

**FEDERAL COURT**

BETWEEN:

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

Applicants

and

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

Respondents

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**AFFIDAVIT OF KERRY BUCK**

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I, Kerry Buck, Director General in the Department of Foreign Affairs and International Trade, of the City of Ottawa, in the Province of Ontario, SWEAR THAT:

1. I am the Director General of the Afghanistan Task Force at the Department of Foreign Affairs and International Trade ("DFAIT"). As a result of my position with DFAIT, 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.
2. While at DFAIT, I have served in the Bureau responsible for Human Rights, Humanitarian Affairs as Deputy Director and Acting Director responsible for bilateral human rights relations and multilateral human rights negotiations. While in the Policy Planning Division, I was responsible for policy relating to peacebuilding in countries in post conflict situations. While in the legal bureau I was responsible for international

human rights and humanitarian law. I was also posted to Canada's mission to the United Nations in New York where I was responsible for international human rights and humanitarian law, among other issues.

3. From 2001 to 2006 I was the Director of Policy and International Programmes at the Canadian Human Rights Commission, and subsequently Director of Machinery of Government at the Privy Council Office.
4. In my current position as Director General of the Afghanistan Task Force, my duties and responsibilities include policy development and program implementation, bilateral relations and multilateral diplomacy, managing Canada's diplomatic operations in Afghanistan and inter-departmental coordination on all these issues. I have been in this position since the Inter-Departmental Task Force was established at DFAIT in April, 2007.

#### **I. Promotion of Human Rights**

5. Afghanistan is emerging from three decades of instability, human rights abuses, terror, insurgency, drought and poverty. The democratically-elected Government of Afghanistan is working with the international community, including Canada, to promote human rights and the rule of law.
6. Since the fall of the Taliban in 2001, and the election of a new Government of Afghanistan, the human rights situation in Afghanistan has been improving. Canada recognises that, after decades of civil strife, it will take time for real and permanent change and that Canada and the international community must work in concert with the democratically elected Government of Afghanistan.
7. In her Affidavit sworn the 1<sup>st</sup> day of May, 2007, Colleen Swords, the Assistant Deputy Minister, International Security Branch and Political Director, DFAIT, explained that Canada is a major participant in the 2006 *Afghanistan Compact*, the purpose of which is to achieve progress in the critical areas of security, governance, and economic and social development.

8. The *Afghanistan Compact* establishes a partnership between the international community, including Canada, and Afghanistan. It sets out principles of cooperation designed to build a lasting Afghan capacity and effective state and civil society institutions, to fight corruption, to uphold justice and the rule of law and to promote respect for the human rights of all Afghans.
9. To further the goals of the *Afghanistan Compact*, Canada has deployed experts to Afghanistan. These include corrections experts to support Canada's ongoing efforts to reform and improve the corrections system in Afghanistan. The Correctional Service of Canada ("CSC") works with a variety of Afghan and international stakeholders so as to make concrete recommendations for immediate and long-term activities for capacity-building in the corrections and detention sector.
10. Furthermore, DFAIT facilitates programming conducted by other Canadian departments having relevant expertise such as the RCMP.
11. In terms of financial aid, for the period 2007 - 2008, DFAIT is contributing approximately \$2,600,000.00 to strengthening the Afghan corrections sector, which represents almost 10% of the Global Peace and Security Fund (GPSF) targeted funding to building Afghan capacity in that area. The GPSF has allocated funding to this key area given Canada's belief that a credible Afghan corrections system is crucial for guaranteeing a transparent and fair process that ensures humane treatment and a respect for the rule of law. Attached to my affidavit as **Exhibit "A"** is a copy of the list of GPSF funding for corrections projects.
12. This funding includes the cost of improving the infrastructure at Sarpoza prison, an Officer Development Plan and human rights training. This project concentrates on making physical improvements to prison facilities in Kandahar, the foremost being Sarpoza Prison and developing a professional cadre of staff. This is an opportunity for Canada to assist in strengthening the corrections system, including formalization of prison law and regulations and introducing a code of conduct for staff. Attached to my

affidavit as **Exhibit "B"** is a copy of the GPSF Proposal Sheet: Sarpoza Prison – Prisoner and Officer Development Program, dated August 9, 2007.

