ *Ibid.*

accommodation that meets all requirements for cubic content of air, minimum floor space and heating (Rule 10). Prisoners must also be provided with such toilet articles as are necessary for health and cleanliness (Rule 15).

96. The conditions of detention in Toronto constitute blatant violations of the Minimum Rules. Some detainees were not permitted to contact family or friends to inform them of their detention, which contravenes Rule 92. Inadequate food, often consisting of a few unhealthful sandwiches, and difficulty obtaining sufficient quantities of fresh drinking water violate the right to food of nutritional value adequate to maintain health set out in Rule 20. The overcrowded cells, small space, intense cold and constant light, and sleep deprivation also violated the Minimum Rules.

97. The only possible explanation for this abuse is that the police wanted to humiliate and even terrorize the young detainees. At best, the treatment indicates a general lack of organization; at worst, it is deliberate collective punishment. Canada not only blatantly contravened its own laws and several UN human rights instruments, but also breached the standards of Inter-American law.

98. Under articles 1, 25 and 26 of the American Declaration and articles 5 and 7 of the American Convention, every person is entitled to protection against arbitrary arrest and imprisonment and inhumane conditions of detention. Cruel, inhumane or degrading treatment is officially prohibited under Inter-American law. As the Inter-American Court has noted, treatment can be considered inhumane even if it does not lead to suffering or physical injury.⁸⁵ Treatment is degrading if a person is made to feel afraid, anxious or inferior so that he or she is humiliated or drained of physical or emotional strength.⁸⁶ Finally, the Inter-American Court has ruled that degrading treatment may be exacerbated if the person being detained is vulnerable.⁸⁷

99. The following treatment inflicted on the detainees contravenes Canadian law, the American Declaration and the principles established by the case law and the Commission's Resolution 1/08:

- being kept in very cold and overcrowded cell;⁸⁸
- not being given adequate food and having to beg for drinking water;⁸⁹

⁸⁵ *Loayza Tamayo (Peru)* (1997), Inter-Am. Ct. H.R. (Ser. C) No. 33, paragraph 57.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*, citing IACHR, *Ribitsch v. Austria*, judgment of December 4, 1995, paragraph 36.

⁸⁸ IACHR, Resolution 1/08, *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, OAS/Ser.L/V/II.131, Doc. 8, March 13, 2008, principles 12 and 17. *Boyce and al. (Barbados)* (2007), Inter-Am. Ct. H.R. (Ser. C), No. 169, paragraph 97. *Lopez-Alvarez (Honduras)* (2006), Inter-Am. Ct. H.R. (Ser. C), No. 144, paragraphs 104-110. *Montero-Aranguren and al. Detention center of Catia (Venezuela)* (2006), Inter-Am. Ct. H.R. (Ser. C), No. 150, paragraph 90. IACHR, *Kalashnikov v. Russia*, judgment of July 15, 2002, Application No. 47095/99, paragraph 97. IACHR, *Ostrovar v. Moldova*, judgment of September 13, 2005. Application No. 35207/03 paragraph 82. IACHR, *Peers v. Greece*, judgment of April 19, 2001. Application No. 28524/95, paragraphs 70-72. IACHR, *Karalevicius v. Lithuania*, judgment of April 7, 2005. Application No. 53254/99, paragraph. cf. CPT/Inf (2001) 16, 11th General Report, paragraph 29.

⁸⁹ *Principles and Best Practices, supra*, note 88, principle 11. *Lopez-Alvarez, supra*, note 88, paragraphs 104-110.

- being forced to sleep on the bare concrete floor without a blanket, with the lights on 24 hours a day and with the stress of not knowing when the ordeal would be over;⁹⁰
- being strip searched and handcuffed for days;⁹¹
- being subjected to rude, sarcastic and discriminatory remarks;⁹²
- not having sufficient and adequate access to bathrooms or sanitary napkins;⁹³
- being vaccinated without consent or not having access to medication or adequate care to meet specific needs.⁹⁴

100. All of these elements indicate a blatant lack of humanity on the part of the authorities toward the detainees. They clearly do not constitute treatment consistent with human dignity⁹⁵ and caused the detainees a great deal of stress.⁹⁶

