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Chair

Mr. Rick Casson

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•(1535)

[English]

The Chair (Mr. Rick Casson (Lethbridge, CPC)): I call the meeting to order. Today is the 18th meeting of the Special Committee on the Canadian Mission in Afghanistan.

Today we have from the Department of Indian Affairs and Northern Development, Colleen Swords, associate deputy minister. Welcome.

From the Department of Foreign Affairs and International Trade, we have Douglas Scott Proudfoot, director of the Sudan task force. Welcome, sir.

From Correctional Service of Canada, we have Linda Garwood-Filbert, manager, assessment and intervention.

I have only one submission here in written form for opening remarks, and that comes from Ms. Garwood-Filbert. Do the other two of you have opening remarks to make?

Ms. Colleen Swords (Associate Deputy Minister, Department of Indian Affairs and Northern Development): We do.

The Chair: Do you know how long they are?

Ms. Colleen Swords: If I go fast, it's about 10 minutes. If I go slow, it's 12 minutes.

The Chair: Go fast.

Sir.

Mr. Douglas Scott Proudfoot (Director, Sudan Task Force, Department of Foreign Affairs and International Trade): Mine will be about three minutes.

The Chair: Do you know how long yours is, Ms. Filbert?

Ms. Linda Garwood-Filbert (Manager, Assessment and Intervention, Correctional Service Canada): Around seven minutes, sir.

The Chair: Members need to know that because that determines how many rounds we get in and how many questions they can ask. We'll get as deep into the rotations as we can.

Welcome.

As usual, we'll give the witnesses time to make their comments and then we'll open it up to questions. Seeing as we have the written one here from Linda Garwood-Filbert, would you like to start now?

Ms. Linda Garwood-Filbert: Thank you.

Good afternoon, ladies and gentlemen.

By way of introduction, my name is Linda Garwood-Filbert. I am currently a special projects officer at Stony Mountain Institution. My responsibilities are to research and draft responses for the commissioner, deputy commissioner, warden, and correctional investigator, and to develop convening orders for inquiries and investigations and action plans for both local and national investigations. I currently have 30 years of experience with the Public Service of Canada, 28 of which have been devoted to Correctional Service both at home and abroad.

In late 2006 I was selected for the newly formed position of correctional component director of the Kandahar provincial reconstruction team. This position was meant to enhance the rule of law portfolio, as there was no correctional expertise in Kandahar. This component added to the already established efforts on policing and judicial reform and would provide a comprehensive approach to justice sector reforms. I deployed to the Kandahar provincial reconstruction team on February 5, 2007, and remained there until December 22, 2007.

Thereafter, from January 2, 2008, until January 2, 2009, I was working with the United Nations Office on Drugs and Crime in Afghanistan as the international coordinator for prison reform. My main responsibilities included the development and implementation of the new prison regulations, completion and implementation of the priority reform and restructuring process, prison infrastructure throughout Afghanistan, training and mentoring of prison staff, and development of educational and vocational programming, in addition to a focus on education and post-release opportunities for women and girl prisoners. Overall, I was in Afghanistan for close to two years visiting and monitoring the Afghan prison system.

My primary roles as the correctional component director were to establish a correctional presence at the KPRT; to assess infrastructure challenges primarily at Sarposa Prison but also at the National Directorate of Security and to a lesser extent at the Afghan National Police headquarters detention centre; to develop a full understanding of the central prison department, with a focus on the training and mentoring needs of correctional personnel; and lastly, to establish working relationships with the justice sectors and Government of Afghanistan stakeholders in Kandahar with corresponding links to the UNAMA correctional adviser and the relevant ministries in Kabul.

These links were intended to assist us in extending the existing authority of the Ministry of Justice and the central prison department to the province of Kandahar, thereby impacting justice sector reform. This would also provide a forum through the prison working group in Kabul to have issues specific to Kandahar addressed on a national level.

Not only did I work in concert with the Canadian Forces, DFAIT, and CIVPOL, but I was also able to work closely with the International Committee of the Red Cross, the Afghanistan Independent Human Rights Commission, NGOs, and other correctional advisers from the United Nations, United States, Norway, and the United Kingdom. Most importantly, I was able to work closely with the warden of Sarposa Prison, his management team, and Government of Afghanistan officials.

The end result was a program proposal, via the global peace and security fund, that focused on infrastructure upgrades, staff training, inmate education and vocational training, living conditions, and health care, with a focus on gender issues and the needs of children, all within the context of international human rights standards for prisoners.

In terms of prison visits, we commenced making site visits as early as February 13, 2007, well before the May 2007 supplementary arrangement signed between the Governments of Canada and Afghanistan that explicitly set out our monitoring rights. During this period, we conducted 13 visits to Sarposa and two visits to NDS. Following the arrangement, another 20 visits to Sarposa were conducted as well as 10 additional trips to NDS prior to my departure in late December.

● (1540)

In other words, in 2007 alone we visited Sarposa Prison on 33 occasions, the National Directorate of Security on 12 occasions, and the Afghan National Police detention centre on two occasions, for a total of 47 visits. These visits were usually unannounced. Overall, I can safely say that Correctional Service was, for the most part, allowed free and unfettered access to Sarposa Prison, the National Directorate of Security, and the Afghan National Police headquarters.

Throughout my mission, I talked to prisoners all the time. Many of these instances were informal in nature. Site visits would include general dialogue and interviews of prisoners, detainees, and prisoner advocates to get their accounts of living conditions and treatment within the prison system. Typically complaints would revolve around food, living conditions, access to family visits, and medical care. These are also typical complaints from inmates in Canada.

My specific role would be to assess treatment against the UN standard minimum rules for treatment and give feedback to the administration on improvements. I would typically look for signs of injury or of distress attributed to the use of shackles, and I would also look at specific medical complaints if they were brought to my attention.

However, in addition to this role, I was also involved in the more formal process of detainee monitoring. When conducting these monitoring interviews with detainees at both Sarposa and NDS, my DFAIT colleague and I were always provided with an office or area

where we could talk privately with the detainee. During these visits, CSC observed approximately 26 detainee interviews. While some inmates would recount what they had heard or were told or what had happened to them personally, to the degree possible I attempted to substantiate their claims. Although I took care to look for them, there were no physical signs of abuse to validate their statements. In all my visits and interviews with these inmates, I personally never saw any signs of physical abuse or torture. All detainees who knew they were captured by the Canadian Forces spoke well of their treatment by them, including receiving medical care when needed.

Nonetheless, in April 2007 I reported two prisoner allegations of mistreatment to the AIHRC and ICRC. Following that, all other claims and observations were documented in my reports.

Specifically, there was one detainee who had been told by others about beatings, another who stated he thought he had heard a beating in the next cell, and six who indicated they themselves had been beaten, including two prisoners who indicated that they had been beaten by the Afghan National Police prior to transfer to the National Directorate of Security. Lastly, on a visit to the National Directorate of Security on November 19, 2007, comments were made regarding the discovery of a braided piece of electrical cable found in the office of the director of investigations during the November 5, 2007, visit, the reporting of which by DFAIT led to his subsequent removal.

The only observable treatment not specifically related to Canadian-transferred detainees that I noted at both sites that was contrary to the United Nations standard minimum rules of treatment was the consistent use of chains as restraints on national security prisoners; at the National Directorate of Security, denial of fresh air exercise, holding child detainees with adults, and on one occasion the use of light deprivation; and at Sarposa Prison, the arbitrary detention of prisoners past their release date. In each of these instances, I immediately spoke to the warden and director and reported these incidents to the UNAMA corrections adviser, DFAIT, and Correctional Service with regard to action plans and resolution.

Initially we would also receive calls from the AIHRC informing us that the directorate was not allowing them entry into the facility, and we would mediate on their behalf. This, however, improved over time. The UN human rights officer also indicated that while they had access to Sarposa and the ANP detention centre, they had not been successful with NDS.

● (1545)

I should note that there were a few occasions in which we were not allowed access to certain areas of the facilities, such as when they were in the middle of transferring prisoners. However, based on my experience, these were justified and were not unusual.

During the time I was in Afghanistan, I noticed an improvement in the general conditions of Sarposa Prison. Some examples would be the installation of a new septic system, medications for the clinic, four new security towers, solar lighting, looms and a new carpentry shop, an on-site training centre, and basic officer training, just to cite a few.

The prison officials I worked with were generally receptive and eager to work with us to help improve prison conditions. While I was working for the UN, I also had the opportunity to visit prisons in other parts of the country. By comparison—and following significant investment by Canada—Sarposa Prison in Kandahar was considered to provide some of the best prison conditions in the country.

In conclusion, during the time I spent in Afghanistan, I was impressed with the work being done to ensure the rights and standards that are to be afforded to prisoners and detainees. I witnessed correctional personnel in the central prison department making a sincere effort to learn and develop and to adhere to international standards to the best of their ability. Their acceptance of my department and their cooperation set the stage for the advancement of justice sector reform and the rule of law in Kandahar.

Thank you.

The Chair: Thank you very much.

Mr. Proudfoot.

[*Translation*]

Mr. Douglas Scott Proudfoot: Thank you, Mr. Chair.

I will present my opening statement in English but I can answer your questions in the official language of your choice.

[*English*]

My name is Scott Proudfoot. I am currently the director of the Sudan task force in the Department of Foreign Affairs, a position I have held since August 2007. In this position I'm responsible for coordinating Canada's whole-of-government engagement in Sudan and for directing Canada's foreign policy toward Sudan.

Previously, I was director of the policy and advocacy division in the Afghanistan task force until July 2007. I began work on Afghanistan in August 2006 when the Afghanistan task force, known as FTAG, was founded. I was its first director.

The task force was created in part to consolidate diverse Afghanistan-related functions that were previously dispersed throughout the department. These included policy formulation and diplomatic engagement, bilateral operations, and public communications. Until the task force was greatly expanded and reorganized in early 2007, responsibility for a number of files remained in other branches. The issues that remained outside the purview of the task force included civilian deployments, program design and execution, narcotics issues, and the detainee issue, where the international security branch retained the lead within DFAIT until the summer of 2007.

Although I was not directly involved in the detainee issue at the time, I do recall seeing reporting on the subject in the autumn of 2006, and I have since reread these reports. The reports in question

did not indicate that Canadian-transferred detainees had been subject to mistreatment. They were largely procedural in content and pointed to a number of deficiencies in the implementation of the arrangements then in place for the transfer of detainees to Afghan custody.

I also recall that DFAIT and DND took steps at the time towards remedying these deficiencies and improving the modalities then in place.

By the early months of 2007, however, there was a growing awareness that additional steps were required to minimize the risk of mistreatment of Canadian-transferred detainees. This was based on reporting and recommendations from the field as well as other sources, including information with regard to the broader human rights context.

