



## RESPONSE TO PETITION

Prepare in English and French marking 'Original Text' or 'Translation'

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PETITION No.: **421-00217**

BY: **MR. STEWART (BURNABY SOUTH)**

DATE: **MAY 3, 2016**

PRINT NAME OF SIGNATORY: **HONOURABLE HARJIT S. SAJJAN**

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Response by the Minister of National Defence

SIGNATURE

Minister or Parliamentary Secretary

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SUBJECT

**Afghanistan**

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**ORIGINAL TEXT**

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**REPLY**

Throughout Canada's military operations in Afghanistan, which began in October 2001 and ended in March 2014, the Government of Canada was committed to ensuring that individuals detained by the Canadian Armed Forces (CAF) were handled and transferred or released in accordance with our obligations under international law. The CAF treated all detainees humanely. The standards of protection afforded by the Third Geneva Convention were applied as a matter of policy. Protections included providing detainees with food, shelter and necessary medical attention. In addition, specific pre-deployment training for Canadian Armed Forces members involving the handling and transfer of detainees was provided.

After more than three decades of civil conflict, the capacity of the Afghan justice and correctional system was seriously eroded. Canada and our allies understood the need to support law and order in Afghanistan by building the capacity of the police, judicial and corrections sectors through targeted capacity-building efforts.

We worked with and trained the Afghan National Defence and Security Forces (ANDSF) to increase the Afghan Government's capacity to handle detainees appropriately. Canada made significant investments to help build capacity in rule of law functions, including police, judicial and correctional services. Canada funded and worked closely with

independent organizations, including the Afghanistan Independent Human Rights Commission (AIHRC), to strengthen their abilities to monitor, investigate, report and act on issues involving the treatment of detainees.

In the early stages of Canada's engagement in Afghanistan, the CAF transferred Afghan detainees to United States (US) authorities, and while on joint operations supporting capacity building of the ANDSF, transferred detainees to Afghan authorities.

In 2005, Canada established the Canada-Afghanistan arrangement for the Transfer of Detainees with the Government of Afghanistan, which outlined roles and responsibilities with regard to the transfer of Canadian-taken detainees to Afghan authorities. In particular, the Afghan government's sovereign responsibility for all issues related to the rule of law and justice in its territory underpinned the 2005 arrangement.

In addition to setting the framework for transfers, this arrangement reinforced the commitments of both parties to treating detainees humanely and in accordance with the standards of the Third Geneva Convention. This arrangement also specifically prohibited the application of the death penalty to any Canadian-transferred detainee.

In 2007, Canada signed a Supplementary Arrangement that clarified Canada's expectations and the Government of Afghanistan's responsibilities. This arrangement provided Canadian officials with unrestricted and private access to Canadian transferred detainees, and committed Afghan authorities to notify Canada when a detainee was transferred, sentenced or released from custody, or had his status changed in any other way. Canada retained the right to refuse follow-on transfers to a third party. In the case of allegations of mistreatment, the Afghan Government committed, through this arrangement, to investigate and, when appropriate, bring to justice suspected offenders in accordance with Afghan law and applicable international legal standards.

In 2008, the Federal Court and Federal Court of Appeal examined Canada's detainee policies and procedures in *Amnesty International Canada v. Canada (Minister of National Defence)*, 2008 FAC 336, affirmed by 2008 FACA 401, leave to appeal to Supreme Court of Canada denied. In this decision, the Courts set out that International Law, including the Law of Armed Conflict, provided the legal basis upon which the CAF conducts its operations and detainee handling.

In 2010, the Vice Chief of Defence Staff convened a Board of Inquiry (BOI) in order to gain a clear understanding of the specific details of an incident of 14 June 2006, in Afghanistan, during which a person in CAF custody was handed over to Afghan authorities and then taken back by CAF personnel. Although the mandate of the BOI did not include undertaking *a broad examination of Canada's detainee management system*, the BOI did review the CAF Theatre Standing Order (TSO) on detainees and determined that the subsequent amendments and improvements incorporated substantive differences compared to the TSO that was in place in 2006. The appropriate changes were implemented in subsequent rotations.

