

## Further Evidence of Richard Colvin to the Special Committee on Afghanistan

December 16, 2009

Following my testimony to the Special Committee on the Canadian Mission in Afghanistan, a number of other witnesses have testified before the Committee. Some of their evidence, with respect, was inaccurate or incomplete. This supplementary written evidence to the Committee aims to clarify some of these issues.

### 1. **'Nobody told us.'**

In 2006 alone, the PRT and embassy sent the following formal reports on detainees to Ottawa:

- May 26, 2006: A PRT report (KANDH-0029, **'Detainees: ICRC concerns over notification by Canadian forces'**) warned of serious problems with notification to the International Committee of the Red Cross (ICRC). As a result of lengthy delays, and inadequate information, detainees in some cases were getting lost and therefore could not be monitored.
- June 2, 2006: A PRT report (KANDH-0032, **'Kandahar prison and Afghan detainees'**) addressed two subjects: The physical condition of Sarpoza prison in Kandahar, and the larger question of detainee treatment. The report flagged that the "main concern in Kandahar is not the prison itself but overall treatment of detainees, including those transferred to Afghan custody by Canadian forces." It included verbatim comments that spelled out the nature of the concerns. We were sufficiently concerned that the whole-of-government leadership of the PRT -- from the Department of Foreign Affairs and International Trade (DFAIT), the Canadian Forces and the RCMP -- not only reported the warnings to Ottawa but also promptly took steps in the field to try to address them.
- September 19, 2006: An embassy report (KBGR-0118, **'Afghanistan: ISAF detainee concerns'**) noted ISAF disquiet about the Canadian Forces' refusal to provide ISAF with information about Canadian detainees -- for example, whether detainees had even been taken. ISAF noted that they had obligations to report on detainee numbers in Brussels. The report also noted that a highly credible source warned that Canada's legal obligations to detainees did not cease just because we had transferred them to the Afghan government; Canada needed to monitor our detainees ourselves.

- September 28, 2006: An embassy report (KBGR-0121, '**Afghanistan: ISAF detainee concerns – update**') conveyed even blunter complaints from ISAF about Canada's detainee practices. ISAF also urged Canada to inform ICRC more speedily about detainee transfers.
- December 4, 2006: An embassy report (KBGR-0160, '**Afghanistan: Detainee issues**') noted allies' concern that detainees may "vanish from sight" after being transferred to Afghan custody, as well as the risk that they "are tortured."
- End of December 2006: The embassy's **annual human-rights report on Afghanistan** -- the major human-rights product of 2006 -- noted that "torture" is rife in Afghan jails, as are "extrajudicial executions and disappearances." The report used the word "torture" repeatedly.

To supplement this written reporting, embassy officials intervened directly with policy-makers. For example, in early March 2007, I informed an interagency meeting of some 12 to 15 officials in Ottawa that, "The NDS tortures people, that's what they do, and if we don't want our detainees tortured, we shouldn't give them to the NDS." (The NDS, or National Directorate of Security, is Afghanistan's intelligence service.) The response from the Canadian Expeditionary Force Command (CEFCOM) note-taker was to stop writing and put down her pen.

Canadian officials in the field were not alone in warning Ottawa of the substantial risk of torture in Afghan prisons. During that same period, key allies and international organizations published similar assessments. They included:

- **A US State Department report** of March 8, 2006. It noted that, "there continue to be instances in which security and factional forces committed extrajudicial killings and torture... The following human rights problems were reported: Extrajudicial killings; torture; poor prison conditions; official impunity; [and] prolonged pretrial detention. Credible observers reported that local [provincial] authorities... routinely tortured and abused detainees. Torture and abuse consisted of pulling out fingernails and toenails, burning with hot oil, sexual abuse and sodomy... Prison conditions remained poor, and prisons were severely overcrowded and unsanitary... Prisoners were reportedly beaten, tortured, and denied adequate food... There were continued reports of private and illegal prisons. The AIHRC [Afghanistan Independent Human Rights Commission] claimed that the country's intelligence agency ran at least two such prisons... The ICRC did not have access to secret or unofficial prisons." The report also provided examples of abuse, including a prisoner who

reported being beaten with rubber hoses and wooden batons, and another who said he had been “tortured nightly for at least eight days.”

