

Bada, Tina -JLT

From: Gibbins, Christopher -DFA -FTAG
Sent: November 21, 2007 6:50 PM
To: 'buchan.g@forces.gc.ca'
Cc: Christoff, James -DFC -FTAG; Termorshuizen, Cindy -DFA -FTAG; Walma, Michael -IDR; 'BOS.M@forces.gc.ca'; Bird, Sheila -DGD -FTAG; SMITH.SL2@forces.gc.ca
Subject: RE: DSACUER?
Attachments: Q&A-(8014).rtf

Gavin - the sad truth of it is that PCO hasn't really approved anything for ages. We prepared extensive lines, with DND, in prep for release of docs on Nov 14 but were told they'd approve on a case by case basis only.

Attached is the latest version of our Q&A which would be the closest thing we have to approved lines. Highlights (hopefully relevant) below. Hope that that is helpful

Sorry not to have gotten back to you sooner but with Shannon gone

Cheers
Christopher

Key Messages

- The primary responsibility for ensuring the rights of detainees transferred to Afghan authorities are respected rests with the Govt of Afghanistan, with the AIHRC in a monitoring & investigative role.
- Canadian officials have underscored the need for Afghan authorities to treat detainees humanely and in accordance with Afghanistan's international obligations.
- Canada continues to work closely with the Government of Afghanistan and the Afghanistan Independent Human Rights Commission (AIHRC) to strengthen their capacity regarding the treatment of detainees.

How often have Canadian officials visited detention facilities? (Nov. 15, 2007)

- Since signing the Supplementary Arrangement in May 2007, Canadian officials have visited detention facilities in Kandahar and Kabul on sixteen (16) occasions.
 - During the course of these visits Canadian officials have conducted 32 private interviews with detainees, in detention facilities in Kandahar and Kabul.
 - In each instance, Canadian officials have had the full cooperation of Afghan authorities, and have been granted free, unrestricted and private access to Canadian-transferred detainees.
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How many detainees have come forward to Canadian officials with claims of mistreatment? (Nov. 15, 2007)

14/01/2010

Document Number / Numéro du document:

0579

Redacted by AG

- Since May 3, 2007, there have been 7 allegations of mistreatment made to Canadian officials by Canadian-transferred detainees.
 - These allegations of mistreatment were made during the regular course of visits to detention facilities in Kandahar and Kabul
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Have you suspended the transfer of detainees (as described by the German NATO General)? Nov 15

- We do not comment on operations in theatre.
- We are confident that the measures available to us under the Supplementary Arrangement are working.

From: BUCHAN.G@forces.gc.ca [mailto:BUCHAN.G@forces.gc.ca]
Sent: November 21, 2007 11:07 AM
To: Walma, Michael -IDR
Cc: BOS.M@forces.gc.ca; LEMIEUX.JAA@forces.gc.ca; Termorshuizen, Cindy -DFA -FTAG
Subject: RE: DSACUER?

Hi Mike,

Yes we have a program (mtgs + roundtable w. senior uniformed staff, bilat w. the Minister), no it wasn't seen as having an interdepartmental component. Joint effort with the SJS and DPFL on developing the program.

Messaging on detainees was going to be delivered during the roundtable, as it's too big an issue to ignore, but it's a long way from being primary focus. Could also be raised in his bilat with the CDS, though we know he has his own inimitable way of conveying talking points.

Does FTAG want to pass us a few PCO-approved bullets on detainees?

Cheers,
Gavin

-----Original Message-----

From: Michael.Walma@international.gc.ca [mailto:Michael.Walma@international.gc.ca]
Sent: Wednesday, 21 November, 2007 10:28
To: Buchan G@ADM(Pol) D NATO POL@Ottawa-Hull
Subject: DSACUER?

Cindy was asking me about a visit of DSACEUR. Do you have a program for this visit? Is there a plan to include DFAIT or no? Cindy's preoccupation, and mine, is to ensure messaging on detainees.

Michael

14/01/2010

SUBJECT - SUJET

TRANSFER OF DETAINEES IN AFGHANISTAN BY THE CANADIAN FORCES (NOV. 21, 2007) [FTAG-38]

ANTICIPATED QUESTION - QUESTION PRÉVUE

KEY MESSAGES (Nov. 15, 2007)

SUGGESTED REPLY - RÉPONSE SUGGÉRÉE

- The primary responsibility for ensuring the rights of detainees transferred to Afghan authorities are respected rests with the Govt of Afghanistan, with the AIHRC in a monitoring & investigative role.
- Canadian officials have underscored the need for Afghan authorities to treat detainees humanely and in accordance with Afghanistan's international obligations.
- Canada continues to work closely with the Government of Afghanistan and the Afghanistan Independant Human Rights Commission (AIHRC) to strengthen their capacity regarding the treatment of detainees.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What is the Canadian Forces policy with respect to transferring juveniles to Afghan authorities? Nov. 21

REPLY- RÉPONSE

- Canadian Forces in Afghanistan have clear instructions to treat juvenile detainees with particular care. Any juveniles detained by the CF are held separately from any detained adults.
- Under Afghan law juvenile prisoners are the responsibility of the Afghanistan Ministry of Justice (MoJ).
- Juveniles detained and transferred by the CF are held in a designated wing of the MoJ prison in Kandahar. Our policy is in line with NATO standard operating procedures

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Did the government know that there were torture allegations when they said they didn't?
(Nov 16)

REPLY- RÉPONSE

- This government has underscored the need for Afghan authorities to treat detainees humanely and in accordance with Afghanistan's international obligations.
- The challenges highlighted in the reports of some of the Afghan prisons confirm that Afghanistan continues to need Canada's help to rebuild the country and its systems.
- The primary responsibility for ensuring the rights of detainees transferred to Afghan authorities are respected rests with the Government of Afghanistan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Is Canada in violation of the Geneva Conventions by continuing to transfer detainees?
(Nov 19)

REPLY- RÉPONSE

- Canada takes its international legal obligations very seriously. Canada's approach to detainee issues in Afghanistan is in full compliance with those obligations
- As a matter of policy, the CF treat all detainees humanely and in accordance with the standards of protection afforded to Prisoners of War, under the Geneva Conventions.
- Canada has gone to extraordinary lengths to reduce risks of inhumane treatment which may be faced by detainees transferred by it to Afghan authorities

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Are the Canadian Forces handing over adequate information to the Afghan National Security Forces to prosecute Canadian-transferred detainees? (Nov 19)

REPLY- RÉPONSE

- It is important to note that these individuals are detained in the conduct of military operations, not law enforcement operations. The CF share information with the Afghan National Security Forces.
- CF personnel keep records on all detained persons. The level of detail we are able to provide will depend on the nature of the operation and the circumstances surrounding the detention.
- Canadian Forces in Afghanistan are fully trained and have clear instructions on all matters related to detainees, including the factors for determining their release or transfer.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why can't Canada account for all the detainees it has transferred to Afghan authorities? (Nov 16)

REPLY- RÉPONSE

- Canada takes this issue extremely seriously, and continues to work closely with Afghan officials to monitor and track all detainees under Afghan authority transferred by the Canadian Forces
- Afghan monitoring and tracking capacity continues to be addressed. Canada is working with Afghan authorities to support initiatives to improve information management and records keeping.
- Since the signing of the Supplementary Arrangement there have been real improvements in the monitoring and tracking of detainees, and Canada has had a great deal of cooperation from Afghan authorities

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How can the government continue to transfer detainees to prison conditions its own officials have reported as appalling? (Nov 16)

REPLY- RÉPONSE

- The challenges highlighted in the reports of some of the Afghan prisons confirm that Afghanistan continues to need Canada's help to rebuild the country and its systems
- Canada is funding a \$1.5M project at Sarpoza prison facility in Kandahar for infrastructure support & human rights training
- Canada has fielded corrections and police advisers to assist in training and mentoring in Kandahar, and we have engaged in a number of initiatives to support the judicial sector

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Do Canadian officials observe the questioning of detainees by Afghan authorities? (Nov 16)

REPLY- RÉPONSE

- These are unsubstantiated allegations.
- The primary responsibility for ensuring the rights of detainees transferred to Afghan authorities are respected rests with the Afghan government, with the AIHRC in a monitoring and investigative role
- Canadian officials have underscored the need for Afghan authorities to treat detainees humanely and in accordance with Afghanistan's international obligations

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How is Canada building capacity in Afghanistan's corrections sector? Nov 16

REPLY- RÉPONSE

- Canada is contributing to efforts to strengthen the rule of law in Afghanistan, including the appropriate treatment of detainees, through support for comprehensive justice and security sector reform.
- In partnership with the Afghan government, Canada is considering how best to proceed with initiatives that contribute to improving Afghanistan's correctional capacity.
- Canada has funded the International Development Law Organization (IDLO) on Strenghtening the Rule of Law, including judges and prosecutors training.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Given the latest allegation of mistreatment of a detainee, will the Gov't consider a temporary moratorium on the transfer of detainees?Nov 15 (1 of 2)

REPLY- RÉPONSE

- The primary responsibility for ensuring the rights of detainees transferred to Afghan authorities are respected rests with the Govt of Afghanistan, with the AIHRC in a monitoring & investigative role
- Credible evidence of some form of physical mistreatment came to light during a recent private interview between Canadian officials and a Canadian-transferred detainee.
- Senior Afghan officials have been engaged, including President Karzai and the head of the NDS. Afghan authorities have advised that they are investigating and considering prosecution.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Given the latest allegation of mistreatment of a detainee, will the Gov't consider a temporary moratorium on the transfer of detainees? Nov 15 (2 of 2)

REPLY- RÉPONSE

- When there are allegations of mistreatment, Canadian officials immediately inform the ICRC, the Afghanistan Independent Human Rights Commission (AIHRC), and senior Government of Afghanistan officials.
- The Government of Afghanistan has committed to investigate all claims, working with the AIHRC
- Canada continues to work closely with the Govt of Afghanistan and AIHRC to strengthen their capacity regarding the treatment of detainees. Challenges remain, but they are surmountable and correctable.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How often have Canadian officials visited detention facilities? (Nov. 15, 2007)

REPLY- RÉPONSE

- Since signing the Supplementary Arrangement in May 2007, Canadian officials have visited detention facilities in Kandahar and Kabul on sixteen (16) occasions.
- During the course of these visits Canadian officials have conducted 32 private interviews with detainees, in detention facilities in Kandahar and Kabul.
- In each instance, Canadian officials have had the full coooperation of Afghan authorities, and have been granted free, unrestricted and private access to Canadian-transferred detainees.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How many detainees have come forward to Canadian officials with claims of mistreatment? (Nov. 15, 2007)

REPLY- RÉPONSE

Responsive Only

- Since May 3, 2007, there have been 7 allegations of mistreatment made to Canadian officials by Canadian-transferred detainees.
- These allegations of mistreatment were made during the regular course of visits to detention facilities in Kandahar and Kabul

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why isn't the Goverment concerned by the number of allegations of mistreatment made by Canadian-transferred detainees ? Nov. 15

REPLY- RÉPONSE

- Canada takes all allegations of mistreatment very seriously. Nevertheless, the nature of these allegations differ considerably in credibility
- Last week, during the course of a visit, we were made aware of an alleged incident that was credible in the opinion of our trained interviewers. There has been an immediate response by the Afghan Govt
- Senior Afghan officials have made it clear that an investigation is underway regarding the most recent allegation of mistreatment, and that progress is being made in uncovering just what happened.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Have you suspended the transfer of detainees (as described by the German NATO General)? Nov 15