As a result, in the winter and spring of 2007 Canada expanded and formalized our relationship with the Afghanistan Independent Human Rights Commission, increased programming activities to build indigenous Afghan monitoring capacity and to improve conditions in Afghan prisons, and developed a diplomatic contingency plan in the event that there were allegations of mistreatment of Canadian-transferred detainees. This plan was put into effect when such allegations arose in April 2007.

During the March-April 2007 period I became more involved in the detainee issue, along with many others from DFAIT and other departments, and I contributed to elaborating the supplemental arrangement that was concluded with the Afghan government on May 3, 2007. As you know, under the supplemental arrangement, Canada obtained enhanced access rights to detention facilities to which detainees were transferred by Canadian Forces in order to ensure the monitoring of those detainees.

I would be happy to respond to any questions you may have.

Thank you.

● (1550)

The Chair: Thank you, Mr. Proudfoot.

I have a good friend at home whose last name is Proudfoot. I'll remember that next time. Thanks.

Ms. Swords.

Ms. Colleen Swords: Thank you, Mr. Chairman and members of the committee. Thank you for the opportunity to appear today and provide my perspective on the issue of Canadian-transferred detainees in Afghanistan. I hope my remarks today will make three points clear.

First, extensive work was under way throughout the period I worked on this file aimed at the prevention of mistreatment of Canadian-transferred detainees. Second, we have in place now a system for tracking and monitoring of Canadian-transferred detainees that is as rigorous as that of any of our NATO allies. Third, I welcomed and expected factual reporting from the field.

First, I'll give you a bit of background. In September 2006, after one year as ambassador to the Netherlands, I was asked to return to Ottawa to take up responsibilities as assistant deputy minister for international security and political director for the G-8. My branch had around 300 staff and a wide range of responsibilities, including peace and security issues, disarmament and non-proliferation, counterterrorism, natural disaster emergency management mission security abroad, and around \$250 million for three different programs, including those for security sector projects in Afghanistan.

An undertaking like the mission in Afghanistan is by its very nature multi-faceted. In my branch, three divisions worked on aspects of the file. The functional lead was the division responsible for liaison with DND. Another division was responsible for humanitarian policies and relations with the International Committee of the Red Cross. And the third division managed the civilian component of our peace operation in Kandahar. Of course, we benefited from our experts in humanitarian law in the department's legal branch.

When I arrived there was also a relatively small Afghanistan task force at DFAIT chaired by my assistant deputy minister colleague in the geographic branch, and the embassy in Kabul reported to them. Throughout the fall of 2006 I coordinated the internal DFAIT detainee team and handled issues that required attention at the assistant deputy minister level. When David Mulrone was assigned to DFAIT in late February 2007, he asked me to take on the coordination of the existing interdepartmental group working on detainees to bring some coherence to our policy as well as to prepare more detailed additional measures that might be taken.

By April 2007, the sheer magnitude of work led to the creation of a much better-resourced Afghanistan task force at DFAIT reporting to David Mulrone. As a consequence of this organizational evolution, when my other responsibilities for G-8 matters became more pressing in late May and early June of 2007 the task force took over the lead coordinating role for detainees.

Canada's policy on the issue of the transfer of Afghan detainees has been inspired throughout by a genuine sense of the importance of two fundamental principles: first, Afghanistan sovereignty, with its own responsibility for human rights within its country; and second, Canadian values, including the respect for humanitarian law and human rights more generally. Reconciling these two principles and turning them into concrete action within the very difficult security context and weak level of development in Afghanistan has not been easy. Extensive work was under way during the entire period I was active on this file to address any shortcomings that came to light and determine what more could be done to reduce the risk of mistreatment to Canadian-transferred detainees. I would like to provide some relevant examples.

During preparation for a visit to Ottawa by the president of the International Committee of the Red Cross at the end of September 2006, I was briefed that earlier there had been problems with the timing of notification of transfers. I understand that these are the subject of Mr. Colvin's May 2006 report. Since the December 2005 MOU stipulates that the ICRC has a right to visit detainees at any time, this was an important issue, and we addressed it quickly. Instructions were sent to the field within the week outlining what steps we were taking and providing a single point of contact for the

ICRC in Kandahar to ensure notifications were done quickly. Meetings were held in Ottawa and Geneva in June 2006, and our procedures were amended. Basically we started notifying the ICRC informally by phone in Kandahar and then followed up with a written notification, delivered in person, to the ICRC in Kandahar, but we also continued the formal notifications through DFAIT headquarters into the ICRC headquarters in Geneva. Any specific problems raised with us on notifications we addressed immediately.

● (1555)

When I arrived in September 2006, the policy direction we pursued was consistent with the December 2005 MOU. It provided that Afghanistan was responsible for detainees in its custody and for keeping records. It referred to the important role, regarding the treatment of detainees, of the international experts in humanitarian affairs, the International Committee of the Red Cross, and the body with the constitutional mandate for human rights, the Afghanistan Independent Human Rights Commission.

We had also developed a strategy for active engagement with the Afghanistan government on their own accountability for human rights protections in their territory. This strategy included more capacity-building in the corrections and justice sector, conscious as we were, from previous peace support operations, that a functioning prison, detention, police, and judicial system lay at the very foundation of establishing the rule of law and respect for human rights.

Thus, in October 2006, DFAIT received a report we had commissioned from the Correctional Service of Canada that assessed Afghan detention and correctional capacity in Kandahar province. It was based on an assessment mission to Kandahar prisons, and it recommended training and mentoring as well as some infrastructure improvements. That led to two Correctional Service of Canada officers being sent to Kandahar. They were funded by the DFAIT security sector program. We've heard from Ms. Garwood-Filbert today.

In the months of February, March, and April, together with some of our other colleagues in the PRT in Kandahar, they made a large number of visits to three different detention facilities in Kandahar. To be clear, they were not at this point specifically monitoring Canadian-transferred detainees, but they did have the opportunity to witness first-hand the state of Afghanistan prisons and to initiate assistance with infrastructure and training.

Another priority for me and our work in the fall of 2006 was to secure the extension of the funding we needed for these very security sector projects, including those in the justice and corrections sector. Our ambassador in Kabul and other Canadians assigned to Afghanistan regularly impressed upon the Afghan authorities the importance of respect for human rights and the international standards that we expected. Given Canada's role in Afghanistan, Afghan authorities, including those at the highest level, were highly receptive to these representations. They fully appreciated the importance we attached to the issue. We believed that their assurances and efforts reflected a genuine commitment to abide by their international obligations.

When information came to us at one point that the Afghanistan Independent Human Rights Commission was having trouble accessing some detention facilities, we raised it with the Afghan authorities. We had access facilitated immediately.

By February 2007, an exchange of letters was signed to make express that the Afghanistan Independent Human Rights Commission would notify Canada if they discovered any mistreatment of a Canadian-transferred detainee. The two Correctional Service of Canada officers had arrived in the field. An interdepartmental working group continued its work to examine short-, medium-, and longer-term options for more active engagement on the issue.

By April 2007 we had developed, after much careful interdepartmental consultation, a detailed contingency plan in the event of an allegation of any mistreatment of a Canadian transferred detainee. There had not been an allegation at this point, but we wanted to be sure that we had in place how we would respond so as to reduce the risk of any repetition.

The interdepartmental group also looked at what would be required if we were to begin our own monitoring regime. This examination included discussions with NATO allies, the ICRC, the Afghanistan Independent Human Rights Commission, and the Afghan government. We considered important practical questions, such as measures necessary for the security of our staff; training for our staff, who would be doing the monitoring; a better tracking tool; standard reporting templates; and standard operating procedures. We were determined to not just announce that we would start monitoring but to figure out how to do it well.

●(1600)

To summarize, continuous ongoing work and many voices in the field and in headquarters all contributed to the May 2007 revised MOU on transfers. As a result, Canada has in place a process of transferring and subsequent monitoring that is more rigorous than any of our NATO allies, who, I would underscore, also transfer detainees to Afghan authorities.

I would like to respond briefly to some points in Richard Colvin's testimony before this committee. He has made valid points about the complexity of the task and our lack of civilian resources in the early days in Afghanistan. DFAIT officers, like Richard and all civilians serving in Afghanistan, some carrying out monitoring in Afghan prisons, do so in a climate of risk to their lives and safety, as Glyn Berry's family knows all too well.

Richard also indicated that I called at one point to suggest not to put things on paper anymore. Actually, I was calling to assure him that options were being worked on in headquarters and to encourage him to report on what he was best placed to provide, that is substantiated and specific reports on what was happening in the field. I encouraged him to call me if he wanted to discuss suggestions or concerns on our policy. I wanted him to understand what contribution he could best make from the field in the context of the work that was going on in headquarters. Since some more specific written reports followed from him, I assume I had successfully conveyed what we needed from the field.

Confidentiality is fundamental to the International Committee of the Red Cross's ability to perform its humanitarian mission, but I did want to remind the committee of what the head of the ICRC said publicly in Ottawa at the beginning of October back in 2006, and I quote:

I do not have reasons to be worried that Canada will not do its utmost. I am sure they will notify [us], and secondly I am convinced they will do the utmost to make sure that people handed over to the Afghan system will be treated correctly.

And I believe we have done so.

[*Translation*]

In conclusion, the issue of the treatment of detainees in the context of a complex stabilization and counter-insurgency mission such as the one we are conducting in Afghanistan is probably one of the most difficult I have encountered in my 29 years of public service.

Every imaginable option has inherent challenges. The lesson I have learned as this matter was unfolding is the importance of developing a multi-faceted response. When we strive to build the capacities of a country that has suffered decades of conflict and is ranking among the lowest on the human development index, the way leading to respect of human rights is a long one. Still, we have to start somewhere and forge ahead with greater determination.

[*English*]

I also want to assure this committee that every person I have dealt with, both in DND and in all civilian departments engaged in the Canadian mission in Afghanistan, has always done the very best they can both to minimize risks to Canadian-transferred detainees and to improve the justice and corrections sector in Afghanistan more broadly.

Thank you.

●(1605)

The Chair: Thank you very much.

We'll get right into our opening round. It's a seven-minute round, and we'll start with Mr. Dosanjh.

Hon. Ujjal Dosanjh (Vancouver South, Lib.): Thank you.

My questions are for Ms. Garwood-Filbert.

I'm going to be very specific, and I hope you'll answer my specific questions in very specific terms, madam.

I'm going to place before you three documents. They are marked 1, and then there's part 1(a), and there are 2 and 3. I'll pass these on to you, if someone will take them.

Madam, you have the documents. You have 1 and 1(a) in your hands. The subject of these documents is FW: KANDH-0039.