13. Canada also works with other non-governmental organizations such as the ICRC and the Afghanistan Independent Human Rights Commission ("AIHRC"), a constitutionally-mandated National Human Rights institution, to promote respect for human rights in Afghan society. The AIHRC, working in cooperation with Canada, provides human rights training for Afghans, including police and prison officials in the provinces.
14. Canada is one of 16 nations that provide financial support for the work of the AIHRC. Canada has committed \$7,000,000.00 over the next 4 years to the AIHRC, with \$500,000.00 of that amount having already been provided. Canada's contribution will go towards supporting various activities, such as training programs for AIHRC staff concerning human rights monitoring and investigation techniques and approaches. This \$7,000,000.00 is in addition to the approximately \$1,000,000.00 previously donated by Canada in order to help establish the AIHRC.
15. On May 15 and 27, 2007, as part of ongoing capacity-building, the Kandahar PRT hosted AIHRC-led workshops on human rights. These workshops are part of the ongoing dialogue among various stakeholders, including the AIHRC.
16. Canada is committed to working with Afghanistan on capacity building, training, and justice sector reform, to promote long-term self-sufficiency. Canada continues to work with the Afghan government and civil society organisations.

## **II. Arrangements Governing the Transfer and Protection of Detainees**

17. On December 18, 2005, Canada concluded an Arrangement for the transfer of detainees from the Canadian Forces ("CF") in Afghanistan to Afghan authorities. This Arrangement is an expression of Canada's commitment to work with the Afghan authorities in ensuring the humane treatment of detainees. It recognizes that Afghanistan is a sovereign nation and that it has the primary responsibility to maintain and safeguard detainees whose custody has been transferred to them.

18. Following the December 2005 Arrangement, Canada worked with Afghan authorities and the AIHRC, through dialogue and capacity-strengthening, to promote the legitimate role of the AIHRC in matters pertaining to detainees.
19. In February 2007, the CF and AIHRC signed an Exchange of Letters that emphasized the legitimate role of the AIHRC, including its monitoring role with regard to the treatment of detainees. One of the provisions of that letter states that the AIHRC shall provide immediate notice to the CF in Afghanistan should it learn that a detainee transferred by the CF to Afghan authorities has been mistreated. Attached to my affidavit as **Exhibit "C"** is a copy of the Exchange of Letters between the CF and the AIHRC.
20. In order to clarify and strengthen available follow-up mechanisms not previously made explicit in the 2005 Arrangement, Canada signed the May 2007 supplementary Arrangement with Afghanistan. The supplementary Arrangement explicitly provides for full, unrestricted access by Canada and the AIHRC to any person transferred by the CF to Afghan authorities while that person is in Afghan custody. It also states that Afghan authorities are responsible for treating detainees in accordance with Afghanistan's international human rights obligations. The ICRC and relevant UN human rights institutions will also be allowed access.
21. The May 2007 supplementary Arrangement requires the Government of Afghanistan to hold detainees transferred by the CF in a limited number of facilities. This limitation aids ongoing monitoring by Canada by making it easier to track detainees. It also limits logistical problems posed by making site visits. Canadian transferred detainees will be held at only 4 facilities: the NDS detention facility in Kandahar; Kandahar central prison Sarposa; the NDS detention facility, Department no. 17, Kabul; and, the Pul-e-Charki prison, Kabul. Attached to my affidavit as **Exhibit "D"** is a copy of the December 6, 2007 letter from the Afghan Officer of the National Security Council, confirming its obligation to hold Canadian transferred detainees will be held at these facilities.

22. Under the supplemental Arrangement, the Government of Afghanistan will investigate allegations of abuse and mistreatment and prosecute such conduct in accordance with national law.
23. I have been informed by Ed Jager, the POLAD at KAF, and do verily believe, that on being transferred to Afghan custody, Canadian-transferred detainees are informed of the May 3 supplementary Arrangement and are given a copy of that arrangement in a language they understand.
24. Canada continues to work with Afghan authorities in implementing the May 2007 Arrangement. (For example, CSC employees identify needs and work with the Afghan government to develop the necessary capabilities to manage prison facilities, which includes Ministry of Justice and National Directorate of Security facilities, to afford the safe and humane treatment of detainees.)