REPLY- RÉPONSE

- We do not comment on operations in theatre.
- We are confident that the measures available to us under the Supplementary Arrangement are working.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What evidence does the Government need to convince it that it is transferring detainees into inhumane conditions? Nov 15

REPLY- RÉPONSE

- Canadian officials have underscored the need for Afghan authorities to treat detainees humanely and in accordance with Afghanistan's international obligations.
- Canada is working to provide the equipment and uniforms necessary for the Afghan authorities to safely manage its dangerous prisoners.
- The primary responsibility for ensuring the rights of detainees transferred to Afghan authorities are respected rests with the Government of Afghanistan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why do we believe the Government of Afghanistan has the capacity to adequately carry out investigations into allegations of mistreatment? Nov 15

REPLY- RÉPONSE

- Canadian officials are in regular dialogue with Afghan officials at the most senior levels regarding the ongoing investigations.
- Canada has offered its assistance in enhancing the Afghan government's capacity to carry out such investigations in a transparent and impartial manner.
- While there remain challenges, they are surmountable and correctable.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What is the status of the investigations the Government keeps telling us the Afghan Government is conducting into the allegations of abuse? Nov 15

REPLY- RÉPONSE

- Canadian officials are in regular dialogue with Afghan officials at the most senior level regarding the ongoing investigations.
- For the most recent allegation, senior Afghan officials have made it clear that an investigation is underway, progress is being made, and anyone found guilty of misdeeds will be brought to justice.
- Canada has offered its assistance in enhancing the Government of Afghanistan's capacity to carry out such investigations in a transparent and impartial manner.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What do Canadian officials do when made aware of allegations of mistreatment? (Oct. 11, 2007)

REPLY- RÉPONSE

- Canadian officials immediately inform the ICRC, the AIHRC, and senior Government of Afghanistan officials. The Government of Afghanistan has committed to investigate all claims, working with the AIHRC
- Canada has offered its assistance in enhancing the Government of Afghanistan's capacity to carry out such investigations in a transparent and impartial manner.
- The fact that allegations have come to light during private interviews with Cdn officials who have free and unrestricted access demonstrates that the Supplementary Arrangement is being implemented.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Is there a limited number of facilities for detainees handed over by Canadians? Nov 15

REPLY- RÉPONSE

- The Supplementary Arrangement concluded on May 3 limits the number of facilities in which Canadian-transferred detainees are held in order to facilitate tracking and follow-up.
- We are currently in the process of formalizing arrangements with the Afghan authorities that would formally restrict the number of facilities to which Canadian-transferred detainees can be held.
- Since May 3, 2007, in practice Canadian-transferred detainees have only been held in four different facilities in Kandahar and Kabul.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How many detainees have been handed over to Afghan authorities by the CF since we signed the arrangement with the Afghan government? Nov 15

REPLY- RÉPONSE

- For operational security reasons, we do not provide information as to how many persons have been detained or transferred by the Canadian Forces in Afghanistan.
- The public release of such information would jeopardize the operational security of our mission and put the lives of those serving in Afghanistan at greater risk.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why can't Canada account for all the detainees it has transferred to Afghan authorities? Nov. 15

REPLY- RÉPONSE

- Canada takes this issue extremely seriously, and continues to work closely with Afghan officials to monitor and track all detainees under Afghan authority transferred by the Canadian Forces
- Afghan monitoring and tracking capacity continues to be addressed. Canada is working with Afghan authorities to support initiatives to improve information management and records keeping.
- Since the signing of the Supplementary Arrangement there have been real improvements in the monitoring and tracking of detainees, and Canada has had a great deal of cooperation from Afghan authorities

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why is the Government of Afghanistan unable to account for detainees it has transferred to the United States? Nov 15

REPLY- RÉPONSE

Responsive Only

- Since 2005, as per our Arrangements with the Afghan Government, Canada transfers detainees to Afghan authorities only.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why are Amnesty International and the British Columbia Civil Liberties Association (BCCLA) taking the Government of Canada to court? Oct 9

REPLY- RÉPONSE

- Amnesty International and the BCCLA have initiated court proceedings regarding the treatment of detainees in Afghanistan.
- The Government of Canada is following normal court procedures in response to this civil action.
- As the matter is before the courts, we will not be making any further comment at this time.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What is the Government's reaction to the court decision to allow the Amnesty-BCCLA case to proceed? Nov 15

REPLY- RÉPONSE

- This is a complex case and we acknowledge and respect the Court's decision.
- The government is reviewing the decision and will determine next steps.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why has the Government blacked out information in the documents released in the context of the Amnesty-BCCLA court case? Nov 15

REPLY- RÉPONSE

- The Government of Canada has a duty to protect information that, if made public, would be injurious to international relations, national defence or national security.
- The documents requested by Amnesty International Canada and the BC Civil Liberties Association required careful interdepartmental review of a large number of sensitive documents.
- The Government of Canada takes applications under Section 38 very seriously and carefully considers all related documents. As this case is still before the courts, we will not comment further.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How can Canada ensure that the AIHRC has access to detainees, for whom it has the responsibility of monitoring? Nov. 15 (1 of 2)

REPLY- RÉPONSE

- Canada has played an important role in strengthening the AIHRC's access to Afghan detention centres.
- Canada continues to provide strong support to the AIHRC. We have recently begun to provide an additional \$7 million to support and strengthen the AIHRC.
- This will serve to considerably build their capacity to monitor, investigate, protect and promote human rights throughout Afghanistan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How can Canada ensure that the AIHRC has access to detainees, for whom it has the responsibility of monitoring? Nov. 15 (2 of 2)

REPLY- RÉPONSE

- Canada recently jointly engaged the Government of Afghanistan, along with a number of our NATO allies operating in the South, confirming the role of the AIHRC and its right of access to detainees.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How has Canada helped build AIHRC capacity? (1 of 2) Nov 15

REPLY- RÉPONSE

- Canada has been working closely with the AIHRC since its inception in 2002 on a range of human rights issues.
- This is consistent with our role in Afghanistan which is to assist the democratically elected Government and help them build their own indigenous capacity, including the justice and security sectors.
- Canada has committed \$8 million in funding toward the AIHRC's mandate to monitor, investigate, promote and protect human rights in Afghanistan, with \$7 million of that total committed in 2007.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How has Canada helped build AIHRC capacity? (2 of 2) Nov 15

REPLY- RÉPONSE

- Canada has provided assistance to AIHRC-initiated and led workshops on human rights training for Afghan security and prison officials.
- Canada also sponsored an assessment mission to Afghanistan in June 2007 to determine where we can further assist the AIHRC in developing its capacity.
- The Government of Canada is looking at ways to provide further support, including logistical and technical assistance where appropriate, to help the AIHRC carry out its important work.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

In the face of evidence in the Amnesty International Report, will the Government cease transferring detainees immediately? (Nov 15)

REPLY- RÉPONSE

- The issues and challenges highlighted in the Amnesty International Report confirm that Afghanistan continues to need Canada's help to help it rebuild the country so that its citizen feel safe.
- In May, we signed a Supplementary Arrangement with Afghanistan that improved the previous arrangement regarding the transfer of Taliban prisoners and insurgents who are detained.
- Since signing this Supplementary Arrangement there have been real improvements in the monitoring and tracking of detainees.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

In the face of the latest allegations of torture in La Presse, will the Govt admit that torture is systemic and stop transferring detainees? oct31 1/3

REPLY- RÉPONSE

- Our Ambassador to Afghanistan immediately raised our concerns about these allegations with the Office of the President, and he will continue to follow up.
- We delivered the same message to the National Directorate of Security. The head of the NDS has told us that his organization is working to respect the May 3 agreement.
- We have also spoken to the Warden of Sarpoza Prison who acknowledges the positive role of Canada through support and training in improving prison management, including the treatment of detainees.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

In the face of the latest allegations of torture in La Presse, will the Govt admit that torture is systemic and stop transferring detainees? oct30 2/3

REPLY- RÉPONSE

- So far these are allegations, not facts. And remember that Taliban insurgents are instructed to make such allegations when they are caught.
- We have asked the journalist for more information about these anonymous allegations.
- Some of those the Canadian Forces has detained and transferred include insurgents who participated in incidents that killed Canadian personnel.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

In the face of the latest allegations of torture in La Presse, will the Govt admit that torture is systemic and stop transferring detainees? oct30 3/3

REPLY- RÉPONSE

- The journalist notes that the AIHRC agrees the situation for detainees has improved since our May 3 agreement.
- She also confirms that the hard-working men and women of the Canadian Forces are respecting the human rights of detainees.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Were any of the persons executed by the Afghan government Canadian-transferred detainees? (Oct. 15, 2007)

REPLY- RÉPONSE

Responsive Only

- Canada has received firm assurances from the Government of Afghanistan that none of the executed prisoners were transferees from the Canadian Forces.
- The Government of Afghanistan has provided written assurances, in its detainee Arrangement with Canada, that no Canadian-transferred detainee will be executed.
- The Afghan Govt has provided assurances that it is living up to its commitments. Canada expects the Government of Afghanistan to live up to its international human rights obligations.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Once the Government of Afghanistan has investigated the allegations of mistreatment, what will Canada do if those allegations are confirmed? Oct 9

REPLY- RÉPONSE

- The Supplementary Arrangement commits the Government of Afghanistan to prosecute such cases in accordance with national law and internationally applicable legal standards.
- Canada is committed to working with the Government of Afghanistan to ensure that it respects its international obligations with respect to the humane treatment of detainees.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What is the status of the DND's Board of Inquiry looking into alleged mistreatment of detainees? Nov 15 (DND)

REPLY- RÉPONSE

- The Canadian Forces take all complaints against their members very seriously and are actively investigating these allegations.
- As you know, the Canadian Forces convened a Board of Inquiry to investigate the specific complaint.
- Any reports resulting from this investigation will be made public subject to limitations imposed by the law and operational security.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Is DND cooperating with the investigation of the Military Police Complaints Commission? Nov 15 (DND)

REPLY- RÉPONSE

- The Canadian Forces take all allegations of abuse very seriously and are cooperating with the Military Police Complaints Commission's investigation of this issue.
- All Canadian Forces members involved in the transfer of detainees get regular training and clearly understand all procedures related to the handling of detainees.
- Canada believes that the best approach is to recognize the responsibility of Afghan authorities regarding the treatment of detainees, and to help them build capacity in that regard.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Will Canada stop transferring detainees to Afghan detention facilities given reports of the use of torture? Oct 5

REPLY- RÉPONSE

Responsive Only

- Canada is aware of several reports which have included references to concerns about human rights in Afghanistan.
- The Government of Afghanistan is conducting investigations into specific allegations brought forward by Canadian officials.
- Canada is part of an international effort to help the Government of Afghanistan develop its justice and governance capacity to ensure that international human rights standards are met.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Do Afghan authorities follow proper procedures when interrogating detainees? Oct 9

