

## ADVICE FOR THE MINISTER

### AFGHANISTAN - DETAINEES

**ISSUE:** Why does this Government refuse to accept that it is not safe to transfer detainees to Afghan authorities? Clearly the Government has something to hide if it is challenging the MPCC and trying to halt the public hearings. Why did the CF have to suspend transfers to Afghan security forces if our arrangements are so great?

- Transfers are assessed on a case-by-case basis, in accordance with international law and consistent with the terms set out in our Arrangements with the Government of Afghanistan.
- Any decision to transfer made by the commander is an operational decision that takes into consideration the facts on the ground and input from other government departments, including Correctional Services Canada and Foreign Affairs.

#### IF PRESSED ON PRE-TRANSFER ALLEGATIONS

- Canadian Forces members involved in the handling and transfer of detainees get regular training and clearly understand all related procedures.
- In 2008, the Military Police initiated six investigations into allegations of abuse by Canadian Forces members. Four of the six investigations determined that the allegations were unfounded. The Military Police continue to investigate the remaining two cases.
- In 2008, the Canadian Forces did not receive any complaints that Afghan officials abused CF-transferred detainees.
- Our military takes all allegations of abuse of CF-captured detainees very seriously, and actively investigates all such allegations against CF members.

#### IF PRESSED ON THE SUSPENSION OF TRANSFER OF DETAINEES

- There was no suspension of transfers of detainees in April 2007. Once the Supplementary Arrangement was signed in May 2007, there was a brief period during which Canadian officials and the Canadian Forces worked to establish the enhanced procedures governing the transfer of detainees.
- During this same period, a detainee was captured and was held in a Canadian transfer facility before being transferred to Afghan authorities under the terms and conditions of the Supplementary Arrangement.
- As everyone is aware, a suspension of transfers did occur in late 2007. Transfers resumed when the Commander on the ground felt confident that transfers could be made in accordance with our obligations under international law.

**IF PRESSED ON COOPERATION WITH THE MPCC**

- The Government of Canada is committed to ensuring that detainees are treated and transferred in accordance with our obligations under international law.
- We are not challenging the role of the MPCC, but rather its jurisdiction in relation to specific complaints. The process of judicial review will help to clarify the issue of whether the MPCC has the authority to investigate and hold public hearings into this matter.
- The Government of Canada is cooperating fully with the Military Police Complaints Commission where we believe it is operating within its mandate, as set out in the *National Defence Act*.
- As the MPCC itself has confirmed, the Department of National Defence has provided the Commission with access to hundreds of documents and produced dozens of witnesses with respect to MPCC matters relating to detainees. As this matter is still before the courts, I will not comment further.

**IF PRESSED ON ACCESS TO INFORMATION**

- The military is committed to being as transparent as possible about its operations in Afghanistan. The CF fully understands and abides by its obligations and responsibilities under the *Access to Information Act*.
- The inadvertent release of operationally sensitive information could jeopardize the lives of our men and women serving in Afghanistan.
- The handling and transfer of detainees is an operational issue, and the Canadian Forces must always balance its commitment to transparency against the need to safeguard operational and personal security.

**IF PRESSED ON CFNIS INVESTIGATIONS**

- The Canadian Forces take all allegations against its members very seriously, and actively investigate issues as they arise.
- The Canadian Forces National Investigation Service provides an independent investigative capability, which is essential for the fair and impartial administration of military justice. Investigators have authority and jurisdiction over all CF personnel throughout the world, regardless of rank or status.
- A summary of the main findings of Canadian Forces National Investigation Service investigations is often made public, particularly in cases of significant public interest, in accordance with Canadian law and subject to any operational security requirements.

