

A Canada-based committee of jurists and others who oppose war and promote enforcement of international humanitarian law.

March 8, 2007

To: The Right Honourable Prime Minister Stephen Harper
The Honourable Attorney General Robert Nicholson,
The Honourable Minister of Foreign Affairs Peter MacKay,
The Honourable Minister of National Defence Gordon O'Connor

Attention Sirs:

Based on the information set out in this letter, we believe that transfers by the Canadian Armed Forces of people detained in Afghanistan to the custody of U.S. and/or Afghan authorities violate Canada's legal obligations.

We call on the government of Canada to direct the Canadian Armed Forces in Afghanistan to comply with the applicable Canadian and international law and to:

1. Stop the transfer of people detained by Canadian Armed Forces to Afghan authorities or to the custody and control of any third country.
2. Ensure that the detention, trial and release of all people taken into custody in Afghanistan by Canadian officials strictly accords with all applicable international and Canadian law.
3. Act to ensure that all procedures and records relating to the capture, detention, release and trial of such detainees is subject to appropriate public scrutiny.

We further call on the Canadian government to hold an inquiry into the turnover of detainees to determine whether detainees' rights have been violated and the appropriate remedies.

We understand that the Canadian Armed Forces are, and have been since early 2002, transferring people detained in Afghanistan to the custody of Afghan and U.S. authorities. Evidence indicates that some detainees who end up in U.S. or Afghan custody are subjected to torture and other criminal violations of fundamental rights.

The Government of Canada, by authorizing or failing to stop such transfers, is violating international and Canadian law. We urge you to take remedial action immediately.

We remind you that Canadian troops are in Afghanistan (1) to prevent violations of human rights and of international humanitarian law and (2) to enable the delivery of humanitarian aid and infrastructure development. Canadian troops are legally entitled and obliged to act as guardians of justice and international law and have no legal authority to deprive other nationals of their rights or to otherwise violate the law.

People taken into custody in Afghanistan and transferred to U.S. custody have been subjected to torture, inhumane treatment, arbitrary detention and violations of other fundamental rights, including rights to: habeas corpus, access to a competent and independent tribunal, and fair trial.¹ Some detainees have died while in custody² and others have suffered permanent physical or mental injury. We know that most of the prisoners in the Guantánamo Bay prison were transferred into U.S. custody by other countries³ and taken out of Afghanistan through an extra-legal rendition process.⁴ We fear that people transferred to U.S. custody by Canadians have been subjected to such treatment.

We also know that detainees transferred to the custody of Afghan authorities have been subjected to torture and other illegal treatment⁵ and are likely to be held in "appalling, dangerous and overcrowded conditions".⁶

As part of the UN Security Council-mandated International Security Assistance Force (ISAF), Canadian troops are present in Afghanistan to provide security that would enable the formation of a government that respects human rights, and to deliver urgent humanitarian aid. The Canadian Armed Forces are in Afghanistan as guardians of law and justice, not as lawbreakers. NATO is restricted by the UN Charter and must operate "in conformity with the principles of justice and international law."

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Evidence clearly indicates that people transferred to U.S. or Afghan custody are at risk of criminal rights violations including serious injury or death. By transferring people to risk of such harm, Canada is violating its legal duty to uphold Canadian and international law and Canadians responsible for the transfers are exposed to possible criminal liability. We urge you act to ensure immediate strict adherence to applicable laws: the International Covenant on Civil and Political Rights; the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment, the Standard Minimum Rules for the Treatment of Prisoners, *Geneva Conventions Act*, *Charter of Rights and Freedoms*, *Criminal Code*, and *Crimes against Humanity and War Crimes Act*.

The December 2005 Arrangement for the Transfer of Detainees between the Canadian Forces and the Ministry of Defence of the Islamic Republic of Afghanistan is wholly inadequate to prevent these violations.⁷ Contrary to assurances from Minister of Defence O'Connor, the International Committee of the Red Cross does not supervise or monitor the treatment of people transferred under this agreement.⁸

We look forward to receiving your response.

Sincerely,

Gail Davidson, Lawyers Against the War
cc. Members of Parliament

¹ Situation of detainees at Guantánamo Bay: Report of the Chairperson of the Working Group on Arbitrary Detention, Ms. Leila Zerrougui; the Special Rapporteur on the independence of judges and lawyers, Mr. Leandro Despouy; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Mr. Manfred Nowak; the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Mr. Paul Hunt. 15 February 2006 E/CN.4/2006/120. Presented to the 62nd session of the Commission on Human Rights. <http://www.ohchr.org/english/bodies/chr/docs/62chr/E.CN.4.2006.120.pdf>

Regarding torture see also *Break Them Down: Systematic Use of Psychological Torture by US Forces*, Physicians for Human Rights, 2005. <http://physiciansforhumanrights.org/library/report-2005-may.html>

² Report of the Independent Expert on the Situation of Human Rights in Afghanistan, M. Cherif Bassiouni, to the UN Commission on Human Rights, 11 Mar. 2005, paragraph 44.

http://www.law.depaul.edu/institutes_centers/ihrli/pdf/Bassiouni_Afghanistan_Final_05.pdf

³ Mark Denbeaux and Joshua Denbeaux, *Guantánamo Detainees: The Government's Story*, http://law.shu.edu/news/guantanamo_report_final_2_08_06.pdf

⁴ *Supra* Note 1, Situation of detainees at Guantánamo, at paragraphs 55,89.

⁵ Afghanistan Independent Human Rights Commission: Annual Report 1 January 2006 – 31 Dec. 2006, page 53.

⁶ *Ibid*, paragraphs 28, 29, 46.

⁷ Michael Byers, *Legal Opinion on the December 18, 2005 "Arrangement for the Transfer of Detainees between the Canadian Forces and the Ministry of Defence of the Islamic Republic of Afghanistan"*, Liu Institute for Global Studies, April 7, 2006.

⁸ Paul Koring, *Red Cross contradicts Ottawa on detainees*, Globe and Mail update, 8 March 2007.

<http://www.theglobeandmail.com/servlet/story/RTGAM.20070308.wdetainees07/BNStory/National/home>