



Public Statement

11 October 2011

The United Nations Documents Widespread Torture in Afghan Jails: Canada must convene a public inquiry into the Afghan prisoner scandal

The report of the United Nations Assistance Mission in Afghanistan, released yesterday, documenting widespread torture in Afghan detention facilities, and the earlier NATO decision, announced on September 6th, to suspend transfers of prisoners into Afghan custody, both make it clear that Canada's policy of handing prisoners over to Afghan officials over the course of more than five years violated international law and should have been reversed years ago. Among many disturbing conclusions, the UNAMA report finds "a compelling pattern and practice of systematic torture and ill-treatment" in facilities where Canada handed over prisoners. In some cases, children in custody were also tortured and abused.

Prime Minister Harper has repeatedly stated that Canada's involvement in Afghanistan was aimed at protecting fundamental Canadian values of "freedom, respect for human rights and the primacy of the rule of law." It is critically important therefore that the Canadian public get a full and candid accounting of what the government has done and that the government ensure that ongoing responsibilities are met.

The end of Canada's combat role in Afghanistan means that Canadian forces are no longer involved in detaining or transferring prisoners in the country. However, given these significant and disturbing recent developments and revelations Amnesty International and the British Columbia Civil Liberties Association have today:

- Asked the Government of Canada to confirm and explain its ongoing responsibility for the human rights of prisoners transferred to Afghan custody;
- Reminded the Government of Canada of its obligation to take immediate steps to confirm the physical condition of all prisoners transferred to Afghan custody;
- Requested that Canada disclose the outcome of Afghanistan investigations into previous allegations of abuse, and confirm whether charges were laid against any Afghan officials; and
- Reiterated their call for a public inquiry to be convened into Canada's approach to handling battlefield prisoners in Afghanistan.

Under international human rights and humanitarian law, the Government of Canada retains the responsibility of ensuring that prisoners transferred by the Canadian Forces are not subject to mistreatment in Afghan custody. Canadian government officials frequently stated that Canadian diplomats were monitoring Afghan detention facilities in order to meet that obligation. Under the circumstances, Canada should confirm that monitoring will continue and that it will take immediate and appropriate action to determine the physical condition of all prisoners transferred to Afghan custody.

While Canadian soldiers are no longer detaining individuals in Afghanistan, it is entirely possible that similar challenges and human rights concerns will arise in future deployments of Canadian forces, in Afghanistan or any other country. For this reason, only a comprehensive public inquiry into all aspects of the issue will ensure that the truth comes to light and that appropriate measures can be adopted to guard against this happening again.

To date there has been a troubling lack of transparency and accountability with regard to this issue in Canada. Given the well-documented and longstanding prevalence of torture in Afghan prisoners, Amnesty International and the British Columbia Civil Liberties Association began to press Canada to revise its prisoner policy as soon as it was announced in late 2005. However, the government steadfastly maintained that the policy was lawful and would not expose prisoners to a risk of torture.

Over time and only after considerable pressure, some reforms were instituted, including agreement from Afghan authorities that Canadian officials would be allowed access to detention centres to monitor prisoners after they were transferred. It later came to light, however, that confidential internal reports from Canadian diplomats who conducted those monitoring visits and documented concerns about torture were generally given very little weight. One diplomat, Richard Colvin, was publicly rebuked by government Ministers and other senior officials when he later was called to testify about his concerns before a parliamentary committee.

In 2007, Amnesty International and the British Columbia Civil Liberties Association launched an application in Federal Court seeking an order that would stop prisoner transfers. The government argued that the court case should not go ahead, because the Canadian Charter of Rights and Freedoms, the legal basis of the application, did not cover the actions of Canadian soldiers when they were outside Canada. Regrettably, the Federal Court and Federal Court of Appeal agreed with that position and the Supreme Court of Canada, in May 2009, declined to hear a further appeal. As a result, no court ever considered the substance of the matter. A complaint before the Military Police Complaints Commission, examining only the limited role played by military police personnel in the transfers, completed hearings in February 2011 and has not yet issued its report.

At the same time, the issue sparked a highly contentious political and constitutional debate between the government and opposition parties, focused largely on the right of Members of Parliament to transparency and accountability from the government on this matter and leading to a highly controversial decision by the government to prorogue Parliament in December 2009. A slow and cumbersome process of document review involving 3 of the 4 federal political parties was then agreed

to, the partial results of which were released in June 2011 but which failed to shed any meaningful light on key concerns.

Against this backdrop of secrecy, refusal to acknowledge the problem, efforts to silence critics and strenuous efforts in the courts and in Parliament to obstruct accountability, it is deeply troubling to see how soon after Canada's withdrawal from a combat role in Kandahar NATO came to recognize and act on the need to suspend prisoner transfers. While NATO's decision was based on their advance review of the UNAMA report, that report did not document or reveal anything that had not already been well-documented by the UN, governments, international and Afghan human rights groups and investigative journalists, going back many years. All of that information had been repeatedly put in front of Canadian officials.

It is essential that Canadian law, policy and practice – at home and abroad – be entirely and at all times directed towards preventing, stopping and avoiding any complicity in torture. That must extend equally to a Canadian prison guard in Canada and to a Canadian soldier deployed anywhere in the world. That is both a matter of international legal obligation and moral necessity. By convening a public inquiry into the entirety of the matter of Afghan prisoner transfers, the Canadian government will demonstrate how seriously it takes that obligation.

Media Contacts:

Amnesty International Canada: John Tackaberry, 613 744 7667 ext 236 (jtackaberry@amnesty.ca)

BC Civil Liberties Association: Carmen Cheung, Counsel, 604-630-9758 (carmen@bccla.org)

B.C. CIVIL LIBERTIES ASSOCIATION

550 - 1188 West Georgia Street
Vancouver, BC V6E 4A2
Tel: 604.687.2919 Fax: 604.687.3045
info@bccla.org



National Office:
312 Laurier Avenue East, Ottawa, ON K1N 1H9
Tel: (613) 744-7667 Fax: (613) 746-2411
info@amnesty.ca

Toronto Office:
1992 Yonge Street, 3rd floor, Toronto ON M4S 1Z7
Tel: (416) 363-9933 Fax: (416) 363-3103
toronto@amnesty.ca

Vancouver Office:
Suite 430, 319 West Pender, Vancouver, BC V6B 1T3
Tel: (604) 294-5160 Fax: (604) 294-5130
vancouver@amnesty.ca