REPLY- RÉPONSE

- Canadian officials have underscored the need for Afghan authorities to treat detainees humanely and in accordance with Afghanistan's international obligations.
- Canadian officials also stress the full and unrestricted access provisions of the Supplementary Arrangement, and make it clear that these provisions also apply to the AIHRC and the ICRC.
- The Heads of the National Directorate of Security (NDS) in Kandahar and Kabul have committed to cooperate fully with Canadian officials, the AIHRC and the ICRC, as per the Supplementary Arrangement.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why are we not working with NATO and ISAF allies to establish a NATO-run detention centre in Afghanistan? Nov. 15

REPLY- RÉPONSE

- Canada has been, and continues to be, in regular dialogue with our NATO and ISAF allies on all aspects of ISAF's mission, including the treatment of detainees transferred by allied forces.
- Like our NATO allies, Canada believes that we can best foster the development of democratic institutions by helping Afghans improve their justice and security systems, including their detention system
- Like our NATO allies, Canada believes that the best approach is to recognize the responsibility of the Afghan authorities for the treatment of detainees and help build their capacity in this area.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why doesn't Canada operate its own detention facilities? Oct 5

REPLY- RÉPONSE

- Canada can do more to foster the sustainable development of Afghan institutions by helping Afghanistan improve its prison system and systems of due process, rather than operating facilities ourselves.
- Like our NATO allies, Canada believes that the best approach is to recognize the responsibility of the Afghan authorities regarding the treatment of detainees, and to help them build their capacity.
- Canada is one of 37 nations in Afghanistan as part of the NATO mission to assist the democratically elected Government of Afghanistan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Should Canada not be responsible for ensuring that the human rights of detainees it transfers to Afghan authorities are respected? Oct 5

REPLY- RÉPONSE

- The primary responsibility for ensuring the rights of detainees transferred to Afghan authorities are respected rests with the Govt of Afghanistan, with the AIHRC in a monitoring & investigative role.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What is the role of the International Committee of the Red Cross in Canada's detainee arrangement with Afghanistan? (1 of 2) Oct 5

REPLY- RÉPONSE

- The ICRC's right to visit detainees while they are in custody derives from existing international law, not an agreement with Canada.
- The Supplementary Arrangement simply makes explicit the fact that the ICRC has a right to visit detainees at any time while they are in custody, whether held by CF or by Afghan authorities.
- The Supplementary Arrangement in no way creates any obligations on the part of the ICRC.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What is the role of the International Committee of the Red Cross in Canada's detainee arrangement with Afghanistan? (2 of 2) Oct 5

REPLY- RÉPONSE

- The Supplementary Arrangement places the onus on the GoA to advise Canada, the AIHRC and ICRC of any corrective action it is taking to remedy instances of abuse.
- Canadian officials continue to maintain an open and constructive dialogue with the ICRC on detainee related issues in Afghanistan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Does the ICRC monitor detainees in CF custody and inspect CF detention facilities? Oct 5

REPLY- RÉPONSE

- The ICRC has visited Canadian Forces holding facilities in Kandahar, and Canadian officials maintain an open and constructive dialogue with the ICRC on detainee issues in Afghanistan.
- The ICRC's right to visit detainees while they are in custody derives from existing international law, not an agreement with Canada.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Is there sufficient personnel to monitor detainees? Oct 5

REPLY- RÉPONSE

- The primary responsibility for ensuring that the rights of detainees transferred to Afghan authorities is respected rests with the Government of Afghanistan, with the AIHRC in a monitoring role.
- We will continue to work with the AIHRC to strengthen its capacity to monitor the human rights situation in Afghanistan, including those of detainees transferred by the Canadian Forces.
- The Government of Canada has increased its civilian presence in Kandahar to enhance its support for the rule of law and human rights.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What is the role of the Afghanistan Independant Human Rights Commission? Oct 9

REPLY- RÉPONSE

- The AIHRC monitors prisons and detention centres and investigates human rights violations. Canada has been working with the AIHRC since 2002 to help build its monitoring and investigative capacities.
- The Government of Canada continues to work closely with the AIHRC to strengthen its capacity to investigate and monitor the treatment of detainees by Aghan authorities.
- The Government of Canada is currently looking at ways to provide further support, including logistical and technical assistance where appropriate, to help the AIHRC do its important work.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How does the Supplementary Arrangement help prevent the mistreatment of detainees?
(1 of 2) Oct 5

REPLY- RÉPONSE

- The Supplementary Arrangement makes explicit that Canada has full, unrestricted and private access to any person transferred by Canadian Forces to Afghan authorities.
- It also ensures that the Afghanistan Independent Human Rights Commission (AIHRC) has the same unrestricted access.
- Finally, it also confirms that the ICRC retains its right of access under international law, and that relevant human rights institutions within the UN system will be allowed to visit those detainees.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How does the Supplementary Arrangement help prevent the mistreatment of detainees?
(2 of 2) Oct 5

REPLY- RÉPONSE

- Under the Supplementary Arrangement, the Government of Afghanistan agrees to investigate and prosecute any allegations of abuse, and to inform Canada, the AIHRC, and the ICRC of the steps it is taking
- The Supplementary Arrangement enhances the December 2005 Arrangement to make explicit Canada's expectations and Afghanistan's responsibilities.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Can the Government guarantee that the Supplementary Arrangement will be implemented and upheld? Oct 5

REPLY- RÉPONSE

- The Supplementary Arrangement was signed by Afghanistan's Minister of Defence.
- The heads of the NDS in Kandahar and Kabul have advised Canada that they are committed to cooperating fully with Canadian officials, the AIHRC and the ICRC, as per the terms of the Supp. Arrangement.
- Canadian officials in Kandahar and Kabul are taking the necessary actions to ensure that all aspects of the Supplementary Arrangement are being implemented.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

While this new Arrangement may protect newly detained persons, what about those who are already in detention? Oct 5

REPLY- RÉPONSE

- The May 2007 Supplementary Arrangement enhances the December 2005 Arrangement which remains in force.
- The Supplementary Arrangement does not create new protections and applies equally to all detainees transferred by the Canadian Forces.
- Our Embassy in Afghanistan has been in contact with Afghan authorities to seek information on the status and current location of detainees previously transferred by Canadian Forces.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

How does the Supplementary Arrangement compare with the detainee arrangements made by our allies? Oct. 5

REPLY- RÉPONSE

- While each arrangement has its own distinct features, Allied arrangements are all aimed at the same fundamental objective: assurances that detainees will be treated humanely

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Section 5 of the Supplementary Arrangement allows for notifications to transfer to other countries. What goes in a decision to transfer? Oct 5

REPLY- RÉPONSE

- The Supplementary Arrangement requires that Afghan authorities receive written agreement from the Govt of Canada before it transfers a detainee, transferred by the Canadian Forces, to a third party.
- A decision by Afghanistan to request transfer to any 3rd party would be based on considerations by the Afghan government, and would have to be consistent with Afghanistan's international obligations.
- Since the Supplementary Arrangement has been put in place, Foreign Affairs officials have not received a request from Afghan authorities for such a transfer.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

What happens to detainees who are captured by Afghan Forces conducting combined operations with Canada? Does Canada inform the ICRC and AIHRC? Oct 5

REPLY- RÉPONSE

- On combined operations between the CF and Afghanistan forces, when an individual is captured by the CF, our regular CF procedures are followed.
- If that individual is captured by Afghan forces, then the Afghan forces follow their own domestic procedures.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Are the Afghan Forces required to comply with international law when they capture individuals during joint operations? Oct 5

REPLY- RÉPONSE

- Afghanistan is obliged to comply with its international legal obligations, including customary international law, concerning humane treatment of detainees.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Does the May 2007 supplement provide monitoring procedures for detainees seized by other countries conducting joint operations with Afghanistan? Oct 5

REPLY- RÉPONSE

- The Arrangement and its Supplement only apply to persons initially detained by the Canadian Forces.
- However, if in the course of visits to facilities, Canadian officials are made aware of allegations or evidence of abuse of a detainee seized by another country, they would inform the other country.
- Canadian officials may also notify Afghan authorities and seek their intervention to stop the mistreatment and to take corrective measures. Canadian officials would also notify the ICRC and the AIHRC.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Why is a special DND review team withholding information on detainees from Canadians who request it through Access to Information?

REPLY- RÉPONSE

- DND and the CF use the same provisions to identify information to be released to the public as all other government departments and are fully compliant with Access to Information laws and procedures.
- The Department strives to make as much information as possible available to the public while balancing the need to protect the lives of our men and women serving in Afghanistan.
- The Department makes decisions on severances and ministers do not interfere in the process.

WHAT'S NEW - DERNIERS DÉVELOPPEMENTS

JUVENILES: On November 19 and 20, the issue of the transfer of juveniles was brought up in the House of Commons. Under Afghan law juvenile prisoners are the responsibility of the Afghan Ministry of Justice (MoJ). Under an understanding reached with the National Directorate of Security (NDS) on September 8, 2007, juveniles detained and transferred by the Canadian Forces to the NDS are to be immediately transferred by the NDS to the juvenile detention facility at the MoJ prison in Kandahar.

BACKGROUND - ASSESSMENT - ÉVALUATION

(Advice to the Minister - Conseil(s) au ministre)

DOCUMENTS RELEASED: Pursuant to the on-going litigation process involving Amnesty International Canada and the B.C. Civil Liberties Association, the Government of Canada released documents related to the issue of detainees transferred by the Canadian Forces to Afghan authorities. The material released is extensive and made up of documents from the DFAIT, DND and Correctional Service Canada. This material consists mainly of email correspondence, reports from Government officials working in Afghanistan, reports assessing the human rights situation, as well as other material needed to conduct day-to-day government business and military operations in Afghanistan.

The documents released bear witness to the dedicated efforts of Canadian and Afghan officials who, through proactive and extensive dialogue, have been able to promote Canada's human rights agenda and improve Afghanistan's ability to implement its international human rights obligations. The material also describes a system plagued by corruption, a flawed judicial system, and poor detention facility infrastructure. The ongoing challenges faced by the Afghanistan Independent Human Rights Commission (AIHRC) are in evidence. Previous challenges related to tracking detainees also come through. Also included are references to the quality of the evidence previously provided by the Canadian Forces to Afghan authorities at the moment of transfer of detainees.

Subsequent to the release of these documents, there has been ongoing attention to various items raised within them, in both the media and Question Period.

ALLEGATION OF MISTREATMENT: On November 14, 2007, MINA advised the House that during a recent follow-up visit, a Canadian-transferred detainee made an allegation of mistreatment that concerned Canadian officials. The Government of Afghanistan has informed us that it has immediately launched an investigation and that progress is being made in uncovering just what happened. Senior Afghan government officials have been demarched including the President, the Governor of Kandahar, and the NDS.

AMNESTY REPORT On November 13, 2007, Amnesty International released a report on the state of detention facilities in Afghanistan. Amnesty states that it has received reports of torture and that ISAF members, including Canada, do not comply with their international legal obligations in transferring detainees to Afghan authorities. The Report includes a series of recommendations for ISAF, the Government of Afghanistan and UNAMA. Key among these is that there should be an immediate moratorium by ISAF countries on transferring detainees to Afghan authorities. Many additional recommendations speak to the need for significant capacity building, something ISAF members and Canada are already heavily engaged in. In addition to continuing our considerable capacity building projects and funding in Afghanistan, the Government of Canada will call upon the Government of Afghanistan to recognize its international obligations.

