

FEDERAL COURT

BETWEEN:

**AMNESTY INTERNATIONAL CANADA and
BRITISH COLUMBIA CIVIL LIBERTIES ASSOCIATION**

Applicants

and

**CHIEF OF DEFENCE STAFF FOR THE CANADIAN FORCES,
MINISTER OF NATIONAL DEFENCE and
THE ATTORNEY GENERAL OF CANADA**

Respondents

AFFIDAVIT OF DAVID CONNOR

I, David Connor, of the City of Ottawa in the Province of Ontario, AFFIRM
THAT:

1. I have been an employee of Correctional Service Canada (“CSC” or “the Service”) since 1980 and have held the position of Director, International Relations since 2003. Based on my experience in corrections and security sector reform, I have knowledge of the matters to which I hereinafter depose. Where I have made this affidavit based upon information obtained from another, I have identified the source of the information and I believe it to be true.

Experience

2. In 2002, I managed the Service’s participation in the Canadian Joint Justice Assessment of the justice system of Afghanistan with the objective of determining the

state of the prison system and making proposals as to possible Canadian assistance.

3. As Director of International Relations, I oversee the development and conduct of CSC's security sector program around the world including in Afghanistan both at the national level in Kabul and as a member of the Provincial Reconstruction Team (PRT).
4. In addition, I have also represented the CSC at numerous forums dealing with the subject of security sector reform. These have included the Organization of American States' hemispheric meetings of officials responsible for prison operations, and the United Nations Department of Peacekeeping Operations in the development of the concept of security sector reform and on peace support operations around the world involving the assessment, design and delivery of security sector reform projects.
5. It is the nature of correctional services that all prison systems in the world deal with difficult circumstances. The state of a prison service is characterized by its ability to detect problems, deal with them and learn from them. There are indications that the Afghan prison system is making progress in this regard.
6. The recognition of Canada's correctional system as one of the more advanced in the world has resulted in requests for the Service to contribute to international post-conflict security sector reform efforts. CSC's initiation in this regard occurred in Kosovo in 1999 when Canada was asked to support the multilateral assessment of that province's prison system. Since then, CSC has continued to develop expertise in the area of corrections and security sector reform.
7. CSC's primary mission in Afghanistan is to provide training and mentoring to prison officials at Sarpoza prison. The aim of this work is to assist the Afghan Ministry of Justice to establish a prison system that recognizes the primacy of the rule of law and responds to international human rights standards
8. In addition, since May 3, 2007, CSC has provided technical expertise in

corrections practices and prison conditions to support the monitoring of detainees by the Department of Foreign Affairs and International Trade (DFAIT). Aside from this, CSC plays no role in the transferring or handling of detainees captured by the Canadian Forces (“CF”) during military engagements in Afghanistan. Furthermore, CSC does not play a role in CF detention facilities in Afghanistan.

CSC’s Engagement in Afghanistan

9. CSC began its engagement in Afghanistan with the 2002 Joint Justice Assessment conducted in cooperation with the Department of Justice and the Royal Canadian Mounted Police. The comprehensive justice sector assessment covered judicial and legal systems and infrastructure, policing and prisons systems. The report of this assessment team led to the establishment of Canadian priorities for initial action in the justice sector.

10. This report was followed in 2006 when CSC performed an assessment of Afghan detention and correctional capacity (the “Assessment”) with a view to Canadian immediate and long-term engagement in reforming the detention and corrections system in Kandahar. CSC’s findings indicated a prison system in need of rebuilding and reform in such areas as administration, infrastructure and equipment as well as training for staff. The Assessment is attached here as Exhibit “A”.

11. The Assessment observed that “[t]he relationship between a functioning prison, detention, police and judicial system in terms of the establishment of the Rule of Law has been demonstrated as essential in previous peace support operations and is the foundation for the respect of human rights legislation both nationally and internationally.”

12. The opportunities identified in the Assessment for long term improvement were: training in basic security operations, prisoner management and for reinforcement of the concepts of the primacy of the rule of law and respect for human rights in the context of corrections. Consequently, the Assessment recommended that national training standards

be implemented by way of establishing an Integrated Justice Training Center (now referred to as the In-Service Training Facility) at the PRT along with mentoring Sarpoza prison staff in the integration and on-the-job utilization of new skills. Soon after these recommendations were made, Canada sent an initial team of two CSC officials to Afghanistan to begin implementing these recommendations.

