

**ACTION**

Your Reference:

Our Reference:

FROM: Wellington (ISED) C10004560- 02/09/2010 08:42  
WLN a.m. WLN

TO: MEA Posts, Wellington, Canberra, Routine  
Kabul, New York, Washington,  
European Posts, Ottawa

CC: Defence, GCSB, NAB, Police, Match Routine  
NZSIS

MFAT: ISED, MEA, AMER, AUS, EUR, UNHC,  
Asia-S, LGL, AIDGLO, SLT

AGENCIES: SEEMail:  
Manual: P/S Defence, P/S MFA, P/S Police, Defence MOD (Sec  
Def, Dep Sec P&P, IDR), PMC [FPA SRG], Defence  
HQNZDF (CDF, VCDF, AC SCI, DDIS), Police NZ (~~PSR(IC)3~~)  
~~PSR(IC)3~~

Special Delivery Instructions: SENT ON BEHALF OF KABUL. DEFENCE: PLEASE PASS  
TO PRT DIRECTOR ~~PSR(IC)3~~

VISIT OF MINISTER OF DEFENCE AND CDF TO AFGHANISTAN 18-22 AUGUST:  
DETAINEES

Summary

- Minister of Defence registers concerns over treatment of detainees by the National Directorate of Security (NDS) in discussions with Afghan Ministers, UNAMA, COMISAF, UK and US and receives positive assurances that the standards of detention facilities in Afghanistan, including the NDS facility in Kabul, have substantially improved.
- Post to join likeminded embassy working group on detainees, which contributes to ongoing efforts to improve the standards, policies and procedures of Afghan detention facilities and authorities.
- ~~PSR(C)1~~
- ~~PSR(C)1~~

Message

**Action**

For information. Post / NZDF to follow up where indicated.

## Report

WLN's C10-4214 and LON's C10-241 (not to all) and ~~PSR(IC)3~~ email of 18 August refers.

The Minister of Defence and Chief of Defence Force took advantage of their recent visit to Afghanistan (see separate reports to follow) to raise New Zealand's concerns over reports of historical abuses committed by the National Directorate of Security (NDS) against detainees; and to seek assurances from Afghanistan on the humane treatment of detainees captured by the Afghan Crisis Response Unit (mentored by NZDF's Taskforce 81), especially with regards to the treatment of those detainees transferred to the NDS.

2 Minister received encouraging remarks ~~PSR(C)1~~ on recent improvements in the standards within the NDS detention facilities. Minister also received clarification from TF81 on their role in the arrest of detainees ~~PSR(C)1~~

### The role of Taskforce 81

3 We understand that NZDF are preparing their own report into the role played by TF81 in the arrest of prisoners by the CRU during "partner enabled operations". We won't repeat the details of that report here, except to note that TF81 have yet to make any arrests themselves - it is the CRU that takes the lead on all operations and, accordingly, it is the CRU that is the detaining authority. As of 19 August, 82 persons have been detained on these CRU-led operations, of which nine have been transferred to the NDS.

4 Due to the fact that TF81 is not the detaining authority, New Zealand has very few rights to follow up on specific detainees. Nevertheless, as was clear from the briefing provided to the Minister by TF81, the CRU remains well above the minimum requirements ~~PSR(C)1~~ in terms of warrant and arrest procedures. This is due in large part to the training and mentoring of TF81. ~~PSR(C)1~~

### Recent improvements in the National Security Directorate

5 As reported in WLN's C10-4214, historic abuse of detainees in the NDS detention facility in Kabul was highlighted in the recent judgment by the UK High Court, which endorsed the UK's self-imposed moratorium on transferring detainees captured by British armed forces to this facility (run by NDS Department 17).

6 Previously reliant on the old Soviet system of confession (rather than evidence) based convictions, Department 17 traditionally had a reputation for human rights abuses, with its interrogation procedures providing substantial opportunity for the abuse of detainees. This issue has been exacerbated by the huge influx of detainees that the NDS has had to process over recent years as ISAF and Afghan operations brought in more and more detainees.



7 However, as with all elements of the Afghan Government, the structure, policies and procedures regarding the treatment of detainees have undergone rapid overhaul over recent years. Throughout the Minister's discussions in Kabul, ~~PSR(C)1~~

the universal message was that the standards of NDS, including those of Department 17, have improved substantially. Furthermore, this improvement is still ongoing, with considerable support from the international community, ~~PSR(C)1~~

. These countries have formed a detainee working group to assist the Afghan Government to upgrade detainee facilities, systems and practices, including within the NDS.

8 Ongoing work includes the development of an electronic tracking system for all prisoners entering NDS custody (expected to be piloted in mid- September); assistance to the NDS to improve its investigative, forensic, and evidence analysis training so that NDS officers can rely less on interrogation and confessions to seek convictions; training in the investigation of detainee complaints of human rights abuses; and investment in the modernisation of detainee facilities (Department 17, for example, has recently opened a brand new facility in Kabul). ~~PSR(C)1~~

UNAMA also makes visits to prisons across the country, including the NDS facility in Kabul but not on a systematic basis.

9. ~~PSR(C)1~~

#### Afghan response

10 The Minister raised New Zealand's concerns regarding the treatment of detainees, especially those arrested in the presence of TF81 troops, with ~~PSR(C)1~~

noted that the surveillance of detention facilities had been improving, by both Afghan officials and the international community. He also corroborated the comments from ~~PSR(C)1~~ that the situation within NDS facilities had improved remarkably and that he had seen this progress first hand. ~~PSR(C)1~~ was happy with the Minister's forewarning that Post would follow up with officials from the Ministry of Interior to discuss NDS in greater detail. He noted that NDS was not part of his

jurisdiction and that the Director General reported directly to the President. ~~PSR(C)1~~ pointed to the recent changes in the leadership of the NDS as signs that standards within the organisation were improving.

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**Comment and next steps**

18 Although TF81 is not the detaining authority when it undertakes partner enabled operations with the CRU, the Defence Minister is of the opinion that when prisoners are detained in the presence of New Zealand troops and / or in operations otherwise facilitated by NZDF, New Zealand has at least a moral, and arguably a legal, responsibility to be seen to have taken reasonable steps to ascertain that the detainees' human rights are respected while in detention.

19 Accordingly, Post will take up the invitation offered by each of PSR(C)1 to join the embassy working group on detainees. This will provide a good forum for the sharing of information on the standards and practices within detention centres in Afghanistan, including the NDS facility in Kabul, and give New Zealand stronger voice with which to raise any concerns with the Afghan government .

PSR(C)1  
- they particularly noted that membership would provide a useful forum for direct engagement with the NDS, which often provides information direct to the working group. PSR(C)1

Membership will also provide an opportunity for New Zealand to better understand the issues facing the NDS and consider how its detention facilities could be further supported to ensure they meet international standards.

20 PSR(C)1

PSR(C)1

21 Post will also seek a call on the new NDS Director General, Major General Rahmatullah Nabil, to ensure that he is aware of New Zealand's concerns with reports of abuse and to let him know that we will be taking a keener interest in the welfare of detainees, particular those transferred to the NDS by the CRU.