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The Right Honourable Stephen Harper
Prime Minister of Canada
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by fax: 613-941-6900

November 24, 2009

Dear Prime Minister,

As you know, Amnesty International and the BC Civil Liberties Association have both been long concerned about the approach Canada has taken to the handling of prisoners apprehended by Canadian forces in Afghanistan during the course of military operations in that country. Our concerns about this issue and the very serious human rights consequences and implications involved lead us to call on you to immediately establish a Commission of Inquiry into the matter.

We first raised concerns about this issue in 2002. At that time, prisoners were being handed over to US forces in Afghanistan, despite the likelihood of further transfers on to Guantánamo Bay as well as a strong risk of torture and ill-treatment at US detention facilities in Afghanistan. We called for the transfers to be halted and a new approach adopted which would conform to Canada's international human rights obligations.

When a new approach was put in place in late 2005, under which prisoners were now to be transferred into the custody of Afghan officials, we again raised concerns. We highlighted that given the prevalence and systematic nature of torture in Afghan prisons, such transfers were prohibited under international law. We urged instead that Canadian forces work closely with Afghan officials and NATO allies to collaboratively take responsibility for the detention of battlefield prisoners, doing so in ways that would protect those prisoners from torture, play a role in helping to eradicate torture more widely, and make a valuable contribution to sorely-needed reforms of Afghanistan's notorious prison system. Those suggestions were rejected.

We turned to the courts and tribunals for recourse, launching a Federal Court application for an order halting the transfers and lodging a complaint with the Military Police Complaints Commission. Rather than agreeing that accountability and transparency regarding such a crucial issue was of utmost importance the government vigorously contested both proceedings, seeking at every turn to have them dismissed or restricted. The Federal Court application was ultimately dismissed, when the courts ruled that it could not go ahead because the Charter of Rights did not apply to Canadian forces in Afghanistan. The MPCC process has become stalled and faced innumerable roadblocks and is unlikely to make much progress.

We realize that the government asserts that the concerns about torture have been adequately resolved through the 2005 and 2007 agreements Canada reached with the Afghan government, wherein Afghan officials promise not to violate the rights of transferred prisoners and give assurances that Canadian representatives, the ICRC and the Afghan Independent Human Rights Commission will all be allowed to visit prisoners after they have been transferred. We have consistently maintained that in the face of widespread and systematic torture, such promises and monitoring assurances do not alleviate the risk faced by prisoners. At best, it may mean that torture is occasionally detected after the fact.

Prime Minister, our two organizations – like countless Canadians – were deeply disturbed to hear the testimony of Richard Colvin last week. Mr. Colvin's reports from 2006 and 2007, detailing his findings as to the risk and incidence of torture for transferred prisoners do not come as a surprise to us but are nonetheless very troubling. We are, however, shocked, that at least 12 of his reports were not disclosed by the government during the course of Federal Court proceedings in 2007 and 2008, despite the fact that they were obviously of direct relevance to the issues before the Court and were certainly covered by requests for disclosure of documents that had been made by our legal team. Equally troubling has been Richard Colvin's testimony as to the ways in which he indicates his reports were dismissed and ignored by senior officials. That your government has responded primarily by seeking to discredit and impugn Mr. Colvin's credibility has been, frankly, wholly unacceptable.

We are left perplexed as to what it will take to ensure there is proper accountability for this very serious human rights concern. It is certainly not going to come through the courts or the MPCC process; that is clear. It is also not going to come through the political process, where partisan interests have taken precedence.

In our view, therefore, there is no other option open other than to immediately convene a full, public Commission of Inquiry into all aspects of the laws, policy and practice that has governed Canada's approach to handling prisoners in Afghanistan. We call on you to do so without delay.

Sincerely,



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