

DRAFT Implementation modalities

The guiding principle of the 2005 Arrangement is that the democratically-elected Government of Afghanistan has sovereign jurisdiction over Afghans detained on its territory. Canada's underlying objective in our Afghanistan engagement is to help build up, not replace, indigenous institutions of governance. The primary responsibility for ensuring that the rights of detainees is respecting rests with the Government of Afghanistan, with AIHRC performing a monitoring function. Follow-up by Canadian officials will complement the AIHRC's role, not supplant it.

At the same time, we recognise that the AIHRC, like other Afghan institutions, lacks the capacity to fulfil these functions without international assistance. Canada is already providing diplomatic support to the AIHRC to obtain access to detention facilities, and we are exploring ways of providing further financial and technical assistance, including training, to the AIHRC, just as we are currently supporting the reform of the Afghan corrections and police systems.

Detainees captured by Canadian Forces and transferred to Afghan authorities will continue to be documented, and their details provided to the AIHRC and the ICRC as well as to Afghan authorities. At the time of transfer, a copy of the Arrangement, together with its Supplement, will be provided to Afghan authorities and the detainee as a reminder of our expectations of Afghan authorities, of the detainees rights, and of Canada's intention to work with Afghan partners to follow-up on the treatment of detainees.

Canadian officials will maintain records on detainees, tracking their whereabouts, status and well-being, based on information provided by Afghan authorities and the AIHRC, and obtained during their own follow-up visits. Canada is looking into ways of assisting Afghan institutions with building their capacity to keep sound records.

The Afghan government's undertaking to hold detainees transferred by Canada at a limited number of specific locations will facilitate records maintenance, monitoring by the AIHRC, follow-up by Canadian officials, and the targeting of capacity-building activities. We are currently working with Afghan authorities to identify the specific facilities which will house detainees transferred by Canada.

Follow-up visits by Canadian officials will be led by DFAIT officials, and involve multi-disciplinary teams drawing on the expertise of various departments, including CSC, RCMP, and DND. They will receive specific training in how to detect signs of mistreatment.

Such visits will occur with or without prior notification, and may include private interviews or medical examinations as required. Detainees transferred by Canada will be selected at random for interview. Facilities will be visited periodically, but without a pre-determined schedule. A follow-up visit may be triggered should Canada become aware of the possibility of mistreatment.

Should Canada learn of allegations of mistreatment of detainees transferred by Canada during follow-up visits, from the AIHRC, or from other sources, we communicate to Afghan authorities their obligation under Afghan and international law to investigate and take corrective action. Canada will retain the right to demand the return of a detainee to Canadian custody should we conclude that the detainee is in danger.

Implementation modalities will evolve based on lessons learnt in their application. We will maintain contact with international partners to exchange best practices, and explore the possibility of collaborative efforts in capacity building and follow-up.