My questions are the same with respect to all of these three documents. The questions are, one, whether you attended during the visits that are specified for Sarposa in these documents; two, whether you wrote the document or you were consulted on writing the document; and three, whether these were Canadian detainees, because the indications are, I will point out to you, that they were; and four, whether each of the documents contained specific allegations of torture of those detainees. By themselves, yes, these are their allegations. But they're very specific allegations of torture.

So these are the four questions I have.

Let me take you through question one. If you look at document 1, it will tell you somewhere that you actually attended. On page 2 of document 1, right top, it says that Fairchild, Garwood-Filbert, and others attended in a follow-up visit. If you go to the first page, at the bottom it says, "We will also be advising MINA under cover of separate memorandum." And I would ask Colleen Swords to perhaps tell me afterwards whether this was ever sent to the minister's office.

If you go to page 3 of document 1, it says, "Number of Canadian-transferred detainees present". "Nature of inter-action with Canadian-transferred detainee(s). Approximately 20 minute private interview...". "Inter-action with any other detainees.... None". So all of the interaction that's specified, I would say, is about Canadian detainees.

If you go to the next page, which is not marked.... It's marked page 2 on the top. If you go to the middle of it, the fourth paragraph, it states; "One detainee...claimed to having been 'beaten with electrical cables while blindfolded' on one occasion...at the Kandahar NDS facility." And then there's something about the medical: "...we withhold his name so as to avoid any possible" problems, because he requested that you withhold his name. That's the first document.

And 1(a) is part of that document in another redacted form. So 1 (a) tells us that this document 1 originated on June 4, 2007, if you turn to page 2 of 1(a). On top it says June 5, 2007. So I'm assuming this document 1 is June 5 or 4 of 2007.

If you go to document 2, Madam, it states—document 2 is KANDH0138—"Number of Canadian-transferred detainees present". Blacked out. "Number of Canadian-transferred detainees seen by officials on visit". Blacked out. "Nature of interaction with Canadian-transferred detainee". It says "private interview with... detainees". Interaction with any other detainees..." Nil. So this report is also about Canadian detainees.

If you go to the bottom third of the second page, it says that this man was slapped in the face once or twice.

If you go to the next page, which is 3 at the bottom, about a third of the way down, "He claims he was interrogated on [blank]

occasions while at NDS...and that he was beaten on [blank] of these occasions. He alleged that the interrogations were conducted by [blank]". "...interrogation[s] lasted between 2 to 4 hours. He alleged that he was beaten several times with a cable and was told he would be [blank], He alleged that". And that's that document, madam.

I'd like to know whether you wrote that or you were consulted on that.

My third document is document 3. The questions are the same.

•(1610)

Madam, if you look at the top of page 2, it says, "Number of Canadian-transferred detainees present". Blank. Then in brackets: "there are CF-transferred detainees in the prison now serving sentences". Then it says, "Number of Canadian-transferred detainees seen by officials on visit". Blank. Then: "Interaction with any of the detainees". Not applicable.

So I would assume that this was also a Canadian detainee. If you go to page 3, about a third of the way down, it says he "came to NDS but did not see him personally. ...saw him when at NDS". Then he goes on to say, "He also used the words...torture". He had been kept awake for [blank] days. He "was beaten badly but doesn't know with what as his eyes were covered. When asked what was used he said a power cable or wire and pointed to his side and buttocks. By torture he meant having been locked in the NDS [blank] and kept awake. When asked why he didn't come forward with this information previously he said he didn't trust us because we turned him over to NDS."

I would like you to answer the questions that I posed initially to you on these documents, madam.

The Chair: Madam, you have less than a minute, I apologize.

Ms. Linda Garwood-Filbert: First of all, these are not my reports. These are DFAIT reports.

Hon. Ujjal Dosanjh: I'm sorry, you wrote one of the reports.

Ms. Linda Garwood-Filbert: No, sir, not in this format. I did write reports and I did submit my reports to DFAIT, and DFAIT also wrote their reports.

Hon. Ujjal Dosanjh: Madam, it says you—

Ms. Linda Garwood-Filbert: I did not submit them in this format because I did not have access to this type of technology.

But I will go on to say that all of these comments are familiar to me. I was present, as I said in my statement, at all of the detainee interviews, and Canadian Forces detainees. So I would have been present, and these comments are familiar to me. The dates are consistent with dates that I recall.

The Chair: I'm sorry, but the time is up.

We're moving on to Mr. Bachand.

[Translation]

Mr. Claude Bachand (Saint-Jean, BQ): Thank you, Mr. Chair. I will split my time with my colleague, Ms. Lalonde.

I will address my questions to Ms. Garwood-Filbert.

Ms. Garwood-Filbert, were you the only correctional officer in the provincial reconstruction team?

[English]

The Chair: Go ahead.

Ms. Linda Garwood-Filbert: No, we had two correctional officers on the ground, me and another. I had an officer with me until the end of July 2007. From that point forward, I was the only officer on the ground.

[Translation]

Mr. Claude Bachand: Mr. Colvin told us that some detainees had no connection with the Taliban and that most were innocent. I think I read in your reports that some of them were not even 18.

Can you confirm that?

[English]

Ms. Linda Garwood-Filbert: I'm not familiar with any of Mr. Colvin's reports, because I wasn't privy to them and I had no dealings with Mr. Colvin. If you're talking about prisoners, yes, there are prisoners in the Afghan prison system who are juveniles. So that is a true statement. With regard to child detainees, those persons who have been taken by a military force, that has happened from time to time. So we did deal with those issues. We tried to keep child detainees separate from adult detainees, which is a basic human right. When we learned of those situations, we did endeavour to keep those detainees separate from adult prisoners, yes.

[Translation]

Mr. Claude Bachand: I have some short questions and I would ask you to also respond briefly because I want to give some time to my colleague.

When you noticed improper things, did you inform the officers of the provincial reconstruction team? Did you have a specific way of supervising detainees? Did you make follow-ups and keep proper records about that? I want to know if you were pressured by the government to say as little as possible both here and before the complaints commission. Did anyone, I would not say threaten, but seriously caution you against saying too much here today?

•(1615)

[English]

Ms. Linda Garwood-Filbert: I'll answer your last question first because it's most recent in my memory.

No pressure has been put on me whatsoever. These are full and complete statements of what I personally observed in interviews. I have been able to report all my comments in my reports, and today in my opening statement, freely without any restrictions whatsoever.

With the number of visits we had, we were always following up on issues, such as the use of restraints, fresh-air exercise, and those types of things. We encouraged and mentored the different personnel in the different detention centres to work through with those issues. If it was a matter of not having proper equipment, we tried to provide it. If it was a matter of not understanding the prison law, the prison regulations, or an international standard, we worked with them on that.

[Translation]

Mr. Claude Bachand: Thank you.

[English]

The Chair: Go ahead.

[Translation]

Ms. Francine Lalonde (La Pointe-de-l'Île, BQ): Mr. Chair, I will start with a couple questions to Mr. Proudfoot.

According to my notes, you said that at the beginning of 2007, you became increasingly aware that improvements were required. You said a little later that in March and April 2007, you contributed to the improvement of the arrangement.

Can you tell us what improvements you thought were required and why? What improvements were actually made?

Mr. Douglas Scott Proudfoot: Sure.

Two types of improvements were made in 2007. First, we strengthened and formalized the relationship between the Government of Canada and the Afghan Human Rights Commission. We sent some Correctional Service officers to Kandahar. At the time, it was mainly to improve the conditions or the capacities of the Afghan correctional system. We developed a contingency plan to be used in case information was received about mistreatment of detainees.

Ms. Francine Lalonde: Did you often hear of such mistreatment?

Mr. Douglas Scott Proudfoot: We received information about that for the first time in April 2007.

Finally, to answer your question, it is the supplemental arrangement of May 3 that really changed several aspects of the Canadian capacity to ensure—

Ms. Francine Lalonde: In your opinion, what were the most important aspects of this improvement?

Mr. Douglas Scott Proudfoot: First, as compared to the 2005 MOU, the 2007 arrangement provides for Canadian officers to have access to detainees and to make follow-ups. For example, the detainees transferred by Canadian Forces were to be held in designated places in order to facilitate follow-ups.

Ms. Francine Lalonde: Is the follow-up provided for in paragraph 7 which instructed—

Mr. Douglas Scott Proudfoot: Yes, exactly, it is in paragraph 7.

[English]

The Chair: Thank you. We'll have to come back to that.

We'll go to the government now for seven minutes.

Mr. MacKenzie.

Mr. Dave MacKenzie (Oxford, CPC): Thank you, Chair.

I'd like to thank the panel for being here today. This is a most important committee in what we're studying.

Ms. Garwood-Filbert, on page 5 of your original opening statement you indicated one incident where a detainee had been told by others about beatings, and so on. Then you said that six indicated they themselves had been beaten, including two prisoners who claimed to have been beaten by the.... Can you tell me if they were Canadian detainees?

• (1620)

Ms. Linda Garwood-Filbert: When I use the word "prisoner", it's in the context of not being a military detainee. In that respect it would have been someone who approached us on one of our visits and brought this information forward. We had such an incident in April, where we were approached by prisoners in NDS, and then we have the situation here that you're referring to, the ANP allegations.

It's important to know that the National Directorate of Security... it's not all military detainees. It could be a prisoner who is there because their crime has impacted the security or the integrity of the Afghan government. It could be a person who's there because of kidnapping, money laundering, counterfeiting, or high-profile crimes. Just because they're in a national security unit does not make them a detainee.

Mr. Dave MacKenzie: So these six you were speaking to were not Canadian-transferred detainees?

Ms. Linda Garwood-Filbert: The six I was speaking to, yes. We had them identified on our list to interview, and we did interview those persons, and they did make those allegations. However, it is an allegation. It's a comment made. We tried to verify the comments and were unable to do so.

Mr. Dave MacKenzie: Okay.

I believe you indicated that you'd been and made 47 visits.

Ms. Linda Garwood-Filbert: Yes, sir.

Mr. Dave MacKenzie: That's a lot of visits, I think anybody would agree. Would I be correct in suggesting that Correctional Service officers from Canada who were sent to Afghanistan, you included, would have had training to detect abuse and torture?

Ms. Linda Garwood-Filbert: I specifically did not have that training. However, I do have a background in 28 years in corrections and I have certainly seen all types of injuries and trauma, whether it's from prison violence or domestic abuse or all of those types of things. Typically in these types of interviews, if someone made an allegation, we would ask them if they had sought medical attention, if they bore any marks or scars. The prisoners in the situations I was involved in were not able to provide us with that concrete evidence.

Mr. Dave MacKenzie: Are you saying that in those 47 visits you didn't see the physical evidence of torture?

Ms. Linda Garwood-Filbert: Exactly, sir.

Mr. Dave MacKenzie: Or in any prisoners you saw during that period of time?