On November 18, 2011, with Canada's combat mission in Afghanistan coming to a close, Canada signed an arrangement with the US to facilitate the transfer of individuals detained by the CAF in Afghanistan to US Forces custody. The Canada-US arrangement built on and operated in parallel with the 2005 and 2007 arrangements signed between the Government of Canada and the Government of Afghanistan. Together, these arrangements allowed Canadian officials to monitor detention facilities, conduct interviews, and assess detainees' conditions of detention and treatment. Global Affairs Canada officials monitored the treatment of Canadian-transferred detainees in US or Afghan detention facilities up to the point where detainees were sentenced by an Afghan court, or were released from custody. Canada's monitoring responsibilities ended in 2014 after the last Canadian-transferred detainee held in Afghan custody was sentenced by an Afghan court.

When a detainee was taken, any decision to transfer was made by the Canadian Task Force Commander as an operational matter. The Commander took into consideration the facts on the ground and input from a variety of Canadian, international and Afghan sources. The Canadian Task Force Commander made every effort to hold detainees no longer than 96 hours, during which time the CAF reviewed all available information and assessed whether further detention, transfer or release was the appropriate course of action. Any transfers to facilities managed by Afghanistan or other nations were assessed on a case-by-case basis and in accordance with applicable domestic and international law, consistent with the terms set out in our arrangements with those nations.

Operational decisions to hold detainees longer than ISAF guidelines may have occurred for a variety of reasons from medical to administrative to security. These decisions were made by the Commander of Canadian Expeditionary Force Command based on a recommendation from the Commander in Theatre and took into consideration the facts on the ground and input from other government departments, particularly Global Affairs Canada.

In the event of an allegation of abuse, Canada notified Afghan or US authorities, the International Committee of the Red Cross (ICRC) and the AIHRC as appropriate, Canadian officials followed approved protocols, which could include focused interviews with the detainee alleging abuse; follow up with the detaining authority; requests for investigations; an enhanced frequency of follow-up visits; and demarches with relevant authorities. If Canada had any concerns that our partners were not abiding by the arrangements, the CAF Commander in Afghanistan could decide to pause or suspend further transfers.

In 2012, the Military Police Complaints Commission (MPCC) completed a Public Interest Hearing into a complaint that certain Military Police (MP) wrongly failed to investigate CAF Commanders for allegedly ordering the transfer of Afghan detainees to a known risk of torture at the hands of Afghan security forces. The Commission's investigation and hearing process spanned nearly four years. During this time, it heard testimony from 40 witnesses, including the eight subjects of the complaint, and held 47 days of public hearings from 2008 to 2011. The Commission also reviewed thousands of documents throughout its investigation. The Commission found the complaints against the eight individual MPs were unsubstantiated.

In 2015, the Commission Chairperson made a decision to conduct a Public Interest Investigation into an anonymous complaint relating to the investigation of alleged mistreatment of detainees by the Military Police in Afghanistan in 2010-11. The complaint made allegations about the conduct of Military Police members involved in ordering and/or conducting exercises where the mistreatment was alleged to have occurred. The complaint also challenges the failure to lay charges or take any other action following investigations conducted by the Canadian Forces National Investigation Service (CFNIS) and the MP Chain of Command in 2011 and 2012. The MPCC is currently awaiting disclosure of relevant material from the Canadian Forces Provost Marshal (CFPM). Once disclosure is received, the Commission will determine the scope of the investigation, identify the individual subjects of the complaint and notify them. It will then begin to interview witnesses and review materials.

Canada is proud of the honourable work of the men and women in uniform and civilian officials who served in Afghanistan. Canada remains the leading donor supporting the work of the AIHRC to strengthen its capacity to fulfill its constitutional mandate to monitor human rights in Afghanistan. Throughout Canada's military operations in Afghanistan, the Government of Canada ensured individuals detained by the CAF were treated humanely and handled, transferred or released in accordance with our obligations under international law. Therefore the Government of Canada does not believe an independent judicial commission of inquiry is necessary.