### **III. Post-transfer Visits and Monitoring**

25. One of Canada's roles in Afghanistan is to assist the democratically elected Government of Afghanistan to build indigenous justice and security sector capabilities. For this reason, Canadian post-transfer follow-up activities are meant to complement existing and future Afghan capabilities to monitor the conditions of detention of individuals transferred by the CF.
26. DFAIT personnel at KAF, PRT and Kabul working with CSC and other Canadian government officials are responsible for monitoring detainees transferred by the CF. DFAIT personnel also notify the ICRC and AIHRC once detainees are transferred to the custody of Afghan authorities or released. Attached to my affidavit as **Exhibit "E"** is a copy of DFAIT's "Standard Operating Procedures: Post transfer follow-up for detainees transferred by Canadian Forces in Afghanistan".
27. Since the supplementary Arrangement was signed on May 3, 2007, Canada has enjoyed full and unrestricted access to all persons transferred to Afghan authorities by the CF as provided for in the supplemental Arrangement, except on two occasions. On one

occasion access was not possible because the detainees had been transferred to another facility by Afghan authorities without prior notification of Canada. On the second occasion, there was a concern about security risk to Canadian officials due to the large number of people at a facility due to Canada's monitoring visit coinciding with family visits. This issue is dealt with in greater detail in Nicholas Gosselin's affidavit of December 14, 2007.

28. Between May 7 and December 14, 2007, there were 20 DFAIT-led visits to the NDS and Ministry of Justice facilities in Kandahar and Kabul. Canada continues to monitor the treatment of Canadian transferred detainees and to maintain ongoing cooperation with Afghan authorities in making long-term changes.
29. I have been informed by John Davison, Political Director, PRT, and do verily believe, that each visit undertaken by Canadian officials is difficult due to the extreme dangers posed by insurgents operating in the area. During each visit DFAIT civilian personnel are protected by Canadian Forces personnel.
30. To enhance Canadian capacity at PRT in relation to detainees, since November 2007, DFAIT has posted a Human Rights Officer in the Kandahar PRT. The Human Rights Officer is responsible for monitoring, coordinating, and political reporting on various human rights issues in Kandahar province in general, as well as the detainee issue specifically. The Human Rights Officer advocates with Afghan actors and our international partners on detainee related matters. Prior to the appointment of the Human Rights Officer, these responsibilities were carried out by the existing DFAIT team at the PRT.

#### **IV. Follow-up on allegations of abuse**

31. Between May 3 and December 14, 2007, 8 allegations of physical abuse at Afghan prison facilities were made by detainees transferred to Afghan authorities by the CF. These allegations were made during private interviews conducted by Canadian officials during site visits in accordance with paragraph 8 of the supplementary Arrangement. Canada

immediately informed the ICRC and the AIHRC of these allegations. Canada has had an ongoing dialogue with Afghan authorities regarding the investigations into these allegations. The affidavit of Nicholas Gosselin, dated December 14, 2007, describes in more detail the monitoring of detainees at Afghan prison facilities.

32. An allegation of abuse with compelling evidence was made to DFAIT staff during a site visit on November 5, 2007. Canada instructed the PRT to carry out additional visits so as to interview as many Canadian-transferred detainees as possible and to visually review all remaining Canadian-transferred detainees for signs of physical abuse. Between November 7 and December 14, there were 8 such site visits to the prison facilities that hold detainees transferred by the CF to Afghan authorities.
33. Canada has used its diplomatic channels at all levels of the Afghan government to convey its serious concerns, to press Afghan authorities to investigate these allegations and insist on compliance by the Government of Afghanistan with their obligations under Afghan and international law.
34. We have been advised by the Government of Afghanistan that their investigations into allegations of abuse that came to light as a result of our monitoring visits and that occurred prior to November 5 have been completed. The Government of Afghanistan advised us that they considered these allegations to be unsupported, but also note that a number of preventative measures are being put in place by Afghan authorities, notably visits by doctors to facilities and detainees on a regular basis, more rigorous monitoring by legal authorities, and enhanced human rights training for Afghan officials. The Government of Afghanistan also recognized gaps in their training, equipment and management capacity. The Government of Canada will be working with the Government of Afghanistan and other donors to assist in remedying these gaps as part of Canada's overall capacity-building measures in the area of rule of law.
35. We have also been advised by the Government of Afghanistan that in response to the allegation of November 5, for which there was compelling evidence of mistreatment, an investigation has been launched and is ongoing. We have been informed that a suspect



has been identified, suspended from his position at the Kandahar NDS facility, and is currently under detention until the completion of the investigation. Canadian officials continue to follow this issue closely.

