

**Detainees in Afghanistan must not face torture,
say rights groups in a call for a judicial review**

The transfer by Canadian Forces of individuals captured or detained in Afghanistan must not lead to the possibility of torture, say Amnesty International and the British Columbia Civil Liberties Association. An application for judicial review of the actions of Canadian Forces regarding the transfers that have taken place under the Canada-Afghanistan Detainee Agreement signed on 18 December, 2005 has been launched by the two organizations today.

“Canadian Forces handling detainees in Afghanistan operate under the *Canadian Charter of Rights and Freedoms* and are bound by Canada’s international human rights obligations”, says Alex Neve, Secretary General of Amnesty International Canada.

“Everyone has the right to life, liberty and security of person under the *Charter* and international law. Individuals detained by Canadian Forces must not face the threat of torture after being transferred.”

The Canada-Afghanistan Detainee Agreement does not provide adequate safeguards to ensure that detainees will not be tortured by Afghan forces. Canadian officials are not

given the right to monitor detainees after they have been transferred. And although the agreement anticipates that detainees first held by Canada may be moved onwards to the custody of a third country it fails to provide safeguards to ensure they will not be subject to torture or even execution. The previous practice by Canadian Forces of transferring detainees directly to United States forces led to serious human rights violations in Afghanistan and Guantanamo Bay. The clear possibility of further transfer of detainees to United States custody remains under the current agreement.

There are strong grounds to believe that Afghan forces are torturing detainees. An extensive record of pervasive and widespread torture in Afghanistan has been well documented by international organizations monitoring human rights issues. Amnesty International has for many years raised concerns about torture and ill treatment by Afghan security forces, including the National Security Directorate (NSD), which along with Afghanistan National Police (ANP), has accepted detainees transferred by Canadian Forces. The NSD enjoys effective impunity, on account of the weak judicial system, lack of adequate training and high levels of corruption in the country. Similar concerns have been noted by the Afghanistan Independent Human Rights Commission (AIHRC). The 2006 annual report of the AIHRC notes the absence of the rule of law, a culture of impunity and abuse of power by government officials, a weak judicial system, slow progress on legal cases and lack of reforms in the judicial and social system. They also note that “in addition, the incidence of torture on detained or imprisoned persons was still occurring throughout the past year,

although cases of torture have declined.”

“The rule of law in Afghanistan is absent and with the transfer of prisoners to Afghan authorities, the Canadian Forces become complicit in a process that can lead to torture,” says Shirley Heafey, a Board member of the British Columbia Civil Liberties Association (BCCLA).

“Torture is an affront to Canada’s commitment to the dignity and autonomy of all individuals - a commitment that is the bedrock of our constitutional democracy,” asserted Jason Gratl, President of the BCCLA.

The Chief of the Defence Staff, General Hillier has also refused to allow these detainees access to legal counsel before being transferred to the Afghanistan authorities. Amnesty International and the British Columbia Civil Liberties Association state that this is also contrary to the right of individuals detained by Canadian Forces to retain and instruct legal counsel without delay under section 10(b) of the *Canadian Charter of Rights and Freedoms*.

The sections of the *Canadian Charter of Rights and Freedoms* apply in the operations of Canadian Forces in Afghanistan. There is a Canadian legal framework for these transfers and Canada’s international obligations prohibit transferring detainees into the custody of states that may torture them. Canada is a signatory to the *United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment*.

Article 3 states that “No State Party shall expel, return (“refouler”) or extradite a person to

another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.” There are similar provisions in the *International Covenant on Civil and Political Rights*, and Common Article 3 of the *Geneva Conventions* that obligate Canada to protect individuals from torture and other cruel, degrading or inhuman treatment.

The Minister of National Defence and the Chief of Defence Staff have responsibility under the *National Defence Act* for the management, direction and control of the Canadian Forces and to uphold the *Canadian Charter of Rights and Freedom* and to meet Canada’s international obligations to prevent torture, say Amnesty International Canada and the British Columbia Civil Liberties Association.

The application for a judicial review in Federal Court seeks a declaration that the Canada-Afghanistan Detainee Agreement offends Section 7 of the *Charter of Rights and Freedoms* because it does not adequately protect detainees from the likelihood of torture by Afghan authorities or other third countries. Detainees’ “right to life, liberty and security of the person” under Section 7 are not being respected.

Amnesty International and the British Columbia Civil Liberties Association are asking for a writ of prohibition preventing Canadian Forces in Afghanistan from transferring detainees to the Afghan authorities or any other state that is likely to torture them, including the United States. And there should be a declaration that Canadian Forces may not detain, handle, interrogate, or transfer a detainee except in observance of the *Canadian Charter of Right and Freedoms* right “to retain and instruct counsel without delay and to be informed of

that right”.

“Canadian soldiers must never be part of a process that could lead to torture”, says Neve. “The detainee agreement should mirror our domestic values and match our international commitments and not be a conduit to possible future human rights violations.”

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