

The Honourable Bill Graham
Minister of National Defence
Major General George R. Pearkes Building
Ottawa, Ontario
K1A 0K2

November 21, 2005

Dear Minister,

I am writing in follow-up to earlier correspondence, as well as exchanges at our lunch meeting on November, 15 about Canada's policy and practice regarding transfers of battlefield detainees in Afghanistan.

When we met you indicated that the government expects to soon finalize a new agreement with Afghan authorities whereby detainees will be transferred into their custody rather than to U.S. forces. We spoke at the time about the fact that there may still be concerns under any such new arrangement. I would like to reiterate some of those points.

- I noted that Amnesty International does of course have serious concerns about prison conditions and treatment of prisoners in Afghan detention centres. I have attached a comprehensive report issued by Amnesty International in July 2003 that documents many of those concerns.
- While concern about mistreatment of detainees in U.S. custody has been primarily a matter of inadequate and unlawful policies and practices; the concerns with respect to Afghan detention centres are primarily a matter of resources and capacity. It would be vital therefore for Canada to ensure development assistance that will help to remedy those very serious shortcomings.
- Unrestricted access for the International Committee of the Red Cross to any and all U.S.-administered places of detention has been problematic. It appears that access has not been granted during the period immediately after arrest, which is when abuses are most likely to occur. As well the ICRC is believed to have no access to detainees held in a number of US Forward Operating Bases in Afghanistan. It would be critical to ensure that ICRC access to detainees transferred by Canadian forces into Afghan custody is not limited in any way.

- It would also be vital to ensure that Canada has reliable and transparent assurances that Afghan forces will not in turn transfer detainees into U.S. custody unless and until such time that there are no longer concerns about serious human rights shortcomings in U.S. detention practices.
- We spoke about Canadian detention capacity, Minister, and you indicated that it was not realistic for Canada to construct and administer detention facilities in operations of the scale of the Canadian presence in Afghanistan. Amnesty International is concerned, however, that a price tag not be put on human rights in a context such as this. It is crucial to ensure that Canadian detention practices are in scrupulous compliance with our obligations under international human rights law and international humanitarian law. If the concerns I have highlighted above cannot be addressed, Canada must be prepared to establish and operate its own detention facilities in Afghanistan, perhaps in concert with other nations that have contributed to the International Security Assistance Force.

I very much enjoyed the opportunity to meet and discuss this issue with you and with Major-General Pitzul. I look forward to continuing engagement and to hearing of the steps Canada takes to ensure that detention practices conform to international requirements.

Sincerely,

Alex Neve
Secretary General

cc. Major-General Jerry Pitzul, Q.C., Judge Advocate General

The Honourable Bill Graham
Minister of National Defence
Major General George R. Pearkes Building
Ottawa, Ontario
K1A 0K2

October 11, 2005

Dear Minister,

I am writing further to earlier correspondence with you and your predecessors, Ministers McCallum and Eggleton, outlining Amnesty International's concerns with respect to the Canadian policy and practice of transferring into U.S. custody detainees captured by Canadian troops in Afghanistan.

As early as January 2002 Amnesty International wrote to the government urging that until U.S. forces accepted the applicability of the Geneva Conventions to the armed conflict in Afghanistan, including provisions relevant to the status and treatment of prisoners of war, Canadian soldiers should be instructed to refrain from turning over prisoners to U.S. forces.

Minister McCallum's July 12, 2002 reply indicated that Canada would continue to transfer "certain detainees" to U.S. military authorities because the government was satisfied with U.S. statements of a willingness to respect the Geneva Conventions and to treat detainees humanely and in a manner consistent with the Geneva Conventions.

Amnesty International wrote to you again on this issue on February 18, 2005 when reports emerged that a number of individuals, who had been captured by Canadian forces and transferred into U.S. custody, may have ended up in detention in Guantánamo Bay. That concern deepened last month when Brigadier General Mike Ward confirmed that in the course of Joint Task Force 2 operations in Afghanistan, prisoners apprehended by Canadian troops had been transferred to U.S. and Afghan authorities.

We continue to be concerned that Canada's practice of turning detainees over to other authorities, U.S. or Afghan, without clear and binding assurances that relevant international human rights and humanitarian law obligations will be fulfilled, puts Canada in breach of its own international legal obligations. When we first raised this issue in early 2002, the nature and extent of serious human rights violations that have occurred in the course of U.S. military detention practices, in Afghanistan, in Iraq and in Guantánamo Bay, were not yet clear. Three years later there is ample, disturbing evidence of a range of grave concerns, including torture and ill-treatment, and long-term detention without charge or trial. Canada must work to counter and improve those practices; not be complicit in their occurrence by transferring prisoners.

U.S. assurances of a willingness to act in ways that are "consistent" with international legal obligations have proven inadequate. What are needed are specific and binding

assurances that those obligations will be met. Until such time, no more prisoner transfers should take place, which may mean that Canadian troops will need to take responsibility for the detention of any individuals that they apprehend in the course of operations in Afghanistan.

Minister, we would appreciate an opportunity to meet with you at your earliest convenience to discuss these concerns further. I can be reached at 613 744 7667 (ext 234) or aneve@amnesty.ca, to make arrangements.

Sincerely,

Alex Neve
Secretary General