Ms. Linda Garwood-Filbert: True.

Mr. Dave MacKenzie: I think it's fair to say, and I do believe most Canadians understand, that Afghan facilities are not what we anticipate in Canada, and as for anticipating or expecting that they would be like Canadian facilities, it would be wrong to make that assumption.

During your time there, have you seen improvements that have been made as a result of Canada's efforts, people like you, and also investments that we've made?

Ms. Linda Garwood-Filbert: Most definitely. Through the work we did and the planning we did, through DFAIT and the global peace and security fund, we were able to upgrade the septic systems, which impacted the health and safety of the prisoners and the staff who lived there. We were able to provide training, equipment, uniforms, vehicles, security towers, and solar lighting, to the point where the infrastructure assessments that came out after our being there indicated that Sarposa was one of the better prisons in Afghanistan. That was directly as a result of the work we did there.

Mr. Dave MacKenzie: In those prison visits...are there female prisoners held in Afghanistan prisons?

Ms. Linda Garwood-Filbert: I can't speak to that point in a public forum, sir.

Mr. Dave MacKenzie: Okay, fair enough.

One of the other changes that we may or may not have seen was the medical attention given to prisoners in Afghanistan. Can you elaborate on that?

• (1625)

Ms. Linda Garwood-Filbert: Prisoners who had been injured on the battlefield were always accorded medical treatment in the Kandahar Airfield detention facility. Following that, it was our role as correctional advisers to make sure that doctors came out to the prisons on a regular basis and treated any medical concerns that were brought to our attention. But in addition to that, through Canadian moneys we were also able, in my time there, to restock the Sarposa clinic on two separate occasions and to provide the prisoners with appropriate medications and medical care.

Mr. Dave MacKenzie: I'd like to go back a little bit. You indicated that prisoners in those facilities were not necessarily military transfers.

Ms. Linda Garwood-Filbert: In the NDS, yes, they were not strictly military detainees. They could have been there for other high-profile crimes.

Mr. Dave MacKenzie: Okay. Not everyone there would be a transferee from the Canadian military, and there may very well have been other complaints. Would you have dealt with those also, or at least interviewed them?

Ms. Linda Garwood-Filbert: You have to understand that the detainee file was just one small part of what I was doing over there. My role was to deal with all prisoners and all prisoner complaints across a variety of jurisdictions, which included NDS; the Afghan National Police, which fell under the Ministry of Interior; and Sarposa Prison, which fell under the Ministry of Justice. I was dealing with all those jurisdictions and all those prisoners, whether they had been convicted or were awaiting trial.

The Chair: Thank you.

We're right on schedule.

Go ahead, Mr. Dewar, for seven minutes.

Mr. Paul Dewar (Ottawa Centre, NDP): Thank you, Chair, and thank you to our guests.

I want to start off with Ms. Swords, go to Mr. Proudfoot, and then finish with Ms. Garwood-Filbert.

Ms. Swords, in your testimony to the Federal Court, which I have here, you stated that there had been a problem around tracking or monitoring detainees in terms of what facility they were going to. In the testimony you said:

We do know that the Afghan government maintains a variety of different facilities, the police, the army, the NDS, and since we don't know exactly where Canadian transferred detainees go, it would make sense in the future try to limit the facilities that they might end up in.

That was a concern. Do you still support that evidence you gave at court?

Ms. Colleen Swords: That evidence was given before we entered into the MOU of May 3, 2007. Subsequent to that, we've developed a pretty rigorous tracking mechanism to start—

Mr. Paul Dewar: No, I was just establishing the concern you had at that time.

Ms. Colleen Swords: At the time—

Mr. Paul Dewar: They were going out, and you couldn't track all of them. They were going to different places.

Ms. Colleen Swords: At the time, we discovered that the Afghan government's records weren't very good. In fact, one of the things we've been doing with capacity-building is to get better record-keeping.

Mr. Paul Dewar: Mr. Proudfoot, in your testimony you suggested the same thing. In the Federal Court, when asked, "Do we know now where Canadian Forces' detainees are being held currently?", you answered, "We have approached the Government of Afghanistan to ascertain the whereabouts of all transferred detainees. I do not know the status of the response."

Then the question from the lawyer was, "So you don't know if Afghanistan has been able to locate all the detainees?" You said, "I do not know."

The lawyer asked, "Once Afghanistan provides that information, would that information at some point cross your desk?" You replied, "Probably not." When asked, "And why is that?", you replied, "The reporting on this issue has a very narrow distribution...."

That's fair enough, but would your evidence be the same as Ms. Swords' evidence, in that you had concerns about the arrangement that up to that point had been in place, because it was hard to track where people were going?

Mr. Douglas Scott Proudfoot: One of the improvements that were made in the May 2007 arrangement—and I was alluding to this in my answer to Madame Lalonde just a moment ago—was paragraph 7, which stipulated that in future the Afghan government would hold detainees transferred by Canadian Forces in a limited number of facilities. This was in order to facilitate our follow-up, tracking, and monitoring of those detainees. If we knew they were in a small number of facilities, we'd more easily be able to go there and identify them and follow up on those individuals.

● (1630)

Mr. Paul Dewar: I have a document in front of me from May 17, 2007, just after arrangements were made to redo the transfer. It's a document from Kerry Buck. It basically says, "The team reviewed the register of detainees transferred February 1 to determine their whereabouts. This was a painstaking process. The team advises that it is not foolproof...the standards of record-keeping. All detainees transferred by Canada since February 1 have either been released or transferred to other institutions. Canadian officials do not know and therefore are not able to interview any detainees transferred by Canada. The team will recommend that additional assistance be helped...".

This just supports what you're saying.

Ms. Garwood-Filbert, I have a document that is your reference. You mentioned in your opening statement that there were some concerns about the treatment of prisoners. You made it known. When you talk about international standards, is it fair to say that it's not an international standard—and when you say international standard, I'm thinking of international law—to have people in shackles for 24 hours a day?

Ms. Linda Garwood-Filbert: Actually, the UN standards do support the use of restraints. What it does not support is the use of restraints for punishment and it does not support the use of chains or straight metal bars. Because of equipment issues, which we tried to reconcile through my time there, the only resource these two facilities had was the use of chains. That's why it was cited as an incident, because the UN standards prohibit the use of chains.

Mr. Paul Dewar: You also noted the fact that they were being transferred from the NDS in chains and remained in chains and that when the warden was asked to actually take them out of chains, the key couldn't be found. This is part of the evidence that you have provided. That was obviously a concern of yours at the time, as it would be of mine.

Ms. Linda Garwood-Filbert: The issue would be with whether they were wearing the leg restraints at the appropriate time, which is supported by the UN standards, which are as follows: was it for the purposes of transfer, was its purpose to prohibit escape, was it for the purposes of preventing self-injury? If you are going to use those restraints for a long period of time, then there's monitoring involved. That's why, whenever I was there, I would make sure to look for signs of distress and—

Mr. Paul Dewar: You indicated that. But that was happening, and those were the methods they were using.

One of the things you also mentioned is that in your request for equipment, you did ask for new boots, and it was suggested—and this has been out before—that for health and safety reasons your staff...and you say "we will be "walking through blood and fecal matter when either on patrol or in the prison". So there is a clear indication that the conditions in the prison needed to be upgraded.

I want to ask Mr. Proudfoot this. One of the things you mentioned—and this is absolutely key to try to figure out what was happening for a period of about 15 months—regarding the reporting that was being done to the Afghan Independent Human Rights Commission is that there were concerns that people weren't able to access that information, or that people weren't actually availing themselves of it. The generals, when they were here, said that during that period before the update of the arrangement they weren't responsible for monitoring detainees after the handover. We've established now that we couldn't figure out where the detainees went because of the arrangement. What we did know is that the Afghan Independent Human Rights Commission, as well as the Red Cross, were actually making it known that there were concerns about torture. In fact, they had been prolific on that.

Had you read any of those reports?

The Chair: A short response, Mr. Proudfoot.

Mr. Douglas Scott Proudfoot: The reports by...?

Mr. Paul Dewar: The Afghan Independent Human Rights Commission.

Mr. Douglas Scott Proudfoot: I'm aware of the reports by the Afghan Independent Human Rights Commission.

Mr. Paul Dewar: But you hadn't read them?

Mr. Douglas Scott Proudfoot: I'm not sure which reports you're referring to.

Mr. Paul Dewar: 2006.

Mr. Douglas Scott Proudfoot: I can't tell you three years later which specific reports I read when. But I'm aware—

Mr. Paul Dewar: In your testimony you said you hadn't, so I'm going to assume that that was correct.

Mr. Douglas Scott Proudfoot: Well, then I guess that's the case.

Mr. Paul Dewar: Why not?

The Chair: Thank you. That ends our first round.

We'll start with the government for five minutes.

•(1635)

Mr. Laurie Hawn (Edmonton Centre, CPC): Thank you, Mr. Chair.

Ms. Garwood-Filbert, you mentioned that you had a number of years—28 years, I think—in the correctional system. Is it safe to say you've had 28 years of looking at claims of abuse, so there's experience in that kind of environment?

Ms. Linda Garwood-Filbert: Yes, we typically get numerous complaints from inmates or prisoners. Some of these complaints are self-serving and some need to be validated. Most are unfounded, and in certain situations, which is important, unfortunately some of those claims may be founded.

Mr. Laurie Hawn: Short answers, please, if you could.

With respect to blood and fecal matter, I've been to the Edmonton Max, walking around, and there's blood and fecal matter there. In your experience in Canadian prisons, is that unusual?

Ms. Linda Garwood-Filbert: I think there's a misunderstanding. When we were referring to that document and the need to wear

boots, it was in reference to the complete breakdown and decay of the sewer and septic system. We were in a situation where we were walking through bloody fecal matter. There was a lot of lung disease, so there was a lot of bloody sputum and things of that nature. That's the context that it was presented in. It had nothing to do with any type of prisoner abuse. It was a health and safety concern for us, the staff at the prison, and the inmates.

Mr. Laurie Hawn: Now, can you confirm for me or not, either way, whether you ever had a claim of abuse that was substantiated?

Ms. Linda Garwood-Filbert: I did not, in my experience, while I was there.

Mr. Laurie Hawn: Never?

Ms. Linda Garwood-Filbert: No, sir.

Mr. Laurie Hawn: Thank you very much.

You mentioned the use of chains and times when restraints are required for operational prison reasons.

Ms. Linda Garwood-Filbert: Yes, sir.

Mr. Laurie Hawn: I think you stated that the issue was really one of a lack of equipment, and that we corrected those deficiencies. Is that a true statement?

Ms. Linda Garwood-Filbert: When I left that part of my mission, we were in the process of looking at getting the appropriate equipment.