101. Without question, the lack of food and water, the constant exposure to light, and the administration or injection of drugs without consent constitute unlawful treatment within the meaning of international law denounced by the UN Special Rapporteur against Torture.⁹⁷

3. CONCLUSION AND RECOMMENDATIONS

102. In view of the criticisms directed toward Canada and the recommendations made by the UN committees regarding the strategies used during social protests, particularly those surrounding international meetings; in view of the fact that Canada has not acted on the recommendations or conducted an inquiry; and in view of the violation of the rights and freedoms of protestors and ordinary citizens during the G20 Summit in June 2010, the ICDR, the Ligue and the IFHR recommend that:

1. the Commission ask Canada to conduct an independent public inquiry into the strategies used by law enforcement authorities during social protests, in particular during

⁹⁰ *Ibid.*

⁹¹ *Ibid.* principles 8 and 22.

⁹² *Ibid.*, principle 2, *Lopez-Alvarez, supra*, note 88, paragraph 67.

⁹³ *Ibid.*, principle 12.2, *Lopez-Alvarez, supra*, note 88, paragraphs 104-110. *Montero-Aranguren and al, supra*, note 88, paragraph 99. *Miguel Castro Castro prison (Peru)* (2006), Inter-Am. Ct. H.R. (Ser. C) No. 160, paragraph 31.

⁹⁴ *Principles and Best Practices, supra*, note 88, principle 10. See also *Lopez-Alvarez, supra*, note 88, paragraph 106. See also IACHR, *Kudla v. Poland*, judgment of October 26, 2000, No. 30210/96, paragraph 94. *Montero-Aranguren and al, supra*, note 88, paragraph 02. *Garcio Asto and Ramirez Rojas (Peru)* (2005), Inter-Am. Ct. H.R. (Ser. C) No. 137, paragraph 227. *De la Cruz Flores (Peru)* (2004) Inter-Am Ct. H.R., (Ser. C) No. 115, paragraph 112. *Tibi (Ecuador)*(2004), Inter-Am Ct. H.R. (Ser. C) No. 144, paragraph 157. IACHR, *Mathew v. The Netherlands*, paragraph 187.

⁹⁵ *Tibi, supra*, note 94, paragraph 147. *Gomez-Paquiyaui Brothers (Peru)* (2004), Inter-Am. Ct. H.R. (Ser. C) No. 110, paragraph 108. *Maritza Urrutia (Guatemala)* (2003), Inter-Am. Ct. H.R. (Ser. C) No. 103, paragraph 87. *Lopez Alvarez, supra*, note 88, paragraph 104.

⁹⁶ *Lopez Alvarez, supra*, note 88, paragraph 106. See also IACHR, *Kudla v. Poland*, judgment of October 6, 2000, No. 30210/96, paragraph 94.

⁹⁷ UN, *Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, Report of the Special Rapporteur, Mr. P.Koojmans, appointed pursuant to Commission on Human Rights Res. 1985/33 E/CN.4/1986/15, February 19, 1996, paragraph 119.

international events, that is, surveillance and infiltration of groups prior to events, use of agents provocateurs, use of weapons and chemical gases, massive precautionary arrest and the conditions of detainees;

Regarding the events of the G20 Summit more specifically, the inquiry shall make it possible to:

- a) identify the strategies used for that event;
 - b) identify the political and police officials responsible for planning and coordinating security measures, including detention measures;
 - c) provide victims of rights violations with adequate compensation.
2. the Commission ask Canada to invite a delegation from the OAS and the Office of the Special Rapporteur on Freedom of Expression to observe on site implementation of the recommendation;
 3. the Commission ask Canada to report on follow-up to the preceding recommendation before the next session.

**APPENDIX 1 : STATEMENT OF SUPPORT FROM THE
INTERNATIONAL CIVIL LIBERTIES MONITORING GROUP**

**International Civil Liberties Monitoring Group
Coalition pour la surveillance internationale des libertés civiles
338 Somerset Street West, Ottawa, Ontario, K2P 0J9
Tel. (613) 241-5298**

October 22, 2010

To: Inter-American Commission on Human Rights

The International Civil Liberties Monitoring Group (ICLMG) is a broad Canadian coalition dedicated to the defence of civil liberties and human rights (see appendix). The coalition is deeply concerned about the serious civil rights violations that occurred during the G20 summit in Toronto on June 26 and 27, 2010.