- **A report by United Nations Secretary-General Kofi Annan** of March 7, 2006 (“The situation in Afghanistan and its implications for international peace and security.”) The UN Secretary-General wrote: “Reports of the use of torture and other forms ill-treatment by the NDS are frequent. Arbitrary arrests are regularly reported and NDS prosecutors regularly fail to conduct investigations within legal time frames... Individuals are documented as having “disappeared” when they are arrested by NDS officials, and access to the facilities where they are held has been problematic for AIHRC and the United Nations.”

In other words, freely available documents from highly credible sources -- including the United States government and the United Nations -- warned of “torture,” including specifically by the NDS.

## **2. ‘As soon as we were informed, we fixed the problems.’**

All this information -- internal reporting from Canadian officials in the field, reports from the US and UN, plus face-to-face interventions with policy-makers -- had no visible impact on Canadian detainee practices. From February 2006 (when the Canadian battle group first deployed) to May 3, 2007 (when Canada signed a new Memorandum of Understanding on detainees that gave us the right to monitor), our detainees continued to be transferred to the NDS, despite a substantial risk of abuse or torture.

Unlike our NATO allies in the south, we chose not to monitor our detainees. Because of notification delays, the Red Cross was also unable to monitor during the first days or weeks of detention, when the risk of torture was highest. Information on detainee transfers had to be sent to the ICRC via CEFCOM in Ottawa, where the information remained until CEFCOM commander Lieutenant-General Michel Gauthier forwarded it. As late as spring 2007, there were delays in notification of up to 34 days.

Even after the new MOU was signed, Ottawa for the first five months did not send a dedicated DFAIT monitor to conduct the monitoring. Monitoring in Kandahar was implemented by a rotating pool of officers, some on very short deployments. As a result, Canadian detainees in NDS custody in Kandahar remained at risk of torture. When a dedicated monitor was finally sent out in late October 2007, he quickly found conclusive evidence of continued torture. This finally triggered a Canadian decision to stop transfers.

From the PRT's warning of 2 June, 2006 -- which noted serious concerns about the treatment of Canadian detainees in Afghan custody -- until the cessation of transfers to the NDS was seventeen months.

**3. 'Afghan detainees are trained to claim torture.'**

Afghans detained by Canada, as deputy Task Force Afghanistan commander Lieutenant-Colonel Tom Putt stated to the Military Police Complaints Commission (MPCC) were primarily "local yokels." Many if not most are illiterate. Afghan villages typically have no electricity, let alone internet access. Witnesses who testified that 'the Taliban are trained to claim torture' seem to be confusing Taliban insurgents (poorly educated Pashtuns, usually illiterate, with a parochial, Afghanistan-centred agenda) with al-Qa'ida terrorists (international jihadists, often highly educated). There is to our knowledge no Taliban equivalent of the al-Qa'ida 'Manchester manual,' which was aimed at a sophisticated, literate audience.

Our experience in Kabul was more typical. As noted below, of the four detainees we interviewed, none at first alleged torture. Contrary to the suggestion that 'all detainees allege torture' because it is in their interest to do so, there are strong disincentives for a detainee to claim that he was tortured. Anyone still in custody could be punished for speaking out, including through more torture. One detainee told Canadian monitors that at first, he did not want to tell them about having been tortured because Canadians had been responsible for his detention and therefore he did not trust us.

Monitoring efforts therefore are more likely to result in under-reporting than over-reporting of torture.

**4. 'There were no credible allegations of torture of Canadian-transferred detainees until November 2007.'**

The revised Memorandum of Understanding (MOU) on detainees for the first time permitted Canadian officials to monitor those detainees already transferred to Afghan authorities. As soon as we began monitoring, we found detainees in both Kandahar and Kabul with credible accounts of torture.