LA PRESSE (Oct 29). An article appeared in La Presse claiming that three Afghan prisoners captured by Canadian soldiers were tortured after they were turned over to Afghan authorities. The three detainees were interviewed by La Presse inside a Kandahar prison but did not want their names published. While the story does not detail what torture the three underwent, the newspaper quotes them as saying that inmates at the prison are hit with bricks, have their fingernails pulled out and undergo shock treatment. They also say detainees are forced to stand with their arms in the air for two days and two nights, and are also beaten with electrified cables while being suspended from a wall with their arms tied behind their backs. La Presse says an official at the Sarpoza jail, who was present for the interviews, backed up the prisoners' statements. He did not want to give his name. Our Ambassador in Kabul has raised the issue with the President's office, who undertook to engage the NDS in parallel to our own efforts. DFAIT officials are attempting to contact the La Presse journalist in an attempt to obtain more detailed information about the allegations. Finally, DFAIT officials are following-up with senior Sarpoza prison officials regarding a prison official's alleged comments regarding the practice of detainee abuse at NDS.

facilities.

EXECUTIONS: On October 8, 2007 it was reported that the Government of Afghanistan had executed 15 prisoners at its main prison outside Kabul. It was the first use of the death penalty in over three years. (Oct 11, 2007)

MISSING DETAINEES: On September 22, 2007, the Globe and Mail reported that Canada can't account for at least 50 prisoners of the approximately 200 that it has captured and turned over to Afghan authorities, and that Canadian sources blamed this on shoddy record-keeping by Afghan authorities. The article also mentions widespread rumours of unofficial "private jails" in Kandahar.

DND BOARD OF INQUIRY: On June 25, 2007 the Globe and Mail reported that DND's Board of Inquiry into the handling of Afghan detainees won't concern itself with whether detainees are tortured or abused in prison. The article suggested that the decision not to probe into widespread allegations of torture and abuse of detainees turned over to Afghan authorities or the effectiveness of the intrusive new monitoring arrangements, which send Canadian soldiers and diplomats into Afghan prisons, limits the inquiry. This is, in fact, not the case. The Board of inquiry was launched to investigate allegations of abuse to Afghan detainees while they were in the custody of the Canadian Forces.

SCOND REPORT: On June 18, 2007 the Standing Committee on National Defence (SCOND) published its report "Canadian Forces in Afghanistan. Recommendation 18 of that Report stated that "The government should attempt to convince NATO to establish a general arrangement with the Government of Afghanistan to ensure the consistent treatment of detainees, but in the meantime, the Government of Canada should ensure that, in all combined operations conducted by Canadian and Afghan military and/or police forces, all detainees captured by Canadian Forces are treated in accordance with the December 18, 2005 and May 3, 2007 arrangements between the Government of Canada and the Government of the Islamic Republic of Afghanistan in the spirit of the Geneva Conventions and the Convention against Torture."

ICRC: On June 14, 2007 the Devoir reported that the ICRC has not been informed of the status of the investigations opened by the Government of Afghanistan into allegations of detainee abuse, and according to Reto Stocker, the head of the ICRC in Afghanistan, "this does not appear to me to be a role that we would play". The May 3 Supplementary Arrangement places the onus on the GoA to advise Canada, the AIHRC and the ICRC of any corrective action it is taking to remedy instances of abuse, but in no way creates an obligation on the part of the ICRC, as the article implies. The ICRC's right to visit detainees in custody (including Canadian custody or Afghan custody) derives from existing international law. The ICRC has visited Canadian detention facilities at Kandahar as well as Afghan detention facilities. The ICRC does not report any specific cases to any government other than the one responsible for the detainees.

SUPPLEMENTARY ARRANGEMENT: The Supplementary Arrangement was signed by Canada's Ambassador to Afghanistan and Afghanistan's Minister of Defence. The Arrangement makes explicit Afghanistan's existing obligations under international human rights law; provides full, unrestricted and private access to detainees by Canadian officials and the AIHRC; limits the number of facilities in which detainees transferred by Canada are held, in order to facilitate tracking of detainees and follow-up; and requires notification to Canada of release, legal proceedings or other change in circumstance of detainees transferred by Canada.

DECEMBER 2005 ARRANGEMENT: Like our NATO allies, Canada believes that the best approach to the detainee issue is to recognize the responsibility of Afghan authorities regarding the treatment of detainees and to help them build capacity in that regard. To that end, Canada and Afghanistan signed an Arrangement whereby Canada transfers all detainees captured in Afghanistan to Afghan authorities, and whereby both countries agree to treat detainees according to the Third Geneva Convention. It also ensures that no person transferred from the Canadian Forces to Afghan authorities will be subject to the death penalty.

MONITORING OF DETAINEES: The Department of Foreign Affairs conducts post-transfer follow-up monitoring of Canadian-transferred detainees pursuant to the terms of the Supplementary Arrangement. This monitoring is meant to complement existing and future Afghan capabilities to follow-up and monitor detainees under their authority, including detainees transferred to them by the Canadian Forces. Under the terms of the Supplementary Arrangement there is a limited number of facilities to which Canadian-transferred detainees can be sent, in order to facilitate post-transfer monitoring by Canadian officials. All Canadian detainees are now transferred directly by Canadian Forces to the National Directorate of Security (NDS) only. In the case of minors, the NDS has agreed to transport minors directly to Sarpasa prison, operated by the Ministry of Justice, which has a juvenile detention centre.

RESULTS OF MONITORING: To date (October 5, 2007), since the signing of the Supplementary Arrangement there have been eleven visits to Afghan detention centers in Kandahar and Kabul, and there have been six allegations of mistreatment (note: two other allegations of mistreatment were made to Canadian officials prior to the signing of the Supplementary Arrangement. These allegations were not made in the regular course of prison visits, and there is nothing to indicate that the persons making these allegations were Canadian-transferred detainees).

AMNESTY COURT CASE: Amnesty International Canada and the B.C. Civil Liberties Association seek to challenge the Government's detainee transfer policy as a whole on the basis of the Canadian Charter of Rights and Freedoms. In February 2007, Amnesty International Canada and the B.C. Civil Liberties Association filed and served an application that challenges the "actions or potential actions" of the CF in Afghanistan, and the Government's detainee transfer policy as a whole on the basis of the Canadian Charter of Rights and Freedoms.

AIHRC: The Afghanistan Independent Human Rights Commission (AIHRC) has a constitutional and legal mandate to promote and protect human rights in Afghanistan, including in particular the mandate and authority to monitor places of detention and investigate complaints. In the December 2005 Arrangement Canada and Afghanistan undertook to cooperate fully with the AIHRC in the exercise of its role. In February 2007 Canada and the AIHRC exchanged letters to formalize arrangements whereby Canada notifies the AIHRC of detainees transferred to the Afghan authorities and the AIHRC notifies Canada immediately should it learn that one of those detainees has been mistreated. In the Supplementary Arrangement signed on May 3, 2007, it was made explicit that both Canadian officials and the AIHRC had the right to full, unrestricted and private access to Canadian-transferred detainees. Canada has been working closely with the AIHRC since its inception in 2002 on a range of human rights issues, and in May 2007 provided assistance to AIHRC-initiated and led workshops on human rights training for Afghan security and prison officials. Canada sponsored an independent assessment mission in June 2007 to determine where we can best further assist the AIHRC in developing its capacity to carry out its mandate.

DND/CF-RELATED INQUIRIES INTO ALLEGATIONS OF ABUSE OF DETAINEES: Currently, two investigations are being conducted by the Military Police Complaints Commission (MPCC). The first investigation is mandated to look at matters falling within the policing responsibilities of military police members. However, the allegations touch on broader CF policy and procedures as well as the actions of CF members acting outside the scope of the policing function. As such, the CDS has also directed a Board of Inquiry to investigate these issues. The DND Board of Inquiry is strictly limited to investigating allegations of mistreatment while detainees are in Canadian custody. Both the MPCC investigation and the Board of Inquiry are ongoing. There is also an ongoing National Investigation Service investigation into the matter.

The second investigation pertains to allegations similar to those in the Federal Court case. The allegation of criminal misconduct against the Canadian Forces Provost Marshall was referred to the RCMP for an investigative assessment. This assessment has been completed and found no grounds for either a service offence or criminal investigation. The aforementioned MPCC investigation is ongoing.

Consultation: Prepared in consultation with IDR, IRH-GHA, JLH, DNATO POL

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SUBJECT - SUJET

TRANSFERT DE DÉTENUS EN AFGHANISTAN PAR LES FORCES CANADIENNES
(20 NOVEMBRE 2007) [FTAG-38]

ANTICIPATED QUESTION - QUESTION PRÉVUE

MESSAGES CLÉS (15 novembre 2007)

SUGGESTED REPLY - RÉPONSE SUGGÉRÉE

- Le gouvernement afghan est le premier responsable d'assurer le respect des droits des détenus transférés aux autorités afghanes, et le rôle de la Commission indépendante des droits de l'homme de l'Afghanistan (CIDHA) est de surveiller et d'enquêter.
- Les représentants canadiens ont souligné la nécessité pour les autorités afghanes de traiter les détenus avec humanité conformément aux obligations internationales de l'Afghanistan.
- Le Canada continue de collaborer étroitement avec le gouvernement afghan et la Commission indépendante des droits de l'homme de l'Afghanistan (CIDHA) pour renforcer leur capacité en matière de traitement des détenus.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Quelle est la politique des Forces canadiennes en ce qui a trait au transfert des mineurs aux autorités afghanes? 21 nov.

REPLY- RÉPONSE

- Les Forces canadiennes en Afghanistan ont reçu des directives claires sur la façon de traiter les détenus mineurs avec un soin particulier. Tout mineur détenu par les FC est gardé dans un lieu distinct de celui où se trouvent les détenus adultes.
- En vertu des lois afghanes, les prisonniers sont sous la responsabilité du ministère de la Justice de l'Afghanistan.
- Les mineurs qui sont détenus et transférés par les FC sont emprisonnés dans une aile désignée de la prison du ministère de la Justice à Kandahar. Notre politique est conforme aux instructions permanentes d'opération de l'OTAN.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Est-ce que le gouvernement était au courant des allégations de tortures lorsqu'il a affirmé qu'il ne savait rien? 16 nov.

REPLY- RÉPONSE

- Le gouvernement a souligné la nécessité pour les autorités afghanes de traiter les détenus humainement et conformément aux obligations internationales de l'Afghanistan.
- Les défis soulevés dans les rapports de certaines des prisons afghanes confirment que l'Afghanistan a toujours besoin de l'aide du Canada pour rebâtir le pays et ses systèmes.
- Le gouvernement afghan est le premier responsable d'assurer le respect des droits des détenus transférés aux autorités afghanes.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Le Canada viole-t-il la Convention de Genève en continuant à transférer des détenus? (19 nov.)

REPLY- RÉPONSE

- Le Canada prend très au sérieux ses obligations juridiques internationales. Son approche à l'égard de la question des détenus en Afghanistan lui permet de respecter l'intégralité de ses obligations.
- Sur le plan politique, les FC traitent tous les détenus humainement et conformément aux normes de protection applicables aux prisonniers de guerre, en vertu de la Convention de Genève.
- Le Canada est allé très loin pour réduire les risques que des détenus transférés aux autorités afghanes soient traités de façon inhumaine.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Est-ce que les FC fournissent des informations suffisantes aux forces de sécurité afghanes pour que ces dernières puissent poursuivre en justice les détenus transférés par le Canada? 19 nov.

