



National Defence

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Ottawa (Ontario)
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23 April 2010

Mr. Jack Harris, M.P.
Mr. Paul Dewar, M.P.
House of Commons
Parliament of Canada
Ottawa ON K1A 0A9

Dear Mr. Harris and Mr. Dewar,

Thank you for your letter dated April 20, 2010 seeking clarification regarding the process of further questioning Afghan detainees after they are transferred to the National Directorate of Security (NDS). As the officer responsible for the strategic level oversight of Canadian Forces operations I have been asked to respond to your letter.

The decision to transfer or release detainees is made at the most senior levels of command and takes into consideration information from a number of Canadian, Afghan and international sources. That authority rests directly with the Commander Joint Task Force Afghanistan, who is held to a high degree of legal and ethical accountability by the Canadian Government on actions by Canadian Forces soldiers serving under his command.

The legal test supporting transfer was, and is accepted to be, that the Commander must not have substantial grounds for believing that a detainee faces a real risk of torture or other forms of mistreatment if transferred to the Afghan authorities. As such, the Commander is prohibited from transferring an individual with the intent that they would be tortured for information. This is further reinforced through strict Canadian guidelines and regulations.

Simply put, the Canadian Forces do not transfer individuals for the purpose of gathering information for our use.

The issue of transferring for further questioning must be explained in its proper context. The people we transfer are only those who through reasonable and probable cause are deemed a threat to Canadians or our allies, or to the Afghan people. Under Afghan law, the NDS is mandated to investigate crimes in support of the Afghan Attorney General's Office. As a consequence of these two factors,

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Canadian transfers to the NDS are considered to be for the purposes of investigations leading to criminal prosecutions. In this context, further questioning or investigations by the NDS for the purposes of criminal prosecution under Afghan law would be expected. This is important, because a successful prosecution ensures that an individual who was determined to be a threat is incarcerated and removed from the insurgency.

In those cases, when sufficient evidence or information does not support a transfer to the Afghan government, the individuals are quickly released.

I hope that this answers your question and reinforces your understanding of our commitment to conducting Canada's mission in Afghanistan lawfully, honourably and professionally, within the spirit of Canadian values and in the manner our nation would expect of its soldiers.

Sincerely,



R.A. Davidson
Rear-Admiral
Director Strategic Joint Staff

c.c. Mr. Kevin Sorenson, M.P.
Chair
Special Committee on the Canadian Mission in Afghanistan
House of Commons
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