**IF PRESSED ON STATUS OF BOARD OF INQUIRY ON DETAINEES**

- The Canadian Forces launched a Board of Inquiry to investigate the circumstances surrounding the detention and treatment of three individuals on or about April 6<sup>th</sup> and 7<sup>th</sup>, 2006.
- In addition to this specific case, the BOI also conducted a detailed examination of the orders, directives and procedures governing detainee treatment.
- The BOI has prepared its final report. As per the normal process, the Department of National Defence and Canadian Forces are currently reviewing the BOI's findings, and more information will be released as soon as possible.

**BACKGROUND: AFGHANISTAN – DETAINEES**

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**AFGHANISTAN – DETAINEES**

- Since the beginning of the Canadian Forces deployment to Afghanistan, they have captured, detained and transferred a number of individuals for suspected links with Al Qaida, the Taliban or other anti-coalition armed groups.
- The International Committee of the Red Cross (ICRC) is notified every time an individual is captured by the Canadian Forces or transferred to another authority. The information provided to the ICRC includes the date of capture and transfer, in addition to the name of the detainee and/or their assigned number.
- The Canadian Forces have detailed policies and procedures for the handling of detainees. Canadian Forces personnel are well trained in the standard of treatment to be accorded to persons detained during operations in Afghanistan.

**ARRANGEMENTS WITH AFGHAN AUTHORITIES ON DETAINEES**

- On 18 Dec 05, the Canadian Forces signed an arrangement with the Government of the Islamic Republic of Afghanistan in respect of the transfer of detainees from the Canadian Forces in Afghanistan to Afghan authorities.
- This arrangement established the procedures in the event of a transfer, and reinforced both parties' commitment to meet their obligations under international law. The document was released to the public on 30 Mar 06.
- Among other provisions, article 12 of the arrangement specified that "no person transferred from the Canadian Forces to Afghan authorities will be subject to the application of the death penalty."
- A Supplementary Arrangement was concluded on 3 May 07, which makes explicit the ability of Canada and the Afghan International Human Rights Commission to have full, unrestricted and private access to any person transferred by Canada to Afghan authorities. The Supplementary Arrangement also limits the number of facilities in which Canadian-transferred detainees may be held in order to facilitate ongoing access.
- The Department of Foreign Affairs developed standard operating procedures for post-transfer follow-up and JTF-Afghanistan's detainee standing orders were reviewed to ensure they are consistent with the Supplementary Arrangement. The standard operating procedures have been in effect since early May 07.

**SUSPENSION OF TRANSFER OF DETAINEES**

- There was no suspension of transfers of detainees in Apr 07.

- Once the supplementary arrangement was signed on 3 May 07, there was a brief period of time during which the CF and Government of Canada officials established the enhanced procedures to govern the transfer of detainees.
- During this brief period, a detainee was captured and was held in a Canadian transfer facility before being transferred to Afghan authorities under the terms of the supplementary arrangement.
- A suspension of transfers did occur in late 2007, and lasted some weeks. Transfers resumed when the Commander on the ground felt confident that these transfers could be made in accordance with our obligations under international law.

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**CFNIS INVESTIGATIONS**

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- On 31 Jan 07, the CF Provost Marshal tasked the Canadian Forces National Investigation Service (CFNIS) to conduct an investigation into the complaint which concerns the alleged abuse of three detainees on or about 6/7 Apr 06 by Canadian Forces. The investigation concluded on 3 Oct 08, the NIS found no evidence that any of the three detainees were mistreated or abused during capture, detention or transfer to Afghan authorities. It was also concluded that CF personnel applied reasonable force within the scope of their duties and acted in accordance with the Rules of Engagement. (Same subject matter as MPCC 1).
- On 5 Mar 07, the CFNIS requested that the RCMP conduct an investigative assessment on its behalf to determine whether a criminal offence had been committed by the CF Provost Marshal and by extension any other Military Police involved. The issue was whether the CF Provost Marshal and the Military Police aided and abetted torture by participating in the transfer of detainees to the Afghanistan authorities. On 4 Sep 07, the RCMP concluded that no evidence was found to support the allegations. (Same subject matter as MPCC 2).

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