REPLY- RÉPONSE

- Il est important de souligner que ces personnes sont détenues dans le cadre d'opérations militaires, et non en vertu de mesures d'application de la loi. Les FC partagent de l'information avec les forces de sécurité afghanes.
- Le personnel des FC conserve un dossier sur toutes les personnes détenues. Le degré de détails que nous pouvons fournir dépend de la nature de l'opération et des circonstances de la détention.
- Les membres des FC en Afghanistan sont parfaitement entraînés et reçoivent des directives claires sur toutes les questions relatives aux détenus, notamment sur les facteurs qui déterminent s'ils sont libérés ou transférés.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi le Canada ne peut-il pas assumer la responsabilité de tous les détenus qu'il a transférés aux autorités afghanes? 16 nov.

REPLY- RÉPONSE

- Le Canada prend cette question très au sérieux et continue de collaborer étroitement avec les représentants afghans afin d'exercer une surveillance et un suivi des détenus transférés par les Forces canadiennes aux autorités afghanes.
- Les questions de capacités de surveillance et de suivi continuent à faire l'objet d'un suivi. Le Canada collabore avec les autorités afghanes pour soutenir des initiatives visant à améliorer la gestion de l'information et le suivi des dossiers.
- Depuis la signature de l'Entente complémentaire, il a eu de nettes améliorations dans la surveillance et le suivi des détenus, et les autorités afghanes collaborent activement avec le Canada.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Comment le Canada peut-il continuer à transférer des détenus dans des prisons où, selon les propos de ses propres représentants, les conditions sont épouvantables? 16 nov.

REPLY- RÉPONSE

- Les défis soulevés dans les rapports de certaines des prisons afghanes confirment que l'Afghanistan a toujours besoin de l'aide du Canada pour rebâtir le pays et ses systèmes.
- Le Canada finance un projet de 1,5 million de dollars à la prison de Sarpoza à Kandahar pour l'amélioration des infrastructures et la formation sur les droits de la personne.
- Le Canada a fourni des conseillers des services correctionnels et des forces de police pour de la formation et du mentorat à Kandahar et il a participé à diverses initiatives pour soutenir le secteur judiciaire

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Est-ce que des représentants du Canada sont présents lors de l'interrogation des détenus par les autorités afghanes? (16 nov.)

REPLY- RÉPONSE

- Ces allégations sont sans fondement.
- Le gouvernement afghan est le premier responsable d'assurer le respect des droits des détenus transférés aux autorités afghanes; la CIDHA exerce des fonctions de surveillance et d'enquête.
- Les représentants du Canada ont souligné la nécessité pour les autorités afghanes de traiter les détenus humainement et conformément aux obligations internationales de l'Afghanistan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLEMENTAIRE

Que fait le Canada pour renforcer les capacités du secteur correctionnel en Afghanistan?
16 nov.

REPLY- RÉPONSE

- Le Canada contribue aux efforts visant à renforcer la primauté du droit en Afghanistan, notamment pour assurer le traitement approprié des détenus en appuyant les réformes en profondeur des secteurs de la justice et de la sécurité.
- En collaboration avec le gouvernement afghan, le Canada s'efforce de déterminer la meilleure façon de procéder pour contribuer à l'amélioration de la capacité correctionnelle de l'Afghanistan.
- Le Canada a financé l'Organisation internationale du droit du développement dans le cadre de projets pour renforcer la primauté du droit, notamment la formation de juges et de procureurs.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Compte tenu des dernières allégations de mauvais traitements des détenus, le gouvernement envisage-t-il un moratoire temporaire sur le transfert des détenus? (15 nov.) (1/2)

REPLY- RÉPONSE

- Le gouvernement afghan est le premier responsable d'assurer le respect des droits des détenus transférés aux autorités afghanes, et le rôle de la Commission indépendante des droits de l'homme de l'Afghanistan (CIDHA) est de surveiller et d'enquêter.
- Des preuves sérieuses à l'appui de certaines formes de mauvais traitements ont été découvertes lors d'entretiens privés entre des représentants du Canada et des détenus transférés par le Canada.
- Des hauts représentants afghans ont été contactés, notamment le président Karzai et le chef de la DNS. Les autorités afghanes ont affirmé qu'elles enquêtaient et envisageaient d'entamer des poursuites.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Compte tenu des dernières allégations de mauvais traitements des détenus, le gouvernement envisage-t-il un moratoire temporaire sur le transfert des détenus? (15 nov.) (2/2)

REPLY- RÉPONSE

- Lorsque des allégations de mauvais traitements sont formulées, les représentants du Canada informent immédiatement le CICR, la Commission indépendante des droits de l'homme de l'Afghanistan (CIDHA) et les hauts représentants du gouvernement afghan.
- Le gouvernement de l'Afghanistan s'est engagé à enquêter sur toutes les plaintes, en collaboration avec la CIDHA.
- Le Canada continue de collaborer étroitement avec le gouvernement afghan et la CIDHA pour renforcer leur capacité en matière de traitement des détenus. Des problèmes persistent mais ils peuvent être surmontés et résolus.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Combien de fois des représentants du Canada ont-ils visité des établissements de détention? (15 nov. 2007)

REPLY- RÉPONSE

- Depuis la signature de l'Entente complémentaire en mai 2007, des représentants du Canada ont effectué 16 visites de centres de détention à Kandahar et à Kaboul.
- Au cours de ces visites, les représentants du Canada ont eu 32 entretiens privés avec des détenus, dans des centres de détention à Kandahar et à Kaboul.
- Chaque fois, les représentants canadiens ont obtenu la pleine collaboration des autorités afghanes et un accès libre, illimité et privé aux détenus transférés par le Canada.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Combien de détenus ont fait part aux représentants canadiens d'allégations de mauvais traitements? (15 nov. 2007)

REPLY- RÉPONSE

Au besoin

- Depuis le 3 mai 2007, les représentants du Canada ont recueilli sept allégations de mauvais traitements formulées par des détenus transférés par le Canada.
- Ces allégations de mauvais traitements ont été formulées au cours des visites courantes effectuées dans les centres de détention de Kandahar et Kaboul.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi le gouvernement n'est-il pas préoccupé par le nombre d'allégations de mauvais traitements formulées par des détenus transférés par le Canada? 15 nov.

REPLY- RÉPONSE

- Le Canada prend très au sérieux ces allégations de mauvais traitements. Cependant, le degré de crédibilité varie énormément d'une allégation à l'autre.
- La semaine dernière, lors d'une visite, nous avons été informés d'un présumé incident, une allégation qui semblait crédible selon nos agents formés pour interroger les détenus. Le gouvernement afghan a réagi immédiatement.
- Des hauts représentants afghans ont affirmé clairement que des enquêtes étaient en cours sur les plus récentes allégations de mauvais traitements et que des progrès sont accomplis en vue de faire la lumière sur ce qui s'est produit.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Avez-vous suspendu le transfert des détenus (comme l'affirme le général allemand de l'OTAN)? 15 nov.

REPLY- RÉPONSE

- Nous ne ferons pas de commentaire sur le théâtre des opérations.
- Nous sommes confiants que les mesures applicables en vertu de l'Entente complémentaire sont efficaces.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

De quelle preuve le gouvernement a-t-il besoin pour se rendre compte que les détenus sont transférés dans des conditions inhumaines? 15 nov.

REPLY- RÉPONSE

- Les représentants du Canada ont fait part aux autorités afghanes de la nécessité de traiter humainement les détenus, conformément aux obligations internationales de l'Afghanistan.
- Le Canada s'efforce de fournir l'équipement et les uniformes nécessaires pour que les autorités afghanes puissent se charger des prisonniers dangereux en toute sécurité.
- Le gouvernement afghan est le premier responsable d'assurer le respect des droits des détenus transférés aux autorités afghanes.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi croyons-nous que le gouvernement afghan a la capacité de mener adéquatement des enquêtes sur les allégations de mauvais traitements? 15 nov.

REPLY- RÉPONSE

- Les représentants du Canada dialoguent régulièrement avec les représentants afghans de haut rang sur les enquêtes en cours.
- Le Canada a offert son aide pour renforcer la capacité du gouvernement afghan de mener de telles enquêtes de façon transparente et impartiale.
- Des problèmes persistent mais ils peuvent être surmontés et résolus.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Le gouvernement nous parle constamment des enquêtes menées actuellement par le gouvernement afghan sur les allégations d'abus. Où en sont ces enquêtes?

REPLY- RÉPONSE

- Les représentants du Canada dialoguent régulièrement avec les représentants afghans de haut rang sur les enquêtes en cours.
- En ce qui concerne les plus récentes allégations, des hauts dirigeants afghans ont clairement affirmé qu'une enquête est en cours, qu'elle progresse et que toute personne reconnue coupable de méfaits sera poursuivie en justice.
- Le Canada a offert son aide pour renforcer la capacité du gouvernement afghan de mener de telles enquêtes de façon transparente et impartiale.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Qu'ont fait les représentants canadiens lorsqu'ils ont été mis au courant des allégations de mauvais traitements? (11 oct. 2007)

REPLY- RÉPONSE

- Les représentants canadiens ont immédiatement informé le CICR, la CIDHA et les hauts fonctionnaires du gouvernement de l'Afghanistan. Le gouvernement afghan s'est engagé à mener une enquête sur chaque plainte, en collaboration avec la CIDHA.
- Le Canada a offert son aide pour améliorer la capacité du gouvernement afghan à mener de telles enquêtes de manière transparente et impartiale.
- Le fait que ces allégations ont été faites au cours d'entretiens privés avec des représentants canadiens qui avaient un accès libre et illimité démontre que l'Entente complémentaire est appliquée.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Le nombre d'établissements où peuvent être détenues les personnes transférées par les Canadiens est-il limité? 15 nov.

REPLY- RÉPONSE

- L'entente complémentaire du 3 mai limite le nombre d'établissements où peuvent être détenues les personnes transférées par les Canadiens afin de faciliter la surveillance et le suivi.
- Nous mettons actuellement la touche finale à une entente avec les autorités afghanes qui limiterait de façon formelle le nombre de centres où peuvent être détenus les prisonniers transférés par le Canada.
- Depuis le 3 mai 2007, les détenus transférés par le Canada ont en pratique été détenus dans quatre centres de détention différents de Kandahar et Kaboul.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Combien de détenus ont été remis aux autorités afghanes par les Forces canadiennes depuis la signature de l'entente avec le gouvernement de l'Afghanistan? 15 nov.

REPLY- RÉPONSE

- Pour des raisons de sécurité opérationnelle, nous ne pouvons fournir de renseignements sur le nombre de personnes détenues ou transférées par les Forces canadiennes en Afghanistan.
- La diffusion de cette information au grand public serait préjudiciable à la sécurité opérationnelle de notre mission et pourrait mettre en danger la vie de ceux qui servent en Afghanistan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi le Canada ne peut-il pas assumer la responsabilité de tous les détenus qu'il a transférés aux autorités afghanes? 15 nov.