After the MOU was signed, Canadian officials in Kandahar began the process of identifying, locating and -- if they were still in custody -- interviewing the substantial number of Afghans already detained and transferred to the NDS. They established that four detainees had been transferred from the NDS

in Kandahar to the NDS in Kabul. The embassy was therefore requested to try to locate and monitor them.

On 5/ 6 June, 2007, a four-person embassy monitoring team visited Sederat, the main NDS jail in Kabul, to try to find and interview these four detainees. This proved a challenge. The information we had been sent was limited and, in the event, partly inaccurate. For example, one of the names was wrong, as were some of the ages. Nevertheless, the NDS helped us locate four detainees who were from Kandahar and more or less matched our records.

Of the four, none immediately reported having been tortured. All three at first volunteered information about conditions in Kabul only. None said they had been mistreated, although they did complain about such issues as poor food and insufficient access to fresh air.

However, about 10 or 15 minutes into each interview, we asked each detainee about their treatment in Kandahar. All three then reported maltreatment or torture. All three moreover had marks on their body. We judged the accounts of all three to be credible. (Our embassy monitoring team included the head of the consular section, who had been trained in recognizing signs of torture, as well as a Pashto-language interpreter.)

The first detainee ('Detainee 1') did not wish to talk to us.

The second detainee ('Detainee 2'), when asked about Kandahar, "became quiet," according to the report that we sent to Ottawa. "He said that in Kandahar, he had been 'hurt' and 'had problems.' He said he is 'happy now.'" He did not elaborate on what had happened to him in Kandahar. However, our consular officer noticed that he had new growth on two of his toenails. These marks were consistent with somebody having their toenails pulled out. In addition to his testimony, and this physical evidence, we noted in the report our judgment that he was "somewhat traumatized."

'Detainee 3' told us his health is 'very bad' and his life is 'very bad.' In our report to Ottawa, we noted: "When asked about his treatment in Kandahar, he said he had a 'very bad time. They hit us with cables and wires.' He said they also shocked him with electricity. He showed us a number of scars on his legs, which he said were caused by the beating. He said he was hit for two days while in NDS custody in Spin Boldak [in Kandahar province], and then another five days by NDS in Kandahar city. It was a 'very dangerous place.'"

'Detainee 4' told us "that he was hit on his feet with a cable or 'big wire' and forced to stand for two days, but 'that's all.' He showed us a mark on the back of his ankle, which he said was from the cable.

[Note: There was a dark red mark on the back of his ankle.] He said it was the NDS who interrogated and held him. After two days of being beaten with the cable and made to stand, he was put in a very small room with another individual. The room had high ceilings but was only about one metre wide and just long enough to lie down in... He said that, while being detained in Kandahar, ISAF came and spoke with him once. He, and others, told the ISAF visitors that three fellow detainees had had their 'fingers cut and burned with a lighter' while in NDS detention. Subsequently, he and the others were not given food or water for a few days and were asked why they had spoken to ISAF."

Later that month, we received a fuller package of information from Kandahar, including full names, and front and side photos, of the four Afghans detained in Kandahar and then transferred to Kabul. We recognized 'Detainee 2' in the photos. The name and time of detention (February 2007) also matched. In an email of 25 June 2007, we informed Interdepartmental Coordinator for Afghanistan David Mulrone that 'Detainee 2' was 'ours,' but that we still had to locate the remaining three.

As of early October, 2007, when I left Afghanistan, we had not been able to locate the remaining three detainees. However, according to good sources, they were likely in Kabul, but at an NDS 'black site' to which we were not given access. ('Black sites' permit interrogation of detainees without interference from human-rights monitors.)

It is therefore likely that all four Canadian-transferred detainees we were seeking in Kabul had been tortured: The one we interviewed, and the three we were unable to locate.

In May and early June, the PRT in Kandahar also began to monitor Canadian-transferred detainees. These visits also turned up credible reports of torture. For example, on 4 June, 2007, a team from the PRT interviewed a Canadian-transferred detainee in Sarpoza who reported that he had been "beaten with electrical cables while blindfolded" while in NDS custody.