36. Canada is now starting to see the results of the requests by the Government of Canada that the Afghan government investigate allegations.

#### **V. Foreign policy implications of a Canadian-run jail**

37. A Canadian-run facility would infringe on Afghan sovereignty and divert important resources from the international community's efforts to work with Afghan authorities to build their capacity to run their own justice system, an integral objective of the *Afghanistan Compact*. NATO has explicitly stated that Afghanistan, as a sovereign country, has the legal responsibility for detention of Afghans and that it is not for NATO to create a parallel detention structure outside the law of the land. Furthermore, one of the goals of the Canadian justice intervention in Afghanistan is to project the Afghan government's authority into the provinces so as to support the creation of an overarching justice system.

#### **VI. Allied Practice and Efforts**

38. Canada's partners have made their own individual Arrangements with the Government of Afghanistan. These Arrangements share the same guiding principle: to cooperate with the sovereign nation state of Afghanistan in order to promote the well-being of transferred detainees. Attached to my affidavit as **Exhibit "F"** are copies of the Arrangements of the Kingdom of Denmark, the United Kingdom, and the Netherlands.
39. The Netherlands and Germany share Canada's views on the importance of Afghan sovereignty and the ongoing capacity-building and that the establishment of a parallel justice system would not be in keeping with the *Afghan Compact*. Attached to my affidavit as **Exhibit "G"** is a copy, with translation, of a letter from Dutch Foreign Affairs, the Military and the Development Cooperative to the Dutch Parliament, dated

November 16, 2007 and a letter from the German State Security, Foreign Office, dated November 22, 2007.

40. The long-term success of the mission in Afghanistan requires not only a partnership with the Government of Afghanistan but also a coordinated and coherent international approach. Canada is not acting in isolation and is actively working with allies on detainee issues.
41. Canada, along with the Governments of Denmark, the Netherlands, Norway, the United Kingdom and the United States, has a collective arrangement with the Government of Afghanistan, that sets forth a common approach and expectations of key members of the international community on the subject of detainees and serves to communicate to the Afghan government in a coordinated manner the importance we place on the issue. This Exchange of Letters serves to reinforce the provisions of Canada's Arrangement and supplementary Arrangement with the Afghan government. Attached to my affidavit as **Exhibit "H"** is a copy of the Exchange of Letters
42. In October 2007, Canada participated in the Copenhagen Conference on "The Handling of Detainees in International Military Operations", the first step in the longer-term Copenhagen Process on the Handling of Detainees. The Copenhagen Progress is a process that seeks to formulate multinational norms for handling of detainees in international military operations. The process started in Copenhagen, and is continuing with the December conference in London. Canada is a partner in this process. Attached to my affidavit as **Exhibit "I"** is a copy of Ministry of Foreign Affairs of Denmark document entitled "The Copenhagen Process on the Handling of Detainees in International Military Operations" dated December 2007.
43. Furthermore, Canada took the lead in sponsoring and planning a London meeting involving a number of countries actively engaged in Afghanistan in order to discuss the post-transfer regime. This meeting was held in London on December 10 and 11, 2007. This meeting with allies had the object of seeking to review and exchange practical

information on all aspects of the handling, transfer, and post-transfer monitoring of detainees transferred to Afghan authorities.

- 44. The Government of Canada has an arrangement with the Government of Afghanistan that references Afghan obligations to treat detainees humanely in accordance with Afghan and international law, Canada has established a robust monitoring system, the Afghan authorities have committed to investigating and investigators have been and are being conducted and the Afghan authorities have shown themselves willing to accept continued and enhanced technical assistance to build their capacity to ensure sound management of prison facilities and to afford humane treatment of detainees.

SWORN before me at )  
 the City of Ottawa, Province )  
 of Ontario this 14th day of )  
 December, 2007. )  
A. Bagorska )  
 A Commissioner, etc. )

Kerry Buck  
 Kerry Buck