Security Sector Reform

13. Various definitions of security sector reform have been proposed since the inception of the term in the 1990's. One authority, the Organisation for Economic Co-operation and Development – Development Assistance Committee (OECD DAC), a forum for governments of 30 democracies, including Canada that works to address the economic, social and environmental challenges of globalization, defines security sector reform as: “seeking to increase partner countries’ ability to meet the range of security needs within their societies in a manner consistent with democratic norms and sound principles of governance, transparency and the rule of law. Security sector reform includes, but extends well beyond, the narrower focus of more traditional security assistance on defence, intelligence and policing.” (OECD, 2004)

14. The importance of security sector reform has also been recognized by the United Nations Security Council when it stated that security sector reform is “critical to the consolidation of peace and stability, promoting poverty reduction, rule of law and good governance, extending legitimate State authority, and preventing countries from relapsing into conflict”. As such, the Security Council “emphasizes that security sector reform must be context-driven and that the needs will vary from situation to situation. (UN Security Council, 20 February 2007)

15. Similarly, the Geneva Centre for the Democratic Control of Armed Forces (DCAF) has recognized the fundamental role of security sector reform in peace support and post conflict situations:

... typical post-conflict features such as an adverse security situation, weak political institutions, and precarious socio-economic conditions make post-conflict peacebuilding a daunting task. Approaches to post-conflict peacebuilding are therefore inherently complex, and have to be tailored to the specific local context. Lessons drawn from practice since the early 1990s are seldom amenable to generalisation. However, there appears to be a consensus that post-conflict peacebuilding is a multidimensional process of transformation from war to peace comprising three equally important and mutually reinforcing dimensions: (1) the security dimension; (2) the political (governance) dimension and (3) the socio-economic dimension. (*Security Governance in Post-Conflict Peacebuilding 2005*)

16. The OECD DAC has developed the authoritative Handbook on Security System Reform (the "Handbook") attached here as **Exhibit "B"** to this affidavit. The guidance offered in the Handbook on how to operationalize sustainable and effective security sector reform is based on the experience of countries that have undertaken security and justice reforms over the last decade. As a member of the OECD DAC and the Task Team that drafted the definition and the Handbook, Canada has committed to the principles of the Handbook as well as its promotion both internally and internationally. The Handbook was endorsed by OECD DAC Ministers, including Canada, and Heads of Agencies in April 2007. Other contributors to the advice contained in the Handbook include donor countries, UN agencies, regional organizations and international financial institutions.

17. Key aspects of security sector reform that relate to the corrections work carried out by CSC render the work different in kind from that normally associated with corrections in Canada. In addition to building collaborative partnerships with other nations, and international non-governmental and intergovernmental agencies, the Service must build cooperative and professional relationships with local officials. Often this must be accomplished through the use of language interpreters and in a context where cultural experiences are substantially different from Canada.

The Challenges of Security Sector Reform in Afghanistan

18. While CSC's initial mission was to develop and deliver training and mentoring to the management and staff of Sarpoza Prison, the main provincial prison located in Kandahar city, it has since expanded to support DFAIT in its role of detainee monitoring. Mentoring activities have included various aspects of prison administration such as record keeping, key control, and staff nominal rolls as well as the storage and dispensing of medical supplies.
19. The Service's mission in Afghanistan exposes CSC officials to conditions not previously encountered in their domestic corrections work. For instance, the persistent threat of attack by insurgent forces necessitates risk mitigation steps be taken to protect CSC personnel. These steps must be taken in concert with the CF prior to each trip to prison facilities or to meetings outside of Camp Nathan Smith. Preparations include specific intelligence assessments and threat analyses that are conducted by CF. During these excursions CSC staff are required to follow protocols including the use of personal protective equipment at all times. They must travel in armoured CF convoys and are constantly attended by CF close protection teams when outside Camp Nathan Smith. CSC officials have had credible threats assessed against them with the result that daily routines have been disrupted or altered including delayed or cancelled visits to prison sites.
20. Despite the dangers presented to CSC officials and Canadian personnel generally, detainees that may be held in Afghan prisons are not at any greater risk of attack than the general prison population. That being said, it is recognized that the presence of CSC officials in the prisons increases the risk of attack to prison staff and prisoners generally during visits. In this regard, I am aware that Afghan interlocutors working with CSC officials do take steps not to be identified or to be seen collaborating with Canadians for fear of retaliation by insurgent forces such as Taliban.