Assertions by witnesses to the Committee that the first credible account of torture of a Canadian-transferred detainee was in November 2007 are therefore inaccurate.

##### **5. "The suggestion that all detainees were tortured is speculation."**

The information that all the detainees transferred by Canada were likely tortured came from highly credible sources. That information was sent to Ottawa in a report of May 2007 or June 2007, but I cannot be more specific about the date without risking identifying the source(s). Detainees were not a source.

In addition to this specific information, it was generally known that prisoners in Afghanistan are routinely tortured or abused. In Kandahar, the risk is even higher than in the average province. Kandahar is on the front lines of the insurgency. Each side treats the other with brutality, and NDS officers and their families are regularly targeted and killed. About half the NDS's staff formerly served in KhAD, the KGB-trained Soviet-era intelligence service, which also had a well-deserved reputation for ferocity.

General Rick Hillier and Lieutenant-General Michel Gauthier, the architects of Canada's detainee system, both had extensive first-hand experience of Afghanistan. Lieutenant-General Gauthier commanded Canadian troops in Kandahar in 2002, and General Hillier commanded ISAF in Kabul in 2004. It is implausible that they would not have known how Afghans treat their prisoners.

#### **6. 'When we got reports of torture, the Afghans investigated.'**

Following the embassy's 5/6 June, 2007 monitoring visit, the NDS at our request conducted an internal investigation. We asked NDS to look into the cases of all three of the individuals who had reported torture, as we did not know at the time which were 'Canadian.'

Either later in June or in July 2007, the NDS sent Ambassador Lalani the result of their investigation -- a one-page sheet, with two paragraphs of text, saying that NDS had looked into the three cases and found they had no basis. There was no additional information. The 'investigation' was so weak that Ambassador Lalani refused even to accept the report. He sent it back to the NDS.

#### **7. 'There was no option but to hand detainees to the NDS in Kandahar.'**

It is not the case that Canada had no alternative but to transfer our detainees to the NDS in Kandahar. There were at least three viable alternatives.

The first option was to build or renovate a joint detention facility for all detainees taken in the south. This was a serious proposal that in spring 2006 was actively being pursued and promoted by two of our principal NATO allies. The prison would have been a sovereign 'Afghan' facility, run by the Government of Afghanistan, but with ISAF mentors, monitors and management support. This would have ensured that detainees were held in appropriate conditions, free from abuse. The United States implemented such a solution in Kabul, renovating a wing of Pol-i-Charki prison to international standards, and embedding US soldiers, corrections officers and senior officers to work alongside Afghan officials. Canada chose not to pursue this approach, but our allies remained interested through 2007.

The second option was to transfer our detainees to Kabul. This was the Dutch solution, which they implemented from early 2006. Away from the front-line violence and pressures of Kandahar, detainees could be monitored and kept free from harm. The Canadian embassy proposed this solution, but it was rejected on the basis that detainees would take up too much space on C-130 flights to Kabul.

A third option was to transfer detainees directly to the Ministry of Interior/ Ministry of Justice -- for example, to Sarpoza. Under Canada's detainee system, all detainees first went to the Kandahar NDS. After interrogation, the interesting ones would be transferred to Kabul, while those with little or no intelligence value -- the vast majority, according to the NDS -- would be either released or transferred to Sarpoza. Sarpoza was much more accessible to Canada, and thus easier to monitor, than the NDS facility in Kandahar. The embassy therefore proposed that Canada skip the NDS phase and place the detainees directly in Sarpoza. Intensive monitoring would ensure that they were not tortured or abused. This solution was also not accepted.

#### **8. 'Afghans were only detained if there was proof that they were insurgents.'**

Several witnesses to the Committee testified that only Taliban insurgents were detained, and only on the basis of strong evidence. They denied that any innocent people were detained.