Mr. Laurie Hawn: Now, Ms. Swords, I'm not sure you can answer this or how much of it you can answer, but with respect to the International Committee of the Red Cross and their standard operating procedures, it would seem to me that if the ICRC had a serious concern about torture and that sort of thing, they would not have been passing those concerns to somebody at Mr. Colvin's level, but they would be passing those concerns at a much higher level, directly to the state, as it were. I don't know whether you can comment on their SOPs or not.

Ms. Colleen Swords: I can. The International Committee of the Red Cross has a very strong policy that if they have concerns, they pass them to the government that is detaining a person. So if they have concerns about the detainees that we have in the Kandahar Airfield until we transfer them, they would discuss those with Canada. If they have concerns about detainees after they've been transferred, they talk to the Afghanistan authorities. It's absolutely critical for them to keep that confidential; otherwise their access can be cut off. They get very concerned when governments suggest they are broadcasting too publicly a private dialogue they are having with a government that's detaining.

Mr. Laurie Hawn: I understand. If they had any concerns with Canada's actions, would they have injected those concerns at Mr. Colvin's level, or would they have injected them at a higher level?

Ms. Colleen Swords: I can say that we have regular meetings with senior officials from the International Committee of the Red Cross in Geneva and in Washington. I don't think it's right to comment on what they have to say, but I can refer you to what Dr. Kellenberger said back in 2006, because he could say it publicly.

Mr. Laurie Hawn: Thank you.

Now, Mr. Proudfoot, if you or your colleagues had any concerns regarding torture of transferred Afghans by the Canadian Forces, who would you have briefed on that? Who would you have reported that to?

Mr. Douglas Scott Proudfoot: We did not have information suggesting that Canadian-transferred detainees had been mistreated prior to April 2007. Thereafter, we did receive such allegations, and those were brought to the attention of senior officials and ministers.

Mr. Laurie Hawn: Did anybody report to you any first-hand evidence of torture of somebody who was transferred by the Canadian Forces?

Mr. Douglas Scott Proudfoot: I saw the reports in April and some of the reports in June, which reported claims by Canadian-transferred detainees that they had been mistreated.

• (1640)

Mr. Laurie Hawn: You probably wouldn't have been in this area, but to your knowledge, were any of those claims substantiated?

Mr. Douglas Scott Proudfoot: I don't know whether they were substantiated.

The Chair: Thank you, Mr. Hawn.

Over to Mr. Wilfert.

Hon. Bryon Wilfert (Richmond Hill, Lib.): Mr. Chairman, I have just one question to Ms. Garwood-Filbert.

I'm trying to reconcile two statements. One you made before committee today said:

[D]uring the time I spent in Afghanistan, I was impressed with the work being done to ensure the rights and standards that are to be afforded to prisoners and detainees. I witnessed correctional personnel in the central prison department making a sincere effort to learn and develop and to adhere to international standards to the best of their ability.

I would like to quote you in a CTV interview that you did, which was reported in *The Globe and Mail* on April 27, 2007:

"There hasn't been any significant work done with the prisons", Ms. Garwood-Filbert said at the time, adding that it is too easy for the Canadian and Afghan authorities to forget about prisoners after they're thrown in jail. "It's out of sight, out of mind. We're just happy they went to jail." Allegations of torture at Afghan prisons wouldn't surprise her.

You said that to CTV News on that date.

This "out of sight, out of mind" policy seemed to remain in Ottawa until November 5, 2007. Those are my words.

Can you reconcile those two statements, the one you gave in April and the one you gave today?

The Chair: Go ahead.

Ms. Linda Garwood-Filbert: Certainly. It's not unusual for any society to forget about an inmate while they're in prison. That's why our profession is called the forgotten keeper. Once they've gone through court, they tend to be forgotten until they're ready to be released again, and then it becomes a community concern. That's the point I was making.

That's not much different from the Afghan people. If someone has been convicted and put in prison, they're quite content to know they're in prison and that's the end of it.

With regard to some of my other statements—and I do have 28 years of experience—I would be personally naive, as a prison expert or adviser, to think that some of the complaints and allegations that come forward in our own Canadian prisons would not come forward in a country such as Afghanistan.

So that explains my statement.

Hon. Bryon Wilfert: Again, I don't quite understand the difference—how you could say that rights and standards are afforded and at the same time say they are out of mind when they go to jail and there could be torture going on. I can't reconcile those two statements.

Ms. Linda Garwood-Filbert: I was making a reference to the Afghan society, not to the prison officials. The prison officials—

Hon. Bryon Wilfert: Well, it says "Canadian and Afghan authorities" forget about prisoners after they're thrown in jail.

Ms. Linda Garwood-Filbert: Well, that's the quote, sir, but that wasn't my intent in what I was saying.

Hon. Bryon Wilfert: Well, intent and what you said...I don't know.

Hon. Bob Rae (Toronto Centre, Lib.): Can I have the floor?

The Chair: It's up to you.

Hon. Bryon Wilfert: Yes, Mr. Rae can go.

The Chair: Go ahead.

Hon. Bob Rae: On page 5, you talk about this braided piece of electrical cable being found in the office of the director of investigations on a November 5 visit.

Ms. Linda Garwood-Filbert: Yes, sir.

Hon. Bob Rae: What would a braided piece of electrical cable be used for?

Ms. Linda Garwood-Filbert: I was not present for that. I was not on that visit. This was something that came to my attention on the visit of November 19.

But as allegations that were made throughout... There was a theme that started to develop. As our monitoring and questioning and the use of our interpreters got better, we started near the end of my tenure there getting a bit of a theme when prisoners or detainees were referring to the use of cables.

Hon. Bob Rae: So this cable would be an instrument of torture?

Ms. Linda Garwood-Filbert: That's how it was reported, to my understanding.

Hon. Bob Rae: And as a result of the reporting of it by DFAIT, you're telling us that the director of investigations was removed from his job.

Ms. Linda Garwood-Filbert: Yes, sir.

Hon. Bob Rae: Well, how can anyone say, then, that there was not evidence of...? I mean, if somebody is fired for having a braided electrical cable in his office, presumably that creates a substantial grounds of risk with respect to what would happen to somebody if you went to the office of the director of investigations.

Ms. Linda Garwood-Filbert: At that point, when we had concrete proof, the transfer of detainees ceased.

Hon. Bob Rae: How long was this man, the director of investigations.... Do you know?

Ms. Linda Garwood-Filbert: I have no knowledge, sir.

Hon. Bob Rae: You found it in his office; presumably it was there before.

Ms. Linda Garwood-Filbert: I was not there during that time, sir, so—

Hon. Bob Rae: I understand; I'm not trying to put words in your mouth; I'm just saying it seems to me it's a little hard to say we don't have any evidence of torture but you found an instrument of torture in the office of the director of investigations.

•(1645)

Ms. Linda Garwood-Filbert: DFAIT did; yes, sir.

Hon. Bob Rae: Yes, DFAIT found that, and as a result he was fired.

Ms. Linda Garwood-Filbert: Yes, and they reported it, and the director was removed.

Hon. Bob Rae: Right.

Ms. Linda Garwood-Filbert: What I'm talking about in my statement are things that I have seen or heard personally. That's what I'm speaking to.

Hon. Bob Rae: I appreciate that entirely.

As I understand international law—and perhaps I could ask Ms. Swords to comment—when we deal with the question of whether we transfer people to another country, if we have substantial grounds—I think that's the legal phrase under the convention of torture—to believe there's a risk of torture, we're not allowed to transfer people to another country. Wouldn't the same principle apply with respect to whether there are substantial grounds, a risk, with respect to torture? If you find an instrument of torture in the office of the director of investigations of the National Directorate of Security, what is that? Doesn't that say...? And how long has this guy been there?

The Chair: We need a short response. The time has expired.

Ms. Colleen Swords: There's never a short legal response. I'm not here as a lawyer, but I think the standard is “substantial risk of torture”, and it has to be with respect to the individual, not generally.

I believe we did take all the measures that were reasonable at the time to ensure we were doing everything we could to minimize substantial risk. You can never eliminate risk altogether, and if that's what we're trying to do, then we will have a great deal of difficulty in being effective in peace operations. We have to have a process in place to try to prevent it from happening, and if we find it has happened, we have to do everything we can to stop it from happening again.

I believe that particular incident is the one that's referred to in the Federal Court in an affidavit by one of my colleagues. We took steps. We raised it at the highest level in the Afghanistan government, and they did what they should. They investigated and removed the person.

The Chair: Thank you very much.

Thanks, Mr. Rae.

We'll go over to the government, and then back to the Bloc.

Mr. Deepak Obhrai (Calgary East, CPC): Thank you, Mr. Chair; and thank you to the witnesses for coming.

Ms. Swords, I want to go on the record, and I want you to go on the record as well. Mr. Mulroney went on the record. Mr. Proudfoot went on the record. Linda went on the record. Was there any credible and substantiated evidence of torture that you know of with the Canadian-transferred detainees?

Ms. Colleen Swords: The first allegations I saw with respect to allegations of torture, which were not necessarily about Canadian detainees, were in fact in *The Globe and Mail* articles in April.

We also got allegations late in April transmitted to two Canadians who were visiting a prison in Kandahar. They were not obviously Canadian-transferred detainees, and they came forward voluntarily. In other words, it wasn't part of our then monitoring mechanism.

Subsequent to that, I think my involvement in June and thereafter was much more peripheral, and there were other people in the lead. I think I'd just confuse everybody if I tried to get to those details.

The first specific allegations we had were in *The Globe and Mail*, and then one subsequent report later. None of them, as far as we could tell, were in fact Canadian transferred, from the list of names that we had.

Mr. Deepak Obhrai: Thank you.

Mr. Colvin's report highlighted many other areas of the Afghan mission, including a lot of procedures regarding areas other than the transfer of detainees. In past testimony we heard about the C4 messages that Mr. Colvin was sending and the distribution line.

Mr. Colvin could have easily singled out something that was of major concern to him—for example, the detainees. I want to ask you, as the assistant deputy minister, did he at any time talk to you about it?

Ms. Colleen Swords: It's hard to say. Mr. Colvin was in a number of meetings where we were discussing what more we needed to do. He did raise his general concerns in those meetings. None of them were ever with respect to a specific allegation of torture that he would have seen first-hand or known first-hand, but he did have concerns, as did many people.

Mr. Deepak Obhrai: Right, the general part of it, but he never specifically raised with you torture concerns.

Ms. Colleen Swords: No. It was general torture concerns, nothing that was specific or substantiated with respect to anyone named. It was the same sort of thing as one would see in the general human rights reports.

• (1650)

Mr. Deepak Obhrai: Ms. Swords, Kerry Buck, the spokesperson during the course of the Amnesty International thing, said her job was just to write and not to do anything else. Can you tell us, as a director, what is the chain of command that you personally would have followed when you received evidence or allegations of torture? What would you do? Is it just written down and forgotten, or was there a follow-up undertaken by the department?