21. The visits made by CSC officials are unscheduled so as to preserve the integrity of the corrections inspection function by ensuring the independence of the operation. This practice is akin to that followed in Canada by the Correctional Investigator for the purpose of assuring an independent inspection process.
22. In addition, the practice of making unscheduled visits reduces the risk of attack by insurgent forces. Further risk mitigation measures include keeping the visits short and focussed which necessitates a more interactive approach to the work of the CSC officials and contributes to the iterative progress made over time. These measures make it more difficult for opposing forces to plan attacks.
23. Even though CSC's participation in this support effort may be welcomed by the Afghan government, there are nevertheless operational hurdles that CSC officials encounter. In particular, CSC's ability to fulfill its mission in Afghanistan is dependent upon the cooperation of Afghan prison officials working in the field. Consequently, it is vital that CSC gain the trust and cooperation of local professionals and maintain courteous, professional relations in order to continue with its training and mentoring. This is despite significant cultural, social and language differences that necessitate such steps as the use of interpreters.
24. Multinational effort requires CSC officials to be both corrections experts and diplomats. The selection and preparation of CSC staff for assignment in Afghanistan is a unique process within the Service and was developed to address the specialized needs of the mission. At this time, very few CSC personnel have the background required to work in Afghanistan. Nevertheless, CSC has found suitable candidates who are prepared to meet the exceptional demands of this mission. These individuals are selected on the basis of personal qualities that have been identified as key to enduring local conditions, coping with the diversity of challenges and managing high levels of stress.

25. CSC officials serving in Afghanistan are required to have a significant knowledge and understanding of international standards and organizations including: international human rights standards (i.e. UN Standard Minimum Rules for the Treatment of Prisoners); UN agencies such as Office of the United Nations High Commissioner for Human Rights, UN Office on Drugs and Crimes, UN Development Program, UN Children's Fund, UN Development Fund for Women and the International Committee of the Red Cross. In addition they must be well acquainted with the application of the concept of the rule of law in the provision of advisory services to prison management officials.
26. In view of the international nature of the work that the Service undertakes in Afghanistan, CSC officials are expected to be cognizant and respectful of cultural differences including race and ethnicity, religion, gender, age, language, sexual orientation, local traditions, the socio-political and economic position of Afghanistan, international standards and human rights as well as recognize military and diplomatic ranks. A high standard of professional and personal comportment is fundamental to all aspects of CSC's mission in Afghanistan and officials are called upon to constantly work and act under pressure, with discretion in a politically sensitive environment, with minimum comfort.
27. Since February 2007, CSC has conducted at least 42 visits to Afghan prisons that have focused on developing a capacity building program centered on training and mentoring at Sarpoza Prison, the main Ministry of Justice prison for Kandahar province. In addition, one preliminary visit was undertaken in late April 2007 to the NDS Prison facility for the purpose of orientation and familiarization.
28. Capacity building entails informing Afghan officials of international human rights standards. CSC officials work with Afghan counterparts to assist them in identifying problems and realistic solutions, and subsequently developing plans to implement, follow up, and revise as necessary the agreed resolution. The goals of such a process are

twofold: supporting processes which are directed at the primacy of the rule of law and respect for international standards, and developing amongst Afghan interlocutors the capacity for independent action in the future.

Activities in Afghanistan since May 3, 2007

29. Since May 3, 2007, CSC has participated in monitoring detainees and has provided expert technical advice to DFAIT with respect to the expanded monitoring process provided for under the supplementary Arrangement made on that day. This advice considers compliance with international standards including in areas such as standards of imprisonment; normal prison procedures such as use of force and restraints and; awareness and knowledge building with respect to interviewing prisoners.

30. Since May 3 2007, CSC has attended site visits to the National Directorate of Security (NDS) facility at Kandahar as Technical Advisor to DFAIT and in this capacity has been identifying matters requiring further attention. At the initial visit CSC performed a visual inspection of the prison infrastructure to determine compliance with international human rights standards. This entailed examinations of detention cells, general living conditions, medical services, and conditions of imprisonment such as food and clothing available for prisoners, access to exercise and fresh air as well as the use of restraint equipment. Prison administration issues, such as organisational structure were also assessed.

31. In addition, CSC officials continue to interact on an international committee with UN officials and international counterparts to provide a Canadian perspective on corrections, as they did prior to May 3, 2007. In particular, CSC cooperates with United Nations Assistance Mission in Afghanistan (“UNAMA”) and other officials in Kabul as well as the Afghan Central Prison Department to support the Afghan government’s endeavours and goals set out in Afghanistan Compact.