However, it was the NDS that told us that many or most of our detainees were unconnected to the insurgency. This assessment was reported to Ottawa. The NDS also told us that, because the intelligence value of Canadian-transferred detainees was so low, it did not want them.

Reports moreover suggest that Afghans are often detained on the basis of suspicion or unproven denunciation. These reports include open-source media reports and internal military reporting.

For example, in the May 2006 incident in which the Afghan National Police (ANP) beat a detainee after he was transferred by Canada, military reports show that he was detained on the basis not of evidence but suspicion. The ANP stopped a white van and decided the man was Taliban. On that basis, he was detained by Canada, passed on to the ANP and then abused by the ANP officers.



**9. 'Embassy/ PRT reporting was second- or third-hand, expressed opinion not fact, and generally unreliable.'**

Witnesses and senior government officials have dismissed PRT and embassy warnings about torture as unreliable. They have variously asserted that:

1. Our information was either 'second-hand,' 'third-hand' or 'hearsay.'
2. The main or only source was detainees. Although presumably 'first-hand,' this information is dismissed as 'Taliban propaganda.'
3. I barely left the PRT or embassy compound and therefore relied on rumour.

All of these assertions are not true.

Reports on detainees from the PRT (May and June 2006) and embassy (August 1, 2006 until April 14, 2007) were based exclusively on the following sources:

1. Intelligence services, both Afghan and foreign, and intelligence products;
2. Relevant NATO embassies;
3. ISAF;
4. The United Nations and European Union missions;
5. Relevant human-rights organizations.

In addition, we talked to a range of other sources, including journalists, representatives of non-governmental organizations, and private individuals with first-hand experience of Kandahar. However, they were not cited or used as sources in the reporting. (Diplomatic reporting is careful and conservative, with the source of information clearly identified.)

Diplomats traffic in information. We seek out the most authoritative sources, build a relationship with those individuals, and report their information and assessments. Because of my positions (the lead DFAIT official in Kandahar, and then the #2 official at the embassy in Kabul), I met regularly with the heads of each of the entities listed above, as well as more junior staff who were experts on detainee questions. Information was cross-checked and triangulated.

Some postings, such as Riyadh, are tough places to gather information. Afghanistan is the opposite. Internationals are present in very large numbers and have excellent access, including to the uppermost reaches of the Afghan government. The collaborative NATO effort encourages collegial

relations; information-sharing with allies was regular and candid. And there is a robust intelligence-collection effort in Afghanistan.

In sum, we had access to very reliable sources and very good information.

**10. 'Ottawa encouraged accurate, rigorous, fact-based reporting.'**

Interdepartmental Coordinator for Afghanistan David Mulroney suggested that the only reason reports were edited was to remove 'opinion' or 'non-fact based' information. This is not correct. Instead, embassy staffers were told that they should not report information, however accurate, that conflicted with the government's public messaging.

For example, Ambassador Lalani instructed that we not report that the security situation was deteriorating. This followed an embassy report to Ottawa in which we noted that the Afghan Minister of Defence judged security to be getting worse -- a view shared by our allies, and corroborated by violence trends and other metrics. Nevertheless, Mr. Mulroney sent instructions via Ambassador Lalani that we should either not mention the security situation at all, or to assert that it was getting better. The ambassador accordingly sent a report in which he said security was improving.

In September 2007, an embassy staffer, in response to a written request from DFAIT's Afghanistan Taskforce to contribute to a security assessment by one of our NATO allies, sent a report that security in Kandahar had got worse and was likely to further deteriorate. Mr. Mulroney severely rebuked the officer in writing.

**11. 'Embassy reporting was not censored.'**

After the embassy sent out its annual 2006 human-rights report for Afghanistan, which repeatedly used the word "torture," Mr. Mulroney told us in person that we should be "very careful" about what we put in future reports. In the context, we interpreted this as an attempt to discourage us from using the word "torture" in future such reports.