REPLY- RÉPONSE

- Le Canada prend cette question très au sérieux et continue de collaborer étroitement avec les représentants afghans afin d'exercer une surveillance et un suivi des détenus transférés par les Forces canadiennes aux autorités afghanes.
- Les questions de capacités de surveillance et de suivi continuent à faire l'objet d'un suivi. Le Canada collabore avec les autorités afghanes pour soutenir des initiatives visant à améliorer la gestion de l'information et le suivi des dossiers.
- Depuis la signature de l'Entente complémentaire, il a eu de nettes améliorations dans la surveillance et le suivi des détenus, et les autorités afghanes collaborent activement avec le Canada.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi le gouvernement de l'Afghanistan est-il incapable de rendre des comptes au sujet des détenus transférés aux États-Unis? 15 nov.

REPLY- RÉPONSE

Au besoin

- Depuis 2005, conformément à notre entente avec le gouvernement afghan, le Canada transfert les détenus uniquement aux autorités afghanes.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi Amnistie internationale et la British Columbia Civil Liberties Association (BCCLA) intentent-elles des poursuites contre le gouvernement du Canada? 9 oct.

REPLY- RÉPONSE

- Amnistie internationale et la BCCLA ont intenté des poursuites relatives au traitement des détenus en Afghanistan.
- Le gouvernement du Canada suit les procédures juridiques normales dans le cas d'une poursuite au civil.
- Comme la question est devant les tribunaux, nous ne ferons aucun autre commentaire pour l'instant.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Quelle est la réaction du Canada à la décision du tribunal de permettre le déroulement des procédures judiciaires entamées par Amnistie et BCCLA? 15 nov.

REPLY- RÉPONSE

- Il s'agit d'une affaire complexe et nous prenons note de la décision du tribunal et nous nous y conformons.
- Le gouvernement étudie cette décision et déterminera quelles seront les prochaines étapes.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi le gouvernement a-t-il supprimé de l'information contenue dans les documents diffusés publiquement dans la procédure judiciaire entamée par Amnistie et BCCLA? 15 nov.

REPLY- RÉPONSE

- Le gouvernement du Canada a le devoir de protéger l'information qui, si elle est rendue publique, pourrait nuire aux relations internationales et à la défense et à la sécurité nationales.
- La demande formulée par Amnistie internationale et l'Association des libertés civiles de la Colombie-Britannique a nécessité qu'un grand nombre de documents de nature sensible soient soumis à un examen interministériel minutieux.
- Le gouvernement du Canada prend les dispositions de l'article 38 très au sérieux et étudie minutieusement tous les documents visés. Comme cette affaire est toujours devant les tribunaux, nous ne ferons aucun autre commentaire.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Comment le Canada peut-il être certain que la CIDHA a accès aux détenus qu'elle a la responsabilité de surveiller? 15 nov. (1 de 2)

REPLY- RÉPONSE

- Le Canada a joué un rôle important dans l'amélioration de l'accès de la CIDHA aux centres de détention de l'Afghanistan.
- Le Canada continue de soutenir fermement la CIDHA. Nous avons récemment commencé à verser 7 millions \$ additionnels pour soutenir et renforcer la Commission.
- Ces fonds serviront à renforcer considérablement sa capacité de surveillance, d'enquête et de protection et de promotion des droits de la personne dans tout le pays.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Comment le Canada peut-il être certain que la CIDHA a accès aux détenus qu'elle a la responsabilité de surveiller? 15 nov. (2 de 2)

REPLY- RÉPONSE

- Le Canada a récemment entamé un dialogue conjoint avec le gouvernement de l'Afghanistan et un certain nombre de nos alliés de l'OTAN qui sont présents dans le Sud pour confirmer le rôle jouer par la CIDHA et son droit d'accès aux détenus.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Comment le Canada a-t-il contribué à bâtir la capacité de la CIDHA? (1 de 2) 15 nov.

REPLY- RÉPONSE

- Le Canada a collaboré étroitement avec la CIDHA depuis sa mise sur pied en 2002 sur une vaste gamme de questions liées aux droits de la personne.
- Cette activité est compatible avec notre rôle en Afghanistan qui est de soutenir le gouvernement élu démocratiquement et de l'aider à construire sa propre capacité, notamment dans les secteurs de la justice et de la sécurité.
- Le Canada a déjà fourni 8 millions \$ pour financer le mandat de la CIDHA de surveiller, de faire enquête et de promouvoir et de protéger les droits de la personne en Afghanistan; 7 millions ont été versés en 2007.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Comment le Canada a-t-il contribué à bâtir la capacité de la CIDHA? (2 de 2) 15 nov.

REPLY- RÉPONSE

- Le Canada a fourni son soutien à des ateliers mis sur pied et menés par la CIDHA pour offrir de la formation sur les droits de la personne aux agents afghans responsables de la sécurité et des prisons.
- Le Canada a également financé une mission d'évaluation en Afghanistan en juin 2007 pour déterminer comment nous pourrions accroître notre soutien à la CIDHA dans le développement de ses capacités.
- Le gouvernement du Canada étudie des façons d'accroître son soutien, notamment du point de vue logistique et technique et selon les besoins, pour aider la CIDHA à faire son important travail.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Compte tenu des preuves contenues dans le rapport d'Amnistie internationale, le gouvernement cessera-t-il immédiatement de transférer des détenus? (15 nov.)

REPLY- RÉPONSE

- Les problèmes et les défis soulevés dans le rapport d'Amnistie internationale confirment que l'Afghanistan a toujours besoin de l'aide du Canada pour reconstruire le pays afin que les citoyens soient en sécurité.
- En mai, nous avons signé une Entente complémentaire avec l'Afghanistan qui renforce l'Entente précédente au sujet du transfert des prisonniers talibans et des insurgés détenus.
- Depuis la signature de l'Entente complémentaire, la surveillance et le suivi de détenus se sont nettement améliorés.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

À la suite des allégations de tortures dans La Presse, est-ce que le gouvernement admettra que la torture est une pratique généralisée et cessera de transférer des prisonniers? 31 oct. 1/3

REPLY- RÉPONSE

- Notre ambassadeur en Afghanistan a immédiatement fait part de ses préoccupations au Cabinet du président et il effectuera un suivi.
- Nous avons tenu les mêmes propos devant la Direction nationale de la sécurité. Le chef de la DNS nous a assuré que son organisation s'efforçait de respecter l'Entente du 3 mai.
- Nous avons également parlé avec le directeur de la prison de Sarpaza qui a confirmé que le Canada jouait un rôle positif en fournissant appui et formation pour améliorer la gestion des prisons, notamment le traitement des détenus.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

À la suite des allégations de tortures dans La Presse, est-ce que le gouvernement admettra que la torture est une pratique généralisée et cessera de transférer des prisonniers? 30 oct. 2/3

REPLY- RÉPONSE

- Pour l'instant, il ne s'agit que d'allégations et non de faits. Et rappelez-vous que les insurgés talibans reçoivent la consigne de formuler de telles allégations lorsqu'ils sont capturés.
- Nous avons demandé à la journaliste de nous fournir de plus amples informations au sujet de ces allégations anonymes.
- Certains des prisonniers détenus et transférés par les Forces canadiennes sont des insurgés qui ont pris part à des incidents ayant causé la mort d'employés canadiens.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

À la suite des allégations de tortures dans La Presse, est-ce que le gouvernement admettra que la torture est une pratique généralisée et cessera de transférer des prisonniers? 30 oct. 3/3

REPLY- RÉPONSE

- La journaliste souligne dans son article que la CIDHA confirme que la situation des détenus s'est améliorée depuis l'entrée en vigueur de l'Entente du 3 mai.
- La journaliste confirme également que les vaillants membres des Forces canadiennes, hommes et femmes, respectent les droits des détenus en vertu des principes des droits de la personne.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Parmi les personnes exécutées par le gouvernement afghan, certaines étaient-elles des détenus transférés par le Canada? (15 oct. 2007)

REPLY- RÉPONSE

Au besoin

- Le Canada a reçu des assurances fermes du gouvernement afghan qu'aucun des prisonniers exécutés n'avait été transféré par les Forces canadiennes.
- Le Gouvernement afghan a fourni des assurances écrites, dans son Entente avec le Canada concernant les détenus, qu'aucun prisonnier transféré par les Forces canadiennes ne serait exécuté.
- Le Gouvernement afghan nous a assuré qu'il respecte ses engagements. Le Canada s'attend à ce que le gouvernement afghan respecte ses obligations internationales en matière de droits de la personne.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Lorsque le gouvernement de l'Afghanistan aura enquêté sur les allégations de mauvais traitements, que fera le Canada si elles sont confirmées? 9 oct.

REPLY- RÉPONSE

- En vertu de l'Entente complémentaire, le gouvernement de l'Afghanistan doit poursuivre les détenus en justice conformément aux lois nationales et aux normes juridiques internationales.
- Le Canada s'est engagé à collaborer avec le gouvernement de l'Afghanistan pour que ce dernier respecte ses obligations internationales en ce qui a trait au traitement humain des détenus.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Où en est la commission d'enquête du ministère de la Défense nationale sur les allégations de mauvais traitement des détenus? (15 nov.)

REPLY- RÉPONSE

- Les Forces canadiennes prennent très au sérieux les plaintes formulées contre trois de leurs membres et font activement enquête sur ces allégations.
- Comme vous le savez, les Forces canadiennes ont formé une commission d'enquête pour enquêter sur ces plaintes.
- Tout rapport résultant de cette enquête sera rendu public, sous réserve des restrictions imposées par la loi et des règles de sécurité opérationnelle.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Est-ce que DN participe aux enquêtes de la Commission d'examen des plaintes concernant la police militaire? 15 nov. (DN)

REPLY- RÉPONSE

- Les Forces canadiennes prennent très au sérieux les allégations d'abus et collaborent avec la Commission d'examen des plaintes concernant la police militaire pour enquêter sur cette question.
- Tous les membres des Forces canadiennes qui participent au transfert des détenus reçoivent régulièrement de la formation et comprennent très bien les procédures liées à ce processus.
- Le Canada estime que la meilleure approche à adopter est de reconnaître la responsabilité des autorités afghanes en ce qui a trait au traitement des détenus, et de les aider à renforcer leur capacité dans ce domaine.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Le Canada arrêtera-t-il de transférer des détenus dans les centres de détention afghans maintenant que des cas de torture ont été rapportés? 5 oct.

REPLY- RÉPONSE

Au besoin

- Le Canada a eu vent de plusieurs rapports faisant référence à des préoccupations relatives aux droits de la personne en Afghanistan.
- Le gouvernement afghan mène actuellement des enquêtes sur les allégations particulières formulées par des représentants canadiens.
- Le Canada fait partie d'une force internationale qui aide le gouvernement afghan à améliorer ses capacités en matière de justice et de gouvernance pour que les normes internationales des droits de la personne soient respectées.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Les autorités afghanes suivent-elles des procédures adéquates lorsqu'elles interrogent des détenus? 9 oct.