Ms. Colleen Swords: If there was an allegation of torture, we immediately followed up. Indeed, we did after the articles in *The Globe and Mail* and the incident at the end of April.

It was raised at the highest levels with the Afghanistan government, at the political level with ministers and with the heads of the prisons. We notified the Afghanistan Independent Human Rights Commission and the ICRC. We insisted that the Afghan government investigate and we offered assistance in any kind of investigation they would wish to do.

Mr. Deepak Obhrai: Mr. Proudfoot, in your former capacity, you were part of the distribution of C4s that were coming from Mr. Colvin. Were you on that distribution list?

Mr. Douglas Scott Proudfoot: Yes, I was copied on most of the C4s.

Mr. Deepak Obhrai: Is there anything you recall in the C4 reports by Mr. Colvin that would provide first-hand evidence of torture?

Mr. Douglas Scott Proudfoot: I believe the first report from Mr. Colvin suggesting that were claims of torture took place in June 2007.

Mr. Deepak Obhrai: And subsequent to June 2007, at that given time, we had the enhanced agreement.

Mr. Douglas Scott Proudfoot: Yes.

Mr. Deepak Obhrai: And at the same time we were doing the visits. So those wire reports came in, and again we go back to the same question: was there any substantiated evidence found subsequent to your investigation or follow-up?

Mr. Douglas Scott Proudfoot: I left the Afghanistan task force in July 2007, so it's difficult for me to say what took place afterwards. But I can say that when we had information suggesting torture of Canadian transfer detainees in April and June 2007, we put in motion the diplomatic contingency plan I mentioned earlier: raising our concerns at senior levels in the Government of Afghanistan, being in touch with the ICRC and the AIHRC to bring the specific cases to their attention, asking them to follow up, and asking that the necessary steps be taken.

The Chair: Thank you very much.

Go ahead, Mr. Bachand.

[Translation]

Mr. Claude Bachand: I will split my time with Ms. Lalonde.

Getting back to you, Ms. Garwood-Filbert, were you called to testify before the military police complaints review commission?

[English]

Ms. Linda Garwood-Filbert: My name was on the initial list, and then at some point in the process it was dropped.

Mr. Claude Bachand: Your name was dropped off the list.

Ms. Linda Garwood-Filbert: Yes, sir.

Mr. Claude Bachand: Okay. You didn't drop yourself off the list. They said that you didn't have to come.

Ms. Linda Garwood-Filbert: No.

Mr. Claude Bachand: Okay, so you didn't have any pressure from the government in not going.

Ms. Linda Garwood-Filbert: No, sir.

[Translation]

Mr. Claude Bachand: Ms. Swords, I have here a document written by Mr. Colvin and Mrs. Bloodworth and approved by Ambassador Lalani, in which Mr. Colvin says:

[English]

He said that while being detained, he came and spoke with him once.

He, and others, told the—"we don't know what—"that three fellow detainees had had their "fingers cut and burned with a lighter" while in NDS detention.

When asked about his own treatment (blacked out) he said 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.

It goes on like this.

[Translation]

This document was copied to you, as well as to Mr. Mulroney, who did remember it very well.

Would you like to see the document or do you remember seeing it?

[English]

Ms. Colleen Swords: I would like to see the document, because it's a large number.

Yes, I believe I've seen this document. It isn't addressed to me for action. I'm on the distribution list. I'm copied on it.

I believe this is from the early June period, and our mission in Kabul went into a prison in Kabul. When this report actually came in, I was at the G-8 meetings. The G-8 summit was going on at the time, and it was actioned by the Afghanistan task force.

• (1655)

[Translation]

Mr. Claude Bachand: You will probably say that Mr. Colvin was a diplomat that you respected. Wasn't this document which was copied to you proof enough to refuse to transfer detainees? The Geneva Convention provides for that not only in case of torture but also of risk of torture.

When Mr. Colvin sent you a copy of this letter, it was reason enough to stop transferring detainees. Why didn't you stop transfers?

[English]

Ms. Colleen Swords: Well, I think when you're in a country like Afghanistan, with the kind of conflict that's going on there right now, you have to be careful in assuming that everyone who claims to have been tortured has actually been tortured. There can be a real risk that it will become that everyone says that. Therefore, the consequences are based not on fact. So it becomes important to do some investigation as to whether those allegations are, in fact, credible.

[Translation]

Mr. Claude Bachand: I just want to stress that—

Ms. Francine Lalonde: I will continue if you do not mind.

In international law, it is not enough to make sure a person is not tortured. If there is a risk of torture, Canada is not allowed to transfer detainees.

[English]

Ms. Colleen Swords: What we have done throughout is try to put in place measures and a process to ensure that someone isn't handed over to a substantial risk of torture. I don't think we can decide every time somebody says, "Hey, I've been tortured", that in fact they have been. What we did was do our best to make sure the Afghan authorities knew what their obligations were and that the people who were detaining them were properly trained, because you can't be there 24 hours a day. Ultimately, we put in place a monitoring mechanism to try to keep track.

[Translation]

Mr. Claude Bachand: There were marks.

Ms. Francine Lalonde: I will continue.

Some hon. members: Oh, oh.

Ms. Francine Lalonde: Canada should provide a minimum of follow-up. You say that people who complain about torture can make false allegations but Canada has a responsibility to make sure the allegations are unfounded. Under paragraph 7 and following the improvements brought about by the second arrangement, it was a responsibility. To the best of your knowledge, did Canada make sure that people who complained were not tortured?

[English]

Ms. Colleen Swords: Again, most of the allegations that came forward came after my intense involvement in the file.

[Translation]

Ms. Francine Lalonde: Oh!

[English]

Ms. Colleen Swords: As I understand it, every time there was an allegation, whether it was suggested that it was a Canadian or not, we notified the Afghan Independent Human Rights Commission and the International Committee of the Red Cross and raised it with the Afghan authorities to ensure they would do something about it.

The Chair: Thank you very much.

Moving over to the government, go ahead, Mr. Kerr.

Mr. Greg Kerr (West Nova, CPC): Thank you very much for being here. Certainly I think you're adding to the story lines as they develop from the various witnesses coming in.

I would like to do a couple of specific things. One is that we've talked generally—we heard a lot of comments back and forth that make it very vague about prisoners and torture—and then we go specifically to what happened to the Canadian transferees. My understanding—this is a general question to whoever—is that we really heard about suggested incidents well into 2007. In other words, when the reports came forward, it was those that possibly involved Canadian authorities. My understanding is that when you heard the reports, the authorities in fact suspended transfer of detainees as soon as they heard the information, and then there was follow-up to find out what went on. That's when we first responded to any suggestions of trouble in terms of Canadian transferees.

If I can start there, is that correct?

• (1700)

Ms. Colleen Swords: I guess any one of us could answer.

The suspension that was done in November was as a consequence of Canada's not having confidence that the Afghan authorities, at that particular time in that prison, were able to meet the standards we felt were necessary. Up until then, any allegations we had either weren't against Canadian transfer detainees—in which case we notified the right authorities and so forth—or on examination were considered not to be very credible, mostly on the basis of physical examination.

The first credible allegation we had against a known Canadian transfer detainee, to my understanding, was in November 2007. Again, I wasn't the lead on the file then. And that's when we suspended transfers.

Mr. Greg Kerr: Okay, and does everybody concur with that?

Ms. Linda Garwood-Filbert: Yes, sir.

Mr. Greg Kerr: I think it's important because a lot of the conversation, a lot of questions, are about general torture that may have taken place in Afghanistan institutions over years of experience and so on, and what your role was. My understanding of this whole issue is that we want to be very clear about what happened with our Canadian military and authorities in terms of their responsibility and their actions. I'm hearing you confirm that happened after the time when we had really understood there were accusations about detainee transfers that came from Canadian authorities. I think it's really important to keep it on the record, that we do that.

The second point I want to go to is backing up, and I think, Ms. Garwood-Filbert, you were talking about the fact that Canada was working hard months before that about dealing with the institutions, and the upgrades, and all that had to take place. Can you talk a bit more about what went into that, both the planning and also the kinds of dollars and infrastructure and what the end result of that was? We tend to gloss over that important point that Canada was trying to improve and upgrade the infrastructure and facilities. I think it's an incredibly important part of what the role was. Considering we hadn't been in the field that long as active military participants, I think the response was very quick. That may be a bias on my part, so I'd like to hear your view on that.

Ms. Linda Garwood-Filbert: One of our major roles was to do an assessment on, for the most part, Sarposa Prison and, as I indicated, to a lesser degree with the NDS and ANP detention centres, with regard to infrastructure and training.

The first concrete example we have of this, I guess to a certain degree, is some quick-impact projects that had to do with medical aid, and then there were some longer and more significant projects that came through the global peace and security fund. For the time I was there, that was approved. It was a \$1.6 million project that looked at a variety of things. I talked about the issues of health and safety around the septic system and the sewer system, and we had that completely upgraded. We were able to install security towers on the perimeter. We were able to provide security lighting for night-time visuals. We were able to provide secure escort vehicles instead of the prison having to use a taxi service. We were able to provide uniforms. We provided flashlights. We provided officer training. We built a carpentry shop for the prisoners for vocational training. We bought looms for a carpet-weaving program for the prisoners.

We also involved other agencies in order to bring in literacy training for the prisoners and the staff, because a lot of the staff were illiterate. We looked at basic officer training and connecting with the training that was being provided in Kabul and trying to provide similar training in Kandahar. There was just a lot of mentoring and being there, allowing them to ask questions, seeing things, pointing out a different way of maybe going about doing business that would be more consistent with the standards.

The Chair: Thank you, Mr. Kerr.

We will go over to the official opposition and then back to the government.

Hon. Ujjal Dosanjh: Thank you.

Ms. Garwood, I take you back to document 3. If you look at the bottom of document 3, it says, "Drafted: Garwood-Filbert/Davison" and "Approved: Davison". You may have drafted it in a different form. It's now in an e-mail form. That's what you meant.

Ms. Linda Garwood-Filbert: Correct. Typically, the way we went about reporting as DFAIT, as per the agreement—

Hon. Ujjal Dosanjh: I understand that. All I want to know is whether this is what you sent, essentially, not in the form but in the content.

Ms. Linda Garwood-Filbert: It's not my report, but it's consistent with my report.

Hon. Ujjal Dosanjh: Absolutely.

Ms. Linda Garwood-Filbert: The information is consistent—

Hon. Ujjal Dosanjh: I hear you.

• (1705)

Ms. Linda Garwood-Filbert: —and it's consistent with the fact that it's speaking to allegations.

Hon. Ujjal Dosanjh: Thank you.