After sending out the embassy's April 24 and April 25 recommendation on detainees, which included some new information (for example, that many of the detainees were unconnected to the insurgency), I was phoned by Assistant Deputy Minister Colleen Swords. She told me that in future, it would be better not to put things in writing but to use the phone. She testified to the Committee that the reason she made that phone call me was to stress that we should use the phone first, and to write

later. This is incorrect. Her message to me was that I should use the phone *instead* of writing. I had never met or even spoken to Ms. Swords before her phone call, and did not do so again until after I had left Afghanistan. This was therefore a rare intervention.

Mr. Mulroney testified that when his choice for ambassador, Arif Lalani, edited embassy reporting it was to remove 'opinion' and other superfluous information. That is also incorrect. For example, in the April 30 message (KBGR-0267) that the embassy sent to Ottawa, what Ambassador Lalani deleted was the most important information in the report, directly related to our detainee concerns, and from a highly credible source. I was so surprised by this decision that I filed the draft as well as the final, approved report.

In the approved version of the report, Ambassador Lalani reduced the distribution list from roughly 75 to about five addressees. Short distribution lists became the norm for messages on detainees.

Of the original 75 addresses, only four were on the 'to' line. All were in DFAIT – the defence-relations division (IDR), which had the lead on detainees; the human-rights division; the legal division; and the Afghanistan task force. (The 'to' line identifies addresses with a potential responsibility to respond or to act.) All other addresses were 'cc'd. Everyone in the 'cc' line had a reason to know about detainees. Responsibility for replying was therefore focused and clear (four addresses), while the longer 'cc' list ensured that everyone who needed to see the report received it.

The new distribution list did two things. First, it muddied the waters. There was only one name on the 'to' line – typically Mr. Mulroney's deputy. Assistant Deputy Minister Colleen Swords -- and, by extension, the divisions that reported to her, including the lead division (IDR) -- was moved to the 'cc' line. In her testimony to the Parliamentary Committee, Ms. Swords used that fact to argue that she was no longer responsible for the detainee issue. Instead of improving responsibility, Mr. Mulroney's changes weakened and confused it.

The second consequence was to exclude anyone not on the distribution list. This included departments, divisions and individuals that should have received the reports. The result was to concentrate information in the hands of a very small number of officials. Any onward distribution was strictly at their discretion. The change also eliminated any record of who had actually seen a given report, beyond the five initial recipients.

**12. 'We had already decided to sign a new MOU.'**

On 24 April, 2007, the embassy submitted written comments, and three recommendations, on a 'Detainee Diplomatic Contingency Plan' sent from Ottawa on 21 April. In our one-page memo, we suggested that Canada should negotiate a new detainee MOU, set up an effective monitoring mechanism, and try to reduce the number of detainees taken. Mr. Mulronev replied within hours to reject our advice, instructing us instead to implement the contingency plan.

In his testimony, Mr. Mulronev suggested that this was only because the contingency plan had been fully consulted already, including with the embassy, and that, once a decision was taken, it was normal to expect full compliance. This is incorrect. We were not consulted and saw no draft. Given the weakness of the plan, the importance of the detainee issue, and the knowledge we had acquired on detainee issues from repeated meetings over the previous year, we provided our input anyway in order to help the government solve this now-urgent problem.

The fact that the 'contingency plan' made no mention of Canada's signing a new MOU, as well as Mr. Mulronev's strong negative reaction to our recommendation that we do so, suggest that the decision to proceed with a new MOU was taken after April 24, 2007.

**13. Colvin has no credibility.**

When working overseas as representatives of the Department of Foreign Affairs, we do not do so as individuals. Instead, we represent the Government of Canada. When we send reports to Ottawa, it is the institution -- in Kabul, the embassy; in Kandahar, the Provincial Reconstruction Team -- that drafts, approves and sends the report.

For example, the key reports from the PRT -- the May 26, 2006 and June 2, 2006 reports -- were collective products, co-drafted and/ or signed by DFAIT, DND and the RCMP. The PRT was the 'whole-of-government' vehicle for the province and those reports expressed the authoritative voice of the Canadian government in Kandahar. Similarly, any reporting sent from the embassy in Kabul expressed the views of the whole embassy, not one individual.