REPLY- RÉPONSE

- Les représentants canadiens ont insisté sur la nécessité pour les autorités afghanes de traiter humainement les détenus, et ce, conformément aux obligations internationales de l'Afghanistan.
- Les représentants canadiens ont aussi mis en évidence les dispositions relatives à une accès total et illimité prévues dans l'Entente complémentaire et ont indiqué clairement que ces dispositions s'appliquaient aussi à la CIDHA et au CICR.
- Les dirigeants des installations de la Direction nationale de la sécurité à Kandahar et Kaboul se sont engagés à collaborer pleinement avec les représentants canadiens ainsi qu'avec la CIDHA et le CICR conformément à l'Entente complémentaire.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi ne collaborons-nous pas avec les alliés de l'OTAN et de la FIAS pour établir un centre de détention dirigée par l'OTAN en Afghanistan? 15 nov.

REPLY- RÉPONSE

- Le gouvernement du Canada a maintenu et maintient un dialogue constant avec ses alliés de l'OTAN et de la FIAS sur tous les aspects de la mission de la FIAS, y compris sur la question des détenus transférés par les forces alliées.
- Tout comme ses alliés de l'OTAN, le Canada estime que nous pouvons mieux contribuer à l'établissement d'institutions démocratiques en aidant les Afghans à améliorer leur système juridique et leur système de sécurité, y compris leur système de détention.
- Tout comme ses alliés de l'OTAN, le Canada estime que la meilleure approche à adopter est de reconnaître la responsabilité des autorités afghanes dans le traitement des détenus et de les aider à bâtir leur capacité dans ce domaine.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi le Canada n'utilise-t-il pas ses propres installations de détention? 5 oct.

REPLY- RÉPONSE

- Le Canada peut faire davantage pour favoriser le renforcement durable des institutions afghanes en aidant les Afghans à améliorer leur système carcéral et leurs systèmes d'application de la loi plutôt qu'en utilisant ses propres installations.
- Tout comme nos alliés de l'OTAN, nous estimons que la meilleure approche à adopter est de reconnaître la responsabilité des autorités afghanes dans le traitement des détenus et de les aider à renforcer cette capacité.
- Le Canada fait partie des 37 nations présentes en Afghanistan dans le cadre de la mission de l'OTAN pour aider le gouvernement démocratiquement élu.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Le Canada ne devrait-il pas être responsable de veiller au respect des droits de la personne des détenus qu'il transfert aux autorités afghanes? 5 oct.

REPLY- RÉPONSE

- La responsabilité de veiller au respect des droits des détenus transférés aux autorités afghanes incombe tout d'abord au gouvernement afghan. La CIDHA est responsable de la surveillance et des enquêtes.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Quel rôle joue le Comité international de la Croix-Rouge (CICR) dans l'entente conclue entre le Canada et l'Afghanistan au sujet des détenus? (1 de 2) 5 oct.

REPLY- RÉPONSE

- Le droit du CICR de visiter les détenus pendant leur détention découle des lois internationales en vigueur, et non d'une entente avec le Canada.
- L'Entente complémentaire énonce simplement de façon explicite que le CICR a le droit de visiter les détenus en tout temps pendant leur détention par les FC ou les autorités afghanes.
- L'Entente complémentaire ne crée aucune obligation de la part du CICR.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Quel rôle joue le Comité international de la Croix-Rouge dans l'entente conclue entre le Canada et l'Afghanistan au sujet des détenus? (2 de 2) 5 oct.

REPLY- RÉPONSE

- L'Entente complémentaire oblige le gouv. afghan à informer le Canada, la CIDHA et le CICR de toute mesure corrective prise en vue de remédier aux allégations d'abus.
- Les représentants du Canada continuent de maintenir un dialogue ouvert et constructif avec le CICR au sujet des questions liées aux détenus en Afghanistan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Est-ce que le CICR surveille les détenus sous la responsabilité des FC et inspecte les installations de détention des FC? 5 oct.

REPLY- RÉPONSE

- Le CICR a visité les installations de détention des FC à Kandahar et les représentants canadiens ont engagé un dialogue ouvert et constructif avec le CICR sur la question des détenus en Afghanistan.
- Le droit du CICR de visiter les détenus en tout temps pendant leur détention découle du droit international actuel et non d'une entente avec le Canada.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Le nombre d'employés affectés à la surveillance des détenus est-il suffisant? 5 oct.

REPLY- RÉPONSE

- Il incombe en premier lieu au gouvernement de l'Afghanistan de veiller à ce que les droits des détenus transférés aux autorités afghanes soient respectés; la CIDHA est responsable de la surveillance.
- Nous continuerons de collaborer avec la CIDHA au renforcement de ses capacités à surveiller la situation des droits de la personne en Afghanistan, y compris ceux des détenus transférés par les Forces canadiennes.
- Le gouvernement du Canada a accru sa présence civile à Kandahar pour améliorer son soutien à la primauté du droit et aux droits de la personne.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Quel est le rôle de la Commission indépendante des droits de l'homme (CIDHA) de l'Afghanistan? 9 oct.

REPLY- RÉPONSE

- La CIDHA surveille les prisons et les centres de détention et enquête sur les violations des droits de la personne. Le Canada collabore avec la Commission depuis 2002 pour l'aider à renforcer ses capacités à surveiller et à enquêter.
- Le gouvernement du Canada continue à travailler étroitement avec la CIDHA pour renforcer ses capacités de surveillance et d'enquête relativement au traitement des détenus sous la responsabilité des autorités afghanes.
- Le gouvernement du Canada cherche actuellement le moyen d'apporter un plus grand soutien, notamment, s'il y a lieu, un appui logistique et technique, pour aider la CIDHA à accomplir son important travail.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Comment l'Entente complémentaire permettra-t-elle de prévenir le mauvais traitement des détenus? (1 de 2) 5 oct.

REPLY- RÉPONSE

- L'Entente complémentaire donne explicitement au Canada un accès illimité, libre et privé à toute personne transférée aux autorités afghanes par les Forces canadiennes.
- Elle garantit également que la Commission indépendante des droits de l'homme en Afghanistan jouira du même accès libre.
- Enfin, elle confirme également que CICR conserve son droit d'accès en vertu du droit international, et que les institutions des Nations Unies chargées de faire respecter les droits de la personne sont autorisées à visiter les détenus.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Comment l'Entente complémentaire permettra-t-elle de prévenir le mauvais traitement des détenus? (2 de 2) 5 oct.

REPLY- RÉPONSE

- En vertu de l'Entente complémentaire, le gouvernement de l'Afghanistan s'engage à faire enquête sur toutes les allégations d'abus et à prendre des mesures de sanction, ainsi qu'à informer le Canada, la CIDHA et le CICR des mesures prises.
- L'Entente complémentaire accroît la portée de l'entente de décembre 2005 en définissant explicitement les attentes du Canada et les responsabilités de l'Afghanistan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Le gouvernement peut-il garantir que l'Entente supplémentaire sera mise en oeuvre et respectée? (5 oct.)

REPLY- RÉPONSE

- L'Entente complémentaire a été signée par le ministère afghan de la Défense.
- Les dirigeants de la Direction nationale de la sécurité à Kandahar et Kaboul se sont engagés à coopérer pleinement avec les représentants du Canada, de la CIDHA et du CICR conformément aux dispositions de l'Entente complémentaire.
- Les représentants canadiens à Kandahar et Kaboul prennent les mesures nécessaires pour s'assurer que tous les volets de l'Entente complémentaire sont mis en oeuvre.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

La nouvelle entente protège les nouveaux détenus, mais qu'en est-il de ceux qui sont déjà en détention? (5 oct.)

REPLY- RÉPONSE

- L'Entente supplémentaire de mai 2007 améliore l'Entente de décembre 2005, laquelle reste en vigueur.
- L'entente supplémentaire ne crée pas de nouvelles protections et s'applique également à tous les détenus transférés par les Forces canadiennes.
- Notre ambassade en Afghanistan a déjà communiqué avec les autorités afghanes afin d'obtenir de l'information sur le statut des détenus transférés antérieurement par les Forces canadiennes et sur le lieu où ils se trouvent.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Quelles sont les similitudes entre l'Entente complémentaire et les attentes prises par nos alliés au sujet des détenus ? (5 oct.)

REPLY- RÉPONSE

- Chaque entente a ses propres caractéristiques. Les ententes de nos alliés visent toutes le même objectif : garantir le traitement humain des détenus.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

L'article 5 de l'Entente complémentaire prévoit l'émission d'un avis avant d'effectuer un transfert à un autre pays. Sur quoi la décision de transférer est-elle fondée? (oct.)

REPLY- RÉPONSE

- L'Entente complémentaire prévoit que les autorités afghanes doivent recevoir une entente écrite du gouvernement du Canada avant de pouvoir transférer à un pays tiers un détenu que les Forces canadiennes leur avait transféré.
- Une décision de l'Afghanistan de demander le transfert à un pays tiers doit être fondée sur des motifs définis par le gouvernement afghan et conforme avec les obligations internationales de l'Afghanistan.
- Depuis l'entrée en vigueur de l'Entente complémentaire, le ministère des Affaires étrangères n'a reçu aucune demande relative à de tels transferts de la part du gouvernement afghan.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Qu'adviennent-il des détenus capturés par les Forces afghanes qui effectuent des opérations conjointes avec le Canada? Le Canada informe-t-il le CICR et la CIDHA? (5 oct.)

REPLY- RÉPONSE

- Lors d'opérations conjointes des forces canadiennes et afghanes, si une personne est capturée par les Forces canadiennes, les procédures normales de ces dernières sont appliquées.
- Si cette personne est capturée par les Forces afghanes, ces dernières appliquent leurs propres procédures nationales.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Est-ce que les Forces afghanes doivent respecter le droit international lorsqu'elles capturent des personnes dans le cadre d'opérations conjointes? (5 oct.)

REPLY- RÉPONSE

- L'Afghanistan est tenu de respecter ses obligations juridiques internationales, notamment le droit international coutumier concernant le traitement humain des détenus.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Les dispositions complémentaires de mai 2007 prévoient-elles des procédures de surveillance des détenus capturés par des pays effectuant des opérations conjointes avec l'Afghanistan. (5 oct.)

REPLY- RÉPONSE

- L'Entente et ses dispositions complémentaires ne s'appliquent qu'aux personnes détenues à l'origine par les Forces canadiennes.
- Toutefois, si, lors de visites dans les installations, les représentants canadiens ont vent d'allégations selon lesquelles un détenu capturé par un autre pays fait l'objet de mauvais traitements ou ont des preuves à cet effet, ils informeront ce pays.
- Les représentants canadiens peuvent aussi aviser les autorités afghanes et leur demander d'intervenir pour mettre fin aux mauvais traitements et de prendre les mesures correctives qui s'imposent. Les représentants canadiens en informeraient également le CICR et la CIDHA.

SUPPLEMENTARY QUESTION - QUESTION SUPPLÉMENTAIRE

Pourquoi un comité d'examen spécial de la DN empêche-t-il la diffusion d'informations sur les détenus demandées par des Canadiens en vertu de la Loi sur l'accès à l'information?

REPLY- RÉPONSE

- DN et les FC s'appuient sur les mêmes dispositions pour identifier l'information qui peuvent être rendue publique que les autres ministères fédéraux et se conforment entièrement à la législation et aux procédures relatives à l'accès à l'information.
- Le Ministère s'efforce de diffuser publiquement le plus grand nombre d'informations tout en tenant compte de la nécessité de protéger la vie des femmes et des hommes déployés en Afghanistan.
- Le Ministère prend des décisions sur les informations non divulguées sans que les ministres n'interviennent dans ce processus.