CSC's Progress to date

32. CSC's mission in Kandahar is in early stages. A positive and productive relationship has been established with the management of Sarpoza Prison, and CSC officials have focussed on a series of quick impact projects to bring immediate improvements to the prison and for its prisoners and staff while building the longer term project. These include:

- a) The establishment of an interview room for access to justice resources by prisoners and to facilitate private communication between lawyers and their clients, despite severe limitations in access and numbers of legal counsel;
- b) Refurbishment and rehabilitation of the Prison's cistern and sewage system to address health issues related to open and overflowing sewage receptacles;
- c) The supply and installation of solar powered lighting systems to improve security for staff and prisoners;
- d) Improved management processes and scheduling of prison routines to permit additional outdoor time for prisoners in accordance with international standards;
- e) progress towards building professional correctional staff, including the development of rank and reporting structures and the introduction of use of uniforms;
- f) provision of newspapers and hand-crank radios to inmates to increase contact with community resources;
- g) establishment of play area for children of prisoners who live with their incarcerated mothers;
- h) provision of basic medical supplies for humanitarian use by inmates and staff, coupled with mentoring and introduction of medication monitoring and control

procedures;

- i) introduction of food storage systems in kitchen to replace food storage on the floor where it was subject to vermin and other contamination;
- j) introduction of visitor log-in procedures for the prison, coupled with mentoring on the importance of visitor identification and control;
- k) immunization program for the children of female prisoners, in cooperation with the World Health Organization;
- l) introduction of basic literacy and vocational programming for inmates, in cooperation with the Afghan Department of Education; and
- m) removal of unexploded ordinance from common areas, including the exercise yard.

33. Recent changes in the use of restraint equipment are of particular significance. International standards recognize the legitimate use of restraint equipment, however upon arriving at Sarpoza Prison, CSC staff observed that restraints, and in particular leg shackles, were commonly used in contravention of UN standards. Subsequent investigation and discussion with prison management revealed a number of reasons for the situation. In some cases, prisoners arriving from other facilities were shackled, without explanation, and it was assumed that they should remain so. In other cases, keys were missing, or the mechanisms were simply rusted shut because prisoners had been required to wear them during personal hygiene and ablutions.

34. CSC instituted an immediate process of intensive mentoring on the proper use of restraint equipment. Consequently, the use of equipment has been significantly reduced and now meets international standards. Improper equipment, including homemade shackles, is no longer in use.

35. Similar patterns of the use of restraint have been observed at the NDS detention facility. The situation has been discussed with prison management, and a similar program of education and mentoring will begin in the very near future pending the procurement of appropriate equipment with CSC's advice and assistance.
36. Security conditions in Kandahar preclude lengthy visits to the prison, which places constraints on the training and mentoring program. Consequently, CSC is working with the Royal Canadian Mounted Police (who are conducting a police training and mentoring program) and DFAIT in the design and construction of an Interim In-Service Training Facility at Camp Nathan Smith. This facility, which is under construction and expected to be completed in early 2008, will provide a secure location at which to conduct training for prison staff and police.
37. Furthermore, DFAIT has approved a \$1.5M reconstruction and refurbishment project at Sarpoza Prison. This project, which is in the early stages of implementation, will include major projects in facility upgrades (perimeter security, interior construction, electrical system, window installation and replacement, and water and sanitation), increased training and mentoring (including basic literacy for staff and prisoners, vocational training for prisoners and human rights and gender equality training for staff), inmate care (including the provision of basic medical supplies, pre-and post-natal care and establishment of a nursery, dental and psychiatric services, upgraded living conditions, hospital upgrades, and the construction of a mosque.) This project is underway and scheduled for completion next year.
38. CSC's experience at Sarpoza Prison has been very promising. As a result of efforts to build respectful relations, CSC officials have been allowed free access to prison officials and the facility. Senior officials have been receptive to the technical advice provided by CSC. They implement changes and find workable solutions although in some cases, progress is limited by the funding available. The recognition by prison officials that problems do exist and the improvements made to date bode well for a

positive outcome for CSC's mission.

39. Initial indications are that CSC will encounter a similar level of cooperation at NDS as relations continue to develop with visits following May 3, 2007. The expansion of CSC's training and mentoring role to NDS is under consideration.

Implications if Injunction Granted


40. CSC requires force protection from the CF in order to continue visits to Afghan prison facilities. If appropriate security cannot be provided, CSC will be unable to continue its capacity building activities at prison facilities.

Affirmed before me at Ottawa, Ontario
on December 14, 2007.

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Commissioner for taking affidavits, etc.



David Connor