



The Honourable Peter MacKay
Minister of National Defence
National Defence Headquarters
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By fax: 613-995-8189

November 30, 2010

Dear Minister:

We are writing to express our deep concern over the Canadian Forces' apprehension, detention and transfer of children who have been captured in course of military operations in Afghanistan. Recent reports indicate that the Canadian Forces have mishandled these children in a manner that contravenes Canada's obligations under the UN Convention on the Rights of the Child (Convention) and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (Optional Protocol). We call upon Canada to take immediate, meaningful action to bring its policies and practices regarding these children in Afghanistan into compliance with international law.

Recent reports disclosed by the government to the Military Police Complaints Commission and additional documents obtained by the CBC further to an Access to Information Request confirm that Canadian Forces in Afghanistan apprehend, detain and transfer juvenile combatants. We are deeply concerned that Canada is not taking necessary steps to ensure that children captured in the course of military operations are being provided with the assistance necessary to foster their rehabilitation and reintegration into Afghan society.

The CBC recently released a document prepared for the National Defence Headquarters, "Briefing Note on Addition of Fifth Facility for Canadian-Transferred Juvenile Detainees in Afghanistan", dated March 30, 2010, which indicates that an undisclosed number of juveniles have been detained by the Canadian Forces since 2006. It further indicates that of that total, an undisclosed number were transferred into Afghan custody, an undisclosed number were released and an undisclosed number are presently being held in the Canadian Forces detainee facility at Kandahar Air Field. The Briefing Note indicates that in the Kandahar area, juveniles transferred into the custody of Afghan officials were previously held in a dedicated wing of Sarpoza prison but that they are now held in the Kandahar Juvenile Rehabilitation Centre (KJRC). At the time the Briefing Note was being prepared, arrangements were being made to transfer the juveniles still in Canadian Forces custody to the KJRC.

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In addition, documents that the government recently released to the Military Police Complaints Commission indicate that until September 2007, five years after Canada first entered into the current conflict in Afghanistan, Canada transferred children directly to the National Directorate of Security (NDS) facility in Kandahar. That facility is run by the Afghan intelligence service and is widely believed to pose a high risk for prisoners of torture and mistreatment. These documents indicate that children at the facility were housed directly with adult prisoners. Housing children with adults creates the risk that children would be abused by adult prisoners.

Canada claims in the Briefing Note that its procedures are “in line with NATO policy and consistent with international norms.” To the contrary, Canada’s approach to the handling of alleged juvenile combatants, both then and now, appears to be in clear contravention of Canada’s obligations under the Convention and Protocol. The Convention reflects the need to respect and ensure the human dignity of all children, and the nearly universal recognition of children’s unique human rights protection needs. It is the most universally accepted human rights treaty. The Convention obliges States Parties, in article 39, to “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of ... armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.” Article 37 requires that children who are imprisoned should be separated from adults.

The Optional Protocol is the strongest instrument to date prohibiting the use of children as combatants and protecting the rights of juveniles taking part in hostilities. Canada played a leading role in developing the Optional Protocol and ratified it in 2000. The Optional Protocol makes it clear, in article 4(1), that armed groups such as the Taliban “should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.” The Optional Protocol further requires, in article 6(3), that States Parties take “all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.”

These international standards make it clear, firstly, that the armed groups and individuals, who recruited these children or allowed them to join in the fighting in Afghanistan, have violated international law. These children are not to be treated as voluntary participants in hostilities, and all efforts must be taken to remove these children from armed conflict. It is disturbing that the Briefing Note refers to child recruits in Afghanistan as “juveniles who are participating in the insurgency in Afghanistan,” with no discussion of the fact that the use of children as soldiers has been universally condemned as abhorrent and that there are serious questions as to the voluntariness of children’s participation in armed conflict.