The other two, 1 and 2, essentially say you were consulted on them, and I can point to that, if you want. If you go to number 2 on the first page, it says you were consulted in the making of that report.

Ms. Linda Garwood-Filbert: Yes.

Hon. Ujjal Dosanjh: It's the same with document 1; I can show you.

You have looked at the allegations that are contained with respect to the three individuals. They sound like the allegations that were made to you when you attended.

Ms. Linda Garwood-Filbert: Yes, sir.

Hon. Ujjal Dosanjh: Fine, thank you—and they are Canadian detainees.

Ms. Linda Garwood-Filbert: These were, yes, sir.

Hon. Ujjal Dosanjh: Thank you.

What period did they cover? Was it February to December? Can you tell?

Ms. Linda Garwood-Filbert: I started with the detainee monitoring after the agreement, so our first visit would have been in June.

Hon. Ujjal Dosanjh: June. One of them covers June.

Ms. Linda Garwood-Filbert: Yes.

Hon. Ujjal Dosanjh: Thank you. And from June to December...?

Ms. Linda Garwood-Filbert: From June to December I was involved in sitting in on the detainee monitoring interviews.

Hon. Ujjal Dosanjh: Thank you.

Both of you have said these allegations are unsubstantiated, that you didn't see any body marks or anything. You know that when the prisoners are first transferred they go to the NDS and it's in the first few days and hours that they are tortured. Then they are transferred to places like Sarposa. Unless their limbs are cut off and they are really disfigured, you would not know a month, two months, or three months later that anybody had been tortured, would you, madam?

Ms. Linda Garwood-Filbert: The experience I had was that I had no significant signs of torture; I had allegations of abuse.

Hon. Ujjal Dosanjh: Absolutely, but you didn't know when they were tortured. Did you ask them how long ago they were tortured?

Ms. Linda Garwood-Filbert: I didn't speak to torture specifically, because that's a leading question. We had a framework of asking questions with regard to treatment behaviour, human rights conditions, all those types of things. We took the information that was given to us, and any allegation that was made I reported upwards.

Hon. Ujjal Dosanjh: Madam, they said they were tortured. These are allegations of torture.

Ms. Linda Garwood-Filbert: Sir, I can give you an example. We had a prisoner who said, "I was tortured", and we said could you explain that word—because we're using an interpreter, we're speaking in Dari or Pashto—and he said, "Someone slapped me and called me a bad name."

Hon. Ujjal Dosanjh: But these allegations—

Ms. Linda Garwood-Filbert: That doesn't mean that it took place. It's an allegation of something he felt had happened to him.

Hon. Ujjal Dosanjh: Would you agree that the allegations you reported in these three cases are more serious than simply slapping, and they would amount to abuse?

Ms. Linda Garwood-Filbert: Yes, but they're still allegations just the same, sir.

Hon. Ujjal Dosanjh: Yes, madam. Let me ask you a question. Did you ask them how long ago they were mistreated or abused?

Ms. Linda Garwood-Filbert: We would ask the facilities. Sometimes dates and times were very difficult to establish, so we would ask them. We would try to establish timeframes, but in that theatre and in that culture, it was hard for them sometimes to describe dates and times and places.

Hon. Ujjal Dosanjh: Thank you.

Ms. Swords, you also said that you would have these kinds of allegations investigated by the Afghanistan Independent Human Rights Commission or others that report to them. Was there any instance where the Canadians who were actually on the scene pursued that investigation with the Afghanistan Independent Human Rights Commission, were present with the commission? These allegations are serious. Did anyone ever check back and ask what the investigation was, who actually investigated the matter, who was spoken to, and what were the results?

Ms. Colleen Swords: One thing I can tell you is that the Afghanistan Independent Human Rights Commission was expressly asked to notify us if they got information about mistreatment of a Canadian-transferred detainee. They didn't do that in the time I was working on the file, so we didn't have any information like that from them.

Hon. Ujjal Dosanjh: And this is the time you were working on the file, because these e-mails are.... You're e-mailed on them.

The Chair: A short response, please.

Ms. Colleen Swords: Well, up until around the end of May, when I went back to my G-8 responsibilities. I believe some of these started in June.

The Chair: Thank you. We have to move on.

Mr. Abbott.

Hon. Jim Abbott (Kootenay—Columbia, CPC): Thank you to our witnesses.

My questions revolve two around issues. One is the credibility of your testimony, and the other is the credibility of the claims of the opposition about political interference.

In the first issue, the credibility of your testimony, Ms. Garwood-Filbert, could you remind me again approximately how many interviews you conducted?

• (1710)

Ms. Linda Garwood-Filbert: With detainees, I was present for 26 monitoring interviews, and I had over 33 visits to Sarposa. I spoke to prisoners on a regular basis. I spoke to prisoner advocates on a regular basis. So the interaction was constant.

Hon. Jim Abbott: Thank you.

Again, in just 30 seconds because of our time constraint, can you remind us of your qualifications for the testimony? You've arrived at a conclusion. What are your qualifications to arrive at that conclusion?

Ms. Linda Garwood-Filbert: I have 28 years' experience working in the federal correctional facility.

Hon. Jim Abbott: Thank you.

It's interesting to note that the person who kicked this off originally, Mr. Colvin, does not have the years of experience that you have, nor the training, nor the background, and I think at best he conducted three interviews.

So we're talking about a group of credible people, along with Mr. Mulrone, along with the generals, highly qualified people who clearly understood your job. So you can tell which place I'm putting most of my weight.

With that, then, I ask the question. You were the people who were effectively on the leading edge of this entire issue. And this is very important: do you feel that at any point you ever received any direction from the political level that would have tried to influence you in the way you were conducting your job in your professional capacity?

Ms. Colleen Swords: No. The only instructions we got were with respect to the policy to implement the December 2005 MOU and to make sure we abided by those two principles that I mentioned at the beginning of my statement.

Hon. Jim Abbott: Mr. Proudfoot.

Mr. Douglas Scott Proudfoot: As Ms. Swords said, we had political direction to seek assurances of humane treatment, and it was in that context that we did additional work that culminated in the 2007 supplementary arrangement.

Hon. Jim Abbott: Thank you.

Ms. Garwood-Filbert.

Ms. Linda Garwood-Filbert: All my reports went up the chain as I wrote them. They were directly taken from my field notes, and I was never asked to change any reports or limit any of my comments.

Hon. Jim Abbott: Thank you very much.

The Chair: Okay, there's still two minutes.

Mr. Laurie Hawn: Mr. Chair, I just want to emphasize with the witnesses that we've got a large body of very qualified, very experienced, very capable people who clearly understand their job and all the implications of their job and the importance of Canada getting it right on the international stage. I'd ask Ms. Swords, as the senior person, for her assessment or her feeling of how seriously everybody over there took that responsibility of making sure Canada got it right, for all the reasons we would all support.

Ms. Colleen Swords: Throughout my experience on this file, I think there has been a clear understanding of the obligations on the part of all Canadian officials and that we had to do everything we could to try to minimize any risks, that we had to develop a process—and it did evolve over time, as we ramped up our involvement in Afghanistan—to do everything we could to try to minimize risk to make sure we left Afghanistan in a better state than it was when we started.

Mr. Laurie Hawn: In the context of the mission and the obvious difficulties of dealing with a third world country like Afghanistan in the middle of a war, obviously there were some significant challenges for everybody, whether it's a soldier on the ground, the diplomat, the prison officials, or whoever. It's difficult for Canadians to understand and appreciate that context from several years and 12,000 kilometres away. Is that a fair statement?

Ms. Colleen Swords: I think that's correct. I would also say that every time we identified an issue or a problem, we dealt with it as best we could.

Mr. Laurie Hawn: From what you've said, it sounds as if you dealt with things.... I can't recall the specific instance you were talking about, but ICRC notification issues and so on were dealt with within a matter of days, at most.

Ms. Colleen Swords: That's right. We worked out a system to do informal notifications as well as formal.

Mr. Laurie Hawn: I want to thank you on behalf of everybody, I think, Canadians across the country, for the tremendous work everybody did do under incredibly difficult circumstances.

• (1715)

The Chair: Thank you very much.

Mr. Dewar.

Mr. Paul Dewar: Thank you, Mr. Chair.

Ms. Swords, you mentioned there had been meetings with the Red Cross here in September and you mentioned that Minister MacKay and Minister O'Connor were present. Were you present at any meetings with the Red Cross in Kandahar in June?

Ms. Colleen Swords: June of...?

Mr. Paul Dewar: June 2006, sorry.

Ms. Colleen Swords: No, in June 2006 I was our ambassador to the Netherlands.

Mr. Paul Dewar: Right.

I wanted to ask you that, because Mr. Colvin had been writing that there had been concerns from the Red Cross and he was very specific that their concerns were warnings from them about possible torture of detainees being transferred. Were you aware of that from the Red Cross, the concerns they had brought forward?

Ms. Colleen Swords: No, I wasn't. The reason I'm aware of the June message is that when Dr. Kellenberger was coming I was briefed and told there had been some issues in May 2006, but we'd had meetings to try to resolve that, and we had.

Mr. Paul Dewar: Did it surprise you that there were a couple of meetings in Kandahar where the Red Cross had brought forward concerns, not only about possible torture of transferred detainees, but the possible torture of detainees who were transferred by Canadian Forces soldiers?

Ms. Colleen Swords: It would surprise me greatly if the Red Cross informed us of detainees who had been mistreated in any way—

Mr. Paul Dewar: That's apparently Mr. Colvin's evidence.

Ms. Colleen Swords: —because they would inform the Afghan government. That is their policy.

Mr. Paul Dewar: Right, so if they had informed us about that, as Mr. Colvin has suggested, it would have to be quite extraordinary circumstances, would you agree?

Ms. Colleen Swords: I think that's just speculation. I'm really familiar with the Red Cross, and they are absolutely adamant that they—

Mr. Paul Dewar: So 100% that they would not have provided us with warnings about possible torture of detainees transferred, or concerns about that?

Ms. Colleen Swords: I'm 100% certain they wouldn't pass on information with respect to a Canadian-transferred detainee per se.

Mr. Paul Dewar: No, I mean just general concerns about transferred detainees.

Ms. Colleen Swords: The kind of information that the Red Cross usually deals with, as it concerns us, relates to the process of the transfer. They're concerned about that and they want to make sure—

Mr. Paul Dewar: But on the other end is where they end up, and I think they had concerns. We're hearing that meetings were held, and Mr. Colvin was making it known that there were concerns about the handover of the prisoners taken by Canadian Forces, and that they had underlined that concern. But you're saying that you had no idea of these concerns from the Red Cross about detainees being tortured in general, and about Canadian-transferred detainees specifically?