WHAT'S NEW - DERNIERS DÉVELOPPEMENTS

JUVENILES: On November 19 and 20, the issue of the transfer of juveniles was brought up in the House of Commons. Under Afghan law juvenile prisoners are the responsibility of the Afghan Ministry of Justice (MoJ). Under an understanding reached with the National Directorate of Security (NDS) on September 8, 2007, juveniles detained and transferred by the Canadian Forces to the NDS are to be immediately transferred by the NDS to the juvenile detention facility at the MoJ prison in Kandahar.

BACKGROUND - ASSESSMENT - ÉVALUATION

(Advice to the Minister - Conseil(s) au ministre)

DOCUMENTS RELEASED: Pursuant to the on-going litigation process involving Amnesty International Canada and the B.C. Civil Liberties Association, the Government of Canada released documents related to the issue of detainees transferred by the Canadian Forces to Afghan authorities. The material released is extensive and made up of documents from the DFAIT, DND and Correctional Service Canada. This material consists mainly of email correspondence, reports from Government officials working in Afghanistan, reports assessing the human rights situation, as well as other material needed to conduct day-to-day government business and military operations in Afghanistan.

The documents released bear witness to the dedicated efforts of Canadian and Afghan officials who, through proactive and extensive dialogue, have been able to promote Canada's human rights agenda and improve Afghanistan's ability to implement its international human rights obligations. The material also describes a system plagued by corruption, a flawed judicial system, and poor detention facility infrastructure. The ongoing challenges faced by the Afghanistan Independent Human Rights Commission (AIHRC) are in evidence. Previous challenges related to tracking detainees also come through. Also included are references to the quality of the evidence previously provided by the Canadian Forces to Afghan authorities at the moment of transfer of detainees.

Subsequent to the release of these documents, there has been ongoing attention to various items raised within them, in both the media and Question Period.

ALLEGATION OF MISTREATMENT: On November 14, 2007, MINA advised the House that during a recent follow-up visit, a Canadian-transferred detainee made an allegation of mistreatment that concerned Canadian officials. The Government of Afghanistan has informed us that it has immediately launched an investigation and that progress is being made in uncovering just what happened. Senior Afghan government officials have been demarched including the President, the Governor of Kandahar, and the NDS.

AMNESTY REPORT On November 13, 2007, Amnesty International released a report on the state of detention facilities in Afghanistan. Amnesty states that it has received reports of torture and that ISAF members, including Canada, do not comply with their international legal obligations in transferring detainees to Afghan authorities. The Report includes a series of recommendations for ISAF, the Government of Afghanistan and UNAMA. Key among these is that there should be an immediate moratorium by ISAF countries on transferring detainees to Afghan authorities. Many additional recommendations speak to the need for significant capacity building, something ISAF members and Canada are already heavily engaged in. In addition to continuing our considerable capacity building projects and funding in Afghanistan, the Government of Canada will call upon the Government of Afghanistan to recognize its international obligations.

LA PRESSE (Oct 29). An article appeared in La Presse claiming that three Afghan prisoners captured by Canadian soldiers were tortured after they were turned over to Afghan authorities. The three detainees were interviewed by La Presse inside a Kandahar prison but did not want their names published. While the story does not detail what torture the three underwent, the newspaper quotes them as saying that inmates at the prison are hit with bricks, have their fingernails pulled out and undergo shock treatment. They also say detainees are forced to stand with their arms in the air for two days and two nights, and are also beaten with electrified cables while being suspended from a wall with their arms tied behind their backs. La Presse says an official at the Sarpoza jail, who was present for the interviews, backed up the prisoners' statements. He did not want to give his name. Our Ambassador in Kabul has raised the issue with the President's office, who undertook to engage the NDS in parallel to our own efforts. DFAIT officials are attempting to contact the La Presse journalist in an attempt to obtain more detailed information about the allegations. Finally, DFAIT officials are following-up with senior Sarpoza prison officials regarding a prison official's alleged comments regarding the practice of detainee abuse at NDS

facilities.

EXECUTIONS: On October 8, 2007 it was reported that the Government of Afghanistan had executed 15 prisoners at its main prison outside Kabul. It was the first use of the death penalty in over three years. (Oct 11, 2007)

MISSING DETAINEES: On September 22, 2007, the Globe and Mail reported that Canada can't account for at least 50 prisoners of the approximately 200 that it has captured and turned over to Afghan authorities, and that Canadian sources blamed this on shoddy record-keeping by Afghan authorities. The article also mentions widespread rumours of unofficial "private jails" in Kandahar.

DND BOARD OF INQUIRY: On June 25, 2007 the Globe and Mail reported that DND's Board of Inquiry into the handling of Afghan detainees won't concern itself with whether detainees are tortured or abused in prison. The article suggested that the decision not to probe into widespread allegations of torture and abuse of detainees turned over to Afghan authorities or the effectiveness of the intrusive new monitoring arrangements, which send Canadian soldiers and diplomats into Afghan prisons, limits the inquiry. This is, in fact, not the case. The Board of inquiry was launched to investigate allegations of abuse to Afghan detainees while they were in the custody of the Canadian Forces.

SCOND REPORT: On June 18, 2007 the Standing Committee on National Defence (SCOND) published its report "Canadian Forces in Afghanistan. Recommendation 18 of that Report stated that "The government should attempt to convince NATO to establish a general arrangement with the Government of Afghanistan to ensure the consistent treatment of detainees, but in the meantime, the Government of Canada should ensure that, in all combined operations conducted by Canadian and Afghan military and/or police forces, all detainees captured by Canadian Forces are treated in accordance with the December 18, 2005 and May 3, 2007 arrangements between the Government of Canada and the Government of the Islamic Republic of Afghanistan in the spirit of the Geneva Conventions and the Convention against Torture."

ICRC: On June 14, 2007 the Devoir reported that the ICRC has not been informed of the status of the investigations opened by the Government of Afghanistan into allegations of detainee abuse, and according to Reto Stocker, the head of the ICRC in Afghanistan, "this does not appear to me to be a role that we would play". The May 3 Supplementary Arrangement places the onus on the GoA to advise Canada, the AIHRC and the ICRC of any corrective action it is taking to remedy instances of abuse, but in no way creates an obligation on the part of the ICRC, as the article implies. The ICRC's right to visit detainees in custody (including Canadian custody or Afghan custody) derives from existing international law. The ICRC has visited Canadian detention facilities at Kandahar as well as Afghan detention facilities. The ICRC does not/not report any specific cases to any government other than the one responsible for the detainees.

SUPPLEMENTARY ARRANGEMENT: The Supplementary Arrangement was signed by Canada's Ambassador to Afghanistan and Afghanistan's Minister of Defence. The Arrangement makes explicit Afghanistan's existing obligations under international human rights law; provides full, unrestricted and private access to detainees by Canadian officials and the AIHRC; limits the number of facilities in which detainees transferred by Canada are held, in order to facilitate tracking of detainees and follow-up; and requires notification to Canada of release, legal proceedings or other change in circumstance of detainees transferred by Canada.

DECEMBER 2005 ARRANGEMENT: Like our NATO allies, Canada believes that the best approach to the detainee issue is to recognize the responsibility of Afghan authorities regarding the treatment of detainees and to help them build capacity in that regard. To that end, Canada and Afghanistan signed an Arrangement whereby Canada transfers all detainees captured in Afghanistan to Afghan authorities, and whereby both countries agree to treat detainees according to the Third Geneva Convention. It also ensures that no person transferred from the Canadian Forces to Afghan authorities will be subject to the death penalty.

MONITORING OF DETAINEES: The Department of Foreign Affairs conducts post-transfer follow-up monitoring of Canadian-transferred detainees pursuant to the terms of the Supplementary Arrangement. This monitoring is meant to complement existing and future Afghan capabilities to follow-up and monitor detainees under their authority, including detainees transferred to them by the Canadian Forces. Under the terms of the Supplementary Arrangement there is a limited number of facilities to which Canadian-transferred detainees can be sent, in order to facilitate post-transfer monitoring by Canadian officials. All Canadian detainees are now transferred directly by Canadian Forces to the National Directorate of Security (NDS) only. In the case of minors, the NDS has agreed to transport minors directly to Sarposa prison, operated by the Ministry of Justice, which has a juvenile detention centre.

RESULTS OF MONITORING: To date (October 5, 2007), since the signing of the Supplementary Arrangement there have been eleven visits to Afghan detention centers in Kandahar and Kabul, and there have been six allegations of mistreatment (note: two other allegations of mistreatment were made to Canadian officials prior to the signing of the Supplementary Arrangement. These allegations were not made in the regular course of prison visits, and there is nothing to indicate that the persons making these allegations were Canadian-transferred detainees).

AMNESTY COURT CASE: Amnesty International Canada and the B.C. Civil Liberties Association seek to challenge the Government's detainee transfer policy as a whole on the basis of the Canadian Charter of Rights and Freedoms. In February 2007, Amnesty International Canada and the B.C. Civil Liberties Association filed and served an application that challenges the "actions or potential actions" of the CF in Afghanistan, and the Government's detainee transfer policy as a whole on the basis of the Canadian Charter of Rights and Freedoms.

AIHRC: The Afghanistan Independent Human Rights Commission (AIHRC) has a constitutional and legal mandate to promote and protect human rights in Afghanistan, including in particular the mandate and authority to monitor places of detention and investigate complaints. In the December 2005 Arrangement Canada and Afghanistan undertook to cooperate fully with the AIHRC in the exercise of its role. In February 2007 Canada and the AIHRC exchanged letters to formalize arrangements whereby Canada notifies the AIHRC of detainees transferred to the Afghan authorities and the AIHRC notifies Canada immediately should it learn that one of those detainees has been mistreated. In the Supplementary Arrangement signed on May 3, 2007, it was made explicit that both Canadian officials and the AIHRC had the right to full, unrestricted and private access to Canadian-transferred detainees. Canada has been working closely with the AIHRC since its inception in 2002 on a range of human rights issues, and in May 2007 provided assistance to AIHRC-initiated and led workshops on human rights training for Afghan security and prison officials. Canada sponsored an independent assessment mission in June 2007 to determine where we can best further assist the AIHRC in developing its capacity to carry out its mandate.

DND/CF-RELATED INQUIRIES INTO ALLEGATIONS OF ABUSE OF DETAINEES: Currently, two investigations are being conducted by the Military Police Complaints Commission (MPCC). The first investigation is mandated to look at matters falling within the policing responsibilities of military police members. However, the allegations touch on broader CF policy and procedures as well as the actions of CF members acting outside the scope of the policing function. As such, the CDS has also directed a Board of Inquiry to investigate these issues. The DND Board of Inquiry is strictly limited to investigating allegations of mistreatment while detainees are in Canadian custody. Both the MPCC investigation and the Board of Inquiry are ongoing. There is also an ongoing National Investigation Service investigation into the matter.

The second investigation pertains to allegations similar to those in the Federal Court case. The allegation of criminal misconduct against the Canadian Forces Provost Marshall was referred to the RCMP for an investigative assessment. This assessment has been completed and found no grounds for either a service offence or criminal investigation. The aforementioned MPCC investigation is ongoing.

Consultation: Prepared in consultation with IDR, IRH-GHA, JLH, DNATO POL

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