These international standards also make it clear that when these juveniles come into the custody and care and thus jurisdiction of Canadian Forces, Canada’s primary obligation must be to ensure that they are demobilized and that they receive the assistance they need to ensure their physical and psychological recovery and their social reintegration. Put plainly, juvenile combatants must be treated as victims in their own right. The Briefing Note does not in any way indicate that Canadian Forces have taken steps to ensure the demobilization, recovery and reintegration of these children. A certain number of the children were apparently simply released, which gives rise to the very real possibility that they would have again forcibly or voluntarily become active with insurgent groups. A certain number were in Canadian Forces custody for a “significant period”, with no indication that they were given access to programs directed to their physical and psychological recovery or their social reintegration.

The remainder of the children have been transferred into the custody of Afghan officials, initially at the NDS facility, then at Sarpoza prison and now at KJRC. CBC reports they have confirmed that when they are transferred into Afghan custody, the children are currently routed through Afghanistan's notorious NDS. The NDS' record of torture and ill-treatment is well-documented, including with respect to children. It is of very real concern to learn that the NDS has been and may continue to be involved at any stage of the detention of these children.

The Briefing Note states that detention conditions at the KJRC have been "confirmed" to be "satisfactory" following consultations with the International Committee of the Red Cross and with UNICEF. It is not made clear whether this "satisfactory" rating includes, as it should, provision of appropriate programming to ensure the physical and psychological recovery of the child detainees, as well as their social reintegration.

In addition to these concerns about apparent failure to recognize and protect these child prisoners as child soldiers, our organizations also have questions about the grounds and necessity for their arrest and detention. Arbitrary arrest and detention is, of course, prohibited under international human rights legal standards. This prohibition is even more stringent when it comes to children, making it clear that imprisonment is to be a measure of last resort. Article 37 of the Convention provides, for example, that:

No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

This requirement that the detention of children be a last resort and be for the shortest appropriate time is included as well in the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. We raise these standards because we are concerned about the possibility that some and even most of these child prisoners may be held without charge or trial, which would be clear contravention of these international obligations.

Minister, Amnesty International and the British Columbia Civil Liberties Association call on the government to:

- discontinue any NDS involvement in the custody or treatment of children detained by Canadian Forces;
- ensure that the approach taken to the arrest, detention, transfer and release of children who have been "participating in the insurgency in Afghanistan" is fully consistent with Canada's obligation to ensure that such children are demobilized, and assisted with their physical and psychological recovery and social reintegration;
- ensure that child prisoners transferred into the custody of Afghan officials are not at risk of torture or ill-treatment, are not arbitrarily detained, and are imprisoned only as a measure of last resort and for the shortest appropriate period of time;
- actively monitor the legal status and detention conditions of transferred child prisoners against applicable international human rights standards;
- cease transfers of child prisoners if there is a serious risk that they will face human rights violations in Afghan custody; and

- provide public information with respect to the arrest, detention, transfer and release of child prisoners, including numbers of child detainees, their ages, where they are held, and details with respect to detention conditions and programming.

In addition to these specific concerns about the treatment of children who have been detained by Canadian Forces, we remain concerned about the wider approach Canada has adopted to the handling of prisoners apprehended in the course of military operations in Afghanistan. Since as early as late 2005, our organizations have voiced concerns about the arrangements Canada has entered into with the Afghan government for the transfers of prisoners, given the widespread use of torture in Afghan prisons. Those arrangements do not satisfy Canada's obligations under international human rights and international humanitarian law, particularly the prohibition on torture and other forms of cruel, inhuman or degrading treatment or punishment.

Through correspondence and legal proceedings before both the Federal Court and Military Police Complaints Commission we have repeatedly called upon Canada to take action to bring its policies and practices regarding detainees in Afghanistan into compliance with international law. We continue to call on the government to cease the practice of transferring prisoners to Afghan officials and to ensure instead that prisoners are dealt with in a manner that fully complies with international legal requirements.

We have previously highlighted that the range of troubling legal, political and military matters at the heart of the failure to ensure full and proper protection of the human rights of prisoners in Afghanistan is of such complexity and such importance that a comprehensive public inquiry of these concerns is required. These latest revelations serve only to underscore how necessary that is. We reiterate our recommendation, therefore, that the government establish a public inquiry without delay.

Sincerely,



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