Ms. Colleen Swords: The concerns from the Red Cross at that time were with respect to the timing of the notification. We were doing it formally through Ottawa and Geneva, and we dealt with that.

Mr. Paul Dewar: But at the time, they were also concerned about the fact of what happens to those detainees when they've been handed over into jails. We've had the Red Cross and we've had the Afghan Independent Human Rights Commission, which, we have established through reports, were concerned about torture. We've had the State Department. Certainly people would have known at the time. If all these institutions had concerns and, in the meetings that were held with the Red Cross, they were expressing those concerns, would we not have flagged that and said, look, we need to do something about the handover of detainees because these institutions—as mentioned earlier in your testimony—are saying torture is a problem, generally speaking?

If that was the case, was no one other than Mr. Colvin underlining that concern?

Ms. Colleen Swords: I think the general concerns that were being raised in human rights reports were known, but they were general, not specific.

Mr. Paul Dewar: But we weren't acting.

Ms. Colleen Swords: They weren't specific.

Mr. Paul Dewar: But we weren't acting on those, is what you're saying.

Ms. Colleen Swords: The human rights report that we had from our embassy made recommendations at the end. The recommendations at that time all related to more capacity-building and more dialogue with the Afghan government.

Mr. Paul Dewar: Wait a minute, here. We had all these recommendations. What was the action? What I'm hearing from everyone here is that we didn't know where the detainees were going and we couldn't track them. I still have concerns about that. When I asked Minister Day at committee where the detainees went when they were released and whether we knew that—which is in our new agreement—he couldn't give me an answer, and he still hasn't to this day, by the way.

There is this phenomenon that we're sending people in and we're monitoring, but we're not investigating. We're hearing from the Red Cross, the UN, and the Afghan Independent Human Rights Commission that they have concerns about torture, and we're making recommendations? Who's acting here? Who was responsible for acting? That's my question.

• (1720)

Ms. Colleen Swords: I think the approach is that the Afghan government is responsible for human rights in their own country.

Mr. Paul Dewar: But they were complicit in the torture.

The Chair: Mr. Dewar, let her respond—

Mr. Paul Dewar: I'm sorry, my apologies.

The Chair: Go ahead.

Ms. Colleen Swords: I find it hard to respond, because I'm not quite sure what the question was.

Mr. Paul Dewar: Who's accountable? That's all.

Ms. Colleen Swords: The Afghan government is accountable for the human rights in its own country. We're accountable for making sure that we do everything we can to minimize risk for any Canadian-transferred detainees.

Mr. Paul Dewar: But under international law, we're responsible —

The Chair: Mr. Dewar.

Mr. Paul Dewar: —for what happens to whoever we're handing over, no?

The Chair: Mr. Dewar, that's it. Your time is up. We have to move on.

We have enough time to go into two spots in the third round. So it's over to the government and then over to the official opposition.

Mr. Laurie Hawn: Thank you, Mr. Chair. I want to continue on that, but in a calmer tone.

With respect to the responsibilities that Canada had, or Afghanistan had, from December 2005 until the enhanced arrangement was brought into place, is it fair to say that we were operating—obviously under the old arrangement the Government of Afghanistan was responsible for human rights—under the honest belief that the International Committee of the Red Cross and the Afghan Independent Human Rights Commission were going to be reporting to us if there was anything Canada would be responsible for fixing or doing something about?

Ms. Colleen Swords: As I tried to explain in my statement, we were kind of evolving and ramping up and doing more and more as time passed. In the fall of 2006, the biggest concern that was ever drawn to my attention related to the infrastructure and the lack of training in the Afghan prisons. That was really pretty basic.

It's really important to build that up, because you can't be in a prison 24 hours a day. If you have better facilities and more training, you are really contributing to a more humane treatment of the prisoners themselves.

Mr. Laurie Hawn: There was an article today by Murray Brewster talking about some meetings that were supposedly held between the International Committee of the Red Cross and people like Mr. Colvin. A member of the International Committee of the Red Cross, Bernard Barrett, who was their spokesman in Washington, D.C., said that the agency would “never share confidential information”, and that Mr. Colvin's memo and comments by Mr. Mendes, who I believe is a professor, are “someone's interpretation of the meeting”.

Does that go back to what you said earlier about how the Red Cross in fact operates, that if they had serious concerns they would not be sharing them with someone at Mr. Colvin's level?

Ms. Colleen Swords: That's correct, and in fact they've made it quite clear to us that they will not share information with us about detainees that we transfer unless it relates to the period of time before we transfer them.

Mr. Laurie Hawn: Okay.

Ms. Colleen Swords: They deal with the detaining power.

Mr. Laurie Hawn: With respect to the enhanced agreement that came in in 2007, I want to confirm that we followed up very quickly on any concerns that were forwarded to us.

Ms. Colleen Swords: Anytime there was an allegation of torture, mistreatment, or abuse, we immediately contacted the Afghanistan Independent Human Rights Commission, the International Committee of the Red Cross, and Afghan authorities at various levels to raise this with them and insist that they investigate.

Mr. Laurie Hawn: Given that Afghanistan will never be like Canada in respect of democracy or prison systems, how much confidence do you have that we can continue to make progress in terms of elevating their level of capability and understanding in those areas?

Ms. Colleen Swords: I think we have already made some progress. Particularly in the Sarposa Prison, where our colleagues from Correctional Service Canada are spending a lot of time, you realize there's a big difference.

Mr. Laurie Hawn: In the context of what was happening at the time, in the legitimate understandings that Canada had, either the previous or current government, with respect to operating there, with respect to the responsibilities of the Government of Afghanistan, the International Red Cross, and the Afghanistan Independent Human Rights Commission, is it fair to say that Canadians were doing the job the best they could, given the context, given the information, given the situation at the time?

• (1725)

Ms. Colleen Swords: Yes, I'm confident of that, and I would also say that most of our NATO allies do exactly the same or even less than what we do.

Mr. Laurie Hawn: That's actually a good point. How much contact did you have, if any, with people at your level among our allies?

Ms. Colleen Swords: I had quite a bit of contact in the spring, when we were trying to develop the May 2007 arrangement. We were trying to understand exactly what they were doing and any difficulties they had, how they were going about it. For example, one of the things we learned from one country was to make sure that when you hand somebody over they know what their rights are, that you'll be going to visit them, and that they are transferred by your country. When we do transfer them, they're read.... It's translated into Pashto and Dari, so each Canadian detainee knows that he's kind of special.

Mr. Laurie Hawn: Prisoners of any country are never shy about coming forward and talking about how they're being treated.

The Chair: A short response, Ms. Swords.

Ms. Colleen Swords: I wouldn't be able to answer that.

Mr. Laurie Hawn: Thank you.

The Chair: Mr. Rae.

Hon. Bob Rae: Just to be clear, Ms. Swords, the convention on torture says that if you have "substantial grounds for believing that he would be in danger of being subjected to torture", you're not allowed to transfer. It goes on to say that in making that decision you "take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights".

We know that since 2005 there have been a significant number of reports, including from the Secretary General of the United Nations, the Afghanistan Independent Human Rights Commission, and the State Department report—which is in there as a general review of the human rights situation in Afghanistan—showing that there were actually very widespread concerns about a pattern of abuse and beatings, a pattern of what is legally defined as torture.

I'm not trying to put anybody on the spot and I'm certainly not trying to assign blame. What I'm trying to get at is the two principles you've established: first, recognizing the sovereignty of Afghanistan; and second, recognizing our international obligations. Would it be fair to say those principles come into conflict if in fact it is the case that there is substantial evidence of massive abuse of human rights in Afghanistan prisons?

Ms. Colleen Swords: As I explained, we're trying to balance those two principles, and that is exactly why this is such a difficult file. I'm not comfortable with giving a legal opinion on the convention against torture; that's not why I'm here.

Hon. Bob Rae: Understood.

Ms. Colleen Swords: I would say there is an understanding that there are a lot of problems in Afghanistan; I don't think we'd be there if there weren't. As a result of that, we entered into the December 2005 MOU. If we thought there were no problems, we wouldn't have done that. We have consistently ratcheted up what we're doing in order to try to minimize the risk and to make sure there is not a substantial risk.

Hon. Bob Rae: When we talk about problems and risks, I don't want to put words in your mouth, but are we talking about torture and abuse?

Ms. Colleen Swords: I've seen a lot of memoranda that try to define torture, and they're torturous, to be honest. I think the difference between inhuman treatment and torture is something lawyers enjoy, but I prefer to just say mistreatment.

Hon. Bob Rae: It's pretty clear that it covers a lot of ground.

Ms. Colleen Swords: It does.

Hon. Bob Rae: All you have to find is abusive treatment in order to get there. But would you agree with me that abusive treatment was the concern there? Is that the risk that you felt was in place?

Ms. Colleen Swords: No Canadian official wants to see anyone abused, let alone tortured.

Hon. Bob Rae: Of course not. But on the argument we're having—and it's not really fair to put everybody on the spot on this—what was the information available as to the pattern of abuse? What other options were considered, apart from simply transferring prisoners to the Afghan authorities? Were any other options seriously pursued?

Let's say you had a discussion at a meeting and somebody said, "You know what, the risk is just too great. Why don't we set up our own prison, set up an ISAP prison, and transfer them somewhere else?" Were any other options put in place that would have led to a different conclusion?

Ms. Colleen Swords: I think just about every option imaginable has been discussed and considered by officials. The option chosen is the one that provides the most realistic opportunity for Canada to continue to help the Afghan government and the Afghan people, while at the same time doing everything we can to minimize the risk of anyone we transfer being abused.

• (1730)

Hon. Bob Rae: So the decision was made to keep them in the Afghan facilities, upgrade the Afghan facilities, improve the monitoring, and improve the access. Yet from time to time you would regularly hear allegations and information being provided, not only on individual cases but on general review. Dutch authorities and other people were saying we had a problem.

Would it be fair to say that information was still widely available after the agreement was signed in 2007?

Ms. Colleen Swords: General statements like that...? But we have to transfer that into specific action in the context of the mission in Afghanistan.

Hon. Bob Rae: Under the law, one could argue that if you have evidence of a pattern you have to take that into account when you assess whether or not it's appropriate to transfer people. You can't just ask whether Harry is going to be tortured. You have say, what do I have to consider if Harry's going to be tortured? You have to consider how many other Harrys have been tortured in the last five or six months. If it's a lot, then you say, okay, we can't transfer him.

The Chair: Please give a short response, if you want.

Ms. Colleen Swords: I'm not quite sure how to answer. Again, it gets into weighing legal advice.

Hon. Bob Rae: That's what you have to do.

The Chair: I want to thank the witnesses for their time here.

Perhaps I could have the attention of committee members. I'm going to adjourn. but I want your attention for one second afterwards.

The meeting is adjourned.

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