

Canada-Afghanistan detainee agreement allows torture: rights groups

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Two human rights groups have called on Canada's Federal Court to review the legality of terrorism detainee transfer procedures under the [Canada-Afghanistan Detainee Agreement](#) [text]. [Amnesty International Canada](#) and the [British Columbia Civil Liberties Association](#) [advocacy websites] filed an application for judicial review Wednesday, alleging that the transfer of terrorist suspects from the custody of the Canadian Forces to Afghanistan may violate the [Canadian Charter of Rights and Freedoms](#) [text; [fact sheet](#)] and various international human rights obligations. The groups allege that Afghanistan tortures detainees.

[Amir Attaran](#), a law professor at the University of Ottawa, wrote an [opinion letter](#) [PDF] last April, concluding that:

[t]he Arrangement fails to meet the minimum standards of the Canadian Charter of Rights and Freedoms with respect to the care that Canadian Forces must take under Canada's constitution to prevent detainees from being tortured after they are transferred to Afghanistan or another country. This problem is serious, and probably would result in the Arrangement being declared unconstitutional if it were judicially reviewed in a Canadian court.

Lawyers for the advocacy groups say the judicial review will raise significant legal issues, such as whether the Geneva Conventions apply when Canadian forces assert that terrorists are not "enemy combatants" under the Conventions, and whether the Charter extends due process rights to such combatants. Similar issues were raised by the US Supreme Court case of [Hamdan v. Rumsfeld](#) [opinion PDF; JURIST [report](#)], where the Court held in part that [Article 3](#) [text] of the Geneva Conventions applies even though the US is at war with al Qaeda, which is not a signatory to the Conventions. The US military subsequently [reversed its Article 3 policy](#) [JURIST report] and decided that the Article 3 safeguards apply to all detainees in US custody. The Globe and Mail has [more](#). Read the Amnesty International Canada [press release](#).

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