On the question of credibility, some officials have suggested that I only left the PRT once and was mostly confined to compounds. For the record, I went "outside the wire" in Kandahar at least eleven times, including attending a *shura* of 300 elders in northern Kandahar (which was widely covered by the media), visiting villages in Arghandab, and spending the night at a forward operating base in

Panjwayi. In Kabul, I left the protected embassy zone (presumably “the wire”) an average of twice a day -- probably 500 times in total. I also travelled to other provinces.

The argument also suggests a misunderstanding about the PRT. We received a constant stream of visitors, including the governor, tribal elders, international officials, aid and counternarcotics workers, and Afghan government officials and Provincial Council members. We also had many indigenous sources of information, including Afghan staff; CIDA, RCMP and USAID officials; a tactical operations centre; civil-military officers; intelligence capabilities; and diplomatic and military reporting from Kandahar airfield (KAF) and Kabul. These collectively provided better information than trips into the field.

**14. ‘We don’t read reports. It was up to DFAIT people/ our staff to tell us. Somebody should have grabbed us by the ear and told us detainees were being tortured.’**

The three generals testified that, if only somebody had spoken to them directly that detainees were being abused, they would immediately have responded.

However, they did have the information. The reporting from the PRT and embassy clearly identifies the problems in Canadian detainee practices, as well as concerns about the detainees’ treatment. The generals said they never read those or other relevant reports. However, it was their obligation to be informed.

The PRT report on procedural problems with detainees (KANDH-0029 of May 26, 2006) did generate a written response from Ottawa. That reply (IDR-0512 of June 2, 2006) shows that the message was widely read across the government, including by CEFCON. The PRT’s subsequent detainee report (KANDH-0032 of 2 June, 2006) raised an even more important issue: Serious concerns about “the overall treatment of detainees by Afghan authorities, including those transferred by Canadian forces.” If the information in that report was not acted on -- and it was not -- it was not because it was not read.

Second, the generals’ suggestion that ‘if only we had been told, we would have acted,’ is contradicted by their actions on Governor of Kandahar Asadullah Khalid. We had good information, early on, that Asadullah was an unusually bad actor on human rights, and also had serious deficits in the spheres of governance, rule-of-law and narcotics. The PRT, and subsequently the embassy in Kabul, recommended both in writing and orally that he be replaced. However, senior Canadian officers intervened twice to keep him in place..

Although Afghanistan is clearly a sovereign country, Canada is a major stakeholder in Kandahar. Both the UK and the Netherlands, even before they deployed to 'their' provinces of Helmand and Uruzgan, requested that their governors be removed. Both were. The Afghan government made clear to us that, as security in Kandahar collapsed in 2006, it would be receptive to a request to replace Governor Khalid.

Third, the generals were not in DFAIT's chain of command. We reported back to DFAIT HQ in Ottawa. It was the job of HQ to engage with the military leadership and to sort out policy. Our job was to provide input to policy, not to beat senior officials over the head with our reports when they were in our physical vicinity.

And finally, civil-military frictions at times impeded communications.

#### **15. 'You should have told the minister.'**

It has been suggested that, as I met Minister Peter MacKay at the PRT, it was my responsibility to inform him about the torture of detainees.

However, it was not the job of DFAIT officials in Afghanistan to push our concerns on ministers, unless they explicitly invited them, which none ever did. Doing so would have invited a reprimand from our superiors. The chain of command for DFAIT officers was back to DFAIT officials at HQ. Circumventing that chain of command would have been evidence of 'going rogue.' I was always very correct in my relations with the political level. I volunteered views to fellow bureaucrats, such as Clerk of the Privy Council Kevin Lynch and DFAIT Associate Deputy Minister David Mulroney. But to have done so with ministers would have been inappropriate.