During the summit, hundreds of peaceful demonstrators were arrested without reasonable cause, detained for several days in appalling and degrading conditions, denied due process, only to be released without charges. The authorities, both government and police, must be held accountable for these serious civil rights violations. Given the many police forces involved in the G20 summit and the scope of the security apparatus deployed, a public inquiry is imperative.

The ICLMG recommends that the Inter-American Commission on Human Rights receive favourably the recommendations presented by the *Ligue des droits et libertés*, the *International Federation for Human Rights* (FIDH) and the *Clinique internationale de défense des droits humains* (CIDDHU).

Sincerely,

Roch Tassé
National Co-ordinator
ICLMG

Appendix: International Civil Liberties Monitoring Group

ICLMG: the organization

The ICLMG is a pan-Canadian coalition of civil society organizations that was established in the aftermath of the September 11, 2001 terrorist attack in the United States. The coalition brings together 40 NGOs, unions, professional associations, faith groups, environmental organizations, human rights and civil liberties advocates, as well as groups representing immigrant and refugee communities in Canada.

Mandate / Objectives

The mandate of the ICLMG is to defend the civil liberties and human rights set out in the Canadian Charter of Rights and Freedoms, federal and provincial laws (such as the Canadian Bill of Rights, the Canadian Human Rights Act, provincial Charter of Human Rights or Privacy legislation), and international human rights instruments (such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment).

Membership

Members of the International Civil Liberties Monitoring Group presently include:

2. Amnesty International
3. Association québécoise des organismes de coopération internationale
4. B.C. Freedom of Information and Privacy Association
5. Canadian Arab Federation
6. Canadian Association of University Teachers
7. Canadian Auto Workers Union
8. Canadian Council for International Co-operation
9. Canadian Council for Refugees
10. Canadian Council on American-Islamic Relations (CAIR-CAN)
11. Canadian Ethnocultural Council
12. Canadian Federation of Students
13. Canadian Friends Service Committee
14. Canadian Labour Congress
15. Canadian Muslim Civil Liberties Association
16. Canadian Muslim Forum
17. Canadian Muslim Lawyers Association
18. Canadian Union of Postal Workers
19. Canadian Unitarians for Social Justice
20. CARE Canada
21. Centre for Social Justice
22. Communications Energy and Paperworkers Union

23. Confederation of Canadian Unions
24. Council of Canadians
25. CUSO
26. David Suzuki Foundation
27. Development and Peace
28. ETC Group
29. Greenpeace
30. International Development and Relief Foundation
31. Inter Pares
32. KAIROS
33. Ligue des droits et libertés
34. National Anti-Racism Council of Canada
35. National Union of Public and General Employees
36. Ontario Council of Agencies Serving Immigrants
37. Mining Watch Canada
38. PEN Canada
39. Primate's World Relief and Development Fund
40. Public Service Alliance of Canada
41. United Steelworkers of America

Friends of the ICLMG

Hon. Warren Allmand; Mr. Allmand is a former solicitor general of Canada and the immediate past president of the International Centre for Human Rights and Democratic Development (Rights & Democracy).

Hon. Edward Broadbent; Mr. Broadbent is a former leader of Canada's New Democratic Party. He was the first president of the International Centre for Human Rights and Democratic Development.

Hon. David MacDonald; Mr. MacDonald is a former Canadian secretary of State and minister of communications. Mr. MacDonald is also an ex-Canadian ambassador to Ethiopia.

Hon. Flora MacDonald; Ms. MacDonald is a former Canadian minister of foreign affairs and a former minister of communications.

The Very Rev. Lois Wilson; Rev. Wilson is a former moderator of the United Church of Canada and a retired Senator.

Brian Murphy; Mr. Murphy is an independent writer, policy analyst and human rights advocate, and a former staff member of the Canadian social justice organization, Inter Pares, where he worked for almost 30 years.