In the case of Minister MacKay, I did spend several hours hosting him at the PRT. As the senior DFAIT officer in Kandahar, I was in charge of his program, accompanied him to his meetings and took notes. However, that is the only time I met him. His visit took place on approximately May 8, 2006. I arrived at the PRT for the first time first ten days earlier, around April 28, 2006. Organizing the minister's program was my first assignment in Afghanistan, and the report I wrote on his visit the first report. After just ten days in the field, I had had no meetings on detainees and knew nothing about Canadian detainee practices. The visit to Sarpoza was on May 16, with follow-up meetings on detainee conditions in the period May 23 to May 30. On May 8, even had I been inclined to violate protocol and inform Minister MacKay, I would have had nothing to tell him.

**16. '2006 was a terrible year. Kandahar was a mess. Of course our detainee system was a mess.'**

Some witnesses implied that Canada's detainee policies evolved organically in the field during the "chaos" of 2006, and that the decline of security in Kandahar somehow resulted in a regrettably but understandably flawed detainee system.

However, the detainee system -- including the legal framework that governed it -- was conceived and established in Ottawa in the summer and fall of 2005. The Memorandum of Understanding on detainees, which prevented Canadian officials from monitoring, was drafted by DND and DFAIT lawyers. It was signed in December 2005, by General Hillier, in Kabul, before the Canadian battle group had deployed to Kandahar.

Several of the key officials who in 2006 and 2007 were responsible for making decisions on the detainee system were already involved in fall 2005. General Hillier was already Chief of Defence Staff. Colleen Swords was DFAIT's chief legal advisor, and thus the DFAIT person responsible for input into the detainee MOU. David Mulroney was DFAIT Assistant Deputy Minister responsible for Afghanistan (where Arif Lalani managed Afghanistan under his direction). In 2006, Mr. Mulroney became Foreign and Defence Policy Advisor to the Prime Minister, a position where he again had important responsibilities for Afghanistan.

According to testimony to the Military Police Complaints Commission, it was CEFCOM in Ottawa, not military officers in the field, that made decisions about each detainee, and urged the field commanders to transfer them to NDS as fast as possible. It was also CEFCOM that created the artificial delays that kept out ICRC monitors during the critical first days when detainees were being interrogated by the NDS.

**17. "Why did he speak up then? What was his motive?"**

Minister of Foreign Affairs Lawrence Cannon has suggested that I "availed myself of the prerogatives of a whistleblower," and that the government accordingly granted me whistleblower protections.

I am not a whistleblower. Rather, I am a loyal servant of the Crown who did his job in Afghanistan to the best of his abilities, working through internal and authorized channels.

In April 2009, long after I had left Afghanistan, I was subpoenaed by the MPCC. Following this subpoena, which was renewed in July after MPCC hearings were delayed, Department of Justice (DoJ)

officials made a number of inaccurate statements about my role in Afghanistan. DoJ moreover sent a letter demanding that I prove whether I had in fact spoken to any Military Police in Kandahar -- and, if so, to whom and when. (The MPCC's mandate was limited to Military Police. DoJ claimed that my testimony would be irrelevant to MPCC and therefore moved to quash my subpoena.)

In response to DoJ's inaccurate statements and their written request for clarification, I filed an affidavit with the MPCC to demonstrate that my reports had in fact reached the Military Police.

At the same time as I was filing my affidavit, MPCC chair Peter Tinsley was adjourning the MPCC in the face of systematic government challenges. With the MPCC process on hold, the Special Committee on the Canadian Mission in Afghanistan decided to investigate the detainee issue. The Committee 'invited' me in writing to appear and testify. My lawyer confirmed with the Committee that this 'invitation' has the force of a subpoena. Attendance is compulsory and testimony must be truthful.

Contrary to Minister Cannon's suggestion, I testified in Parliament because I was summoned by the Committee and legally compelled to speak the truth. I feel it is my duty as a public servant, when commanded to appear before the Parliamentary Committee, to give evidence that is full, frank and fair. I feel duty bound to be frank and thorough in responding to the Committee's inquiries.

I hope that this submission clarifies some of the issues that have come before the Committee in recent weeks.

Richard Colvin

December 16, 2009

Washington, DC