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ISAF CONFERENCE ON AFGHANISTAN DETAINEES: MEETING REPORTSummary

Fourth Allied Detentions Seminar held in London on 17 September provides useful opportunity for ISAF partners to update each other on issues pertaining to their detentions monitoring regimes in Afghanistan. Also provides a useful update on key capacity challenges in the justice and rule of law sectors, and work under way to address these. While it is agreed that the detentions seminar will continue annually, attendees stress the importance of ongoing cooperation and collaboration between ISAF partners on the ground in Kabul where much of the day-to-day action on detentions is taking place.

MessageAction

For information and consideration of further follow-up in Kabul as appropriate.

Report

Your C10-4189 and PSR(IC)3 emails refer.

PSR(R)1 Meeting on Detainees Policy and Practices in London on 17 September. The meeting was attended by representatives from the PSR(R)1

Zealand was represented by PSR(IC)3, P (New Zealand) and Counsellor (Political). (NZDF) and

Detainee Monitoring Regimes

2 A number of countries provided updates on their monitoring regimes. PSR(IC)3 presented an update on New Zealand procedures.

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3 PSR(R)1

noted that its objective was to visit detainees within 72 hours of their being detained and then regularly thereafter. PSR(R)1 officials had unrestricted access to detainees.

4 PSR(R)1 viewed its relationship with the NDS as important (comment: this was a consistent point made by the major detaining countries), both in Kabul and PSR(R)1r, and was also looking to build its engagement with the NDS including through weekly meetings. PSR(R)1 noted that transfer to NDS had been paused last year for a time due, partly due to concerns about allegations pertaining to detainee treatment.

5 PSR(R)1

noted that from 1 August it had assumed a greater role in detentions PSR(R)1. Presently, interim arrangements were being implemented for the monitoring of detainees based largely on the exchange of diplomatic notes.

6 PSR(R)1

, was focused on ensuring that its monitoring was undertaken based on ISAF best practice (PSR(R)1). Photos of all detainees were taken by PSR(R)1 at the time of detention. officials aimed to carry out initial visits within 72 hours of detention and then regular visits about every four weeks thereafter. All interviews of detainees were undertaken in private.

7 PSR(R)1 noted that advice was being prepared for PSR(R)1 on the PSR(R)1 detention monitoring regime. From a policy perspective, PSR(R)1 noted, the objective was to ensure that its regime was effective, consistent with PSR(R)1 international legal obligations; and that it effectively supported transition objectives through contributing to capacity building for the Government of Afghanistan (GoA) in the rule of law and justice sectors.

8 PSR(R)1 also stressed the importance that PSR(R)1 attached to close cooperation with ISAF partners on detentions issues moving forward.

9 PSR(R)1

noted that it would be unlikely that they would be undertaking any detentions as PSR(R)1 were no longer conducting force protection or combat operations. PSR(R)1

. That said, its MOU with the GoA remained in force and PSR(R)1 officials were still visiting individuals that had been detained by PSR(R)1 forces, consistently with the PSR(R)1 practice of monitoring detainees until they had passed through the court system. From May 2011, however, following the completion of PSR(R)1 visits would take place much less frequently. PSR(R)1 noted, had not noticed any marked difference in its relationship with the NDS since it had announced its decision to transition.

10 PSR(R)1 briefed the meeting on its detainee monitoring regime (consistent with developments reported in our C10-241).

11 PSR(R)1

noted that it did not have the same detainee MOU with the GoA as other and was working on



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developing one. One of the challenges for the <sup>PSR(R)1</sup> was around numbers. It took a lot of detainees in a number of areas in the country. This was problematic in terms of monitoring. Considerable progress was being made in some areas, however, and <sup>PSR(R)1</sup> ).

12 The <sup>PSR(R)1</sup> felt that the NDS Department 17 in Kabul had made real improvements in its practices and facilities. The new facilities were relatively good and the <sup>PSR(R)1</sup> assessed that there was little evidence to suggest a culture of ongoing, systematic abuse.

#### Litigation and Procedural Reviews

13 The main focus of this session was on the Evans case, which we have reported on separately in our C10-241. Other countries <sup>PSR(R)1</sup> also briefed the meeting on legal action that had been brought or was pending in their jurisdictions.

14 It was clear that many ISAF countries were facing similar issues in relation to detentions-related judicial processes. These included:

- high media, NGO and political interest;
- allegations of either conscious or implied complicity in mistreatment of detainees – even in cases where ISAF forces themselves were not involved directly in the mistreatment but had been present during (or in the vicinity of) a detention by ANSF;
- difficulties in investigating allegations of mistreatment on the ground, due to factors such as a lack of physical evidence due to the complaint being made some time after the alleged incident; witness availability and reliability; and concerns that insurgents may be trying to use such allegations for propaganda purposes; and
- the challenge for Governments of defending against such allegations in court when they were constrained in how they could use classified information as part of their defences.

15 <sup>PSR(R)1</sup> ) previewed the <sup>PSR(R)1</sup> (the last one had been in June 2009), which was scheduled for Spring 2011. <sup>PSR(R)1</sup> noted that the Conference would focus on a range of detentions and rule of law issues (including arrest, detention, transfer and military support operations) and <sup>PSR(R)1</sup> was in the process of producing a draft consultation document. The objective of the conference would be to come up with a framework of (non-binding) guiding principles for addressing detentions issues. The intention was also to engage with NGOs and other interested parties through this process.

<sup>PSR(IC)3, PSR(R)1</sup>

16 <sup>PSR(R)1</sup>

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17 PSR(R)1

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21 PSR(R)1

Rule of Law - Capacity Building Session

PSR(R)1

22 PSR(R)1

) updated the Meeting on its rule of law strategy in Afghanistan . reiterated that the viewed rule-of-law capacity building efforts as important in the context of its broader COIN objectives. A new PSR(R)1 rule of law strategy for Afghanistan was currently being finalised PSR(R)1 ). This had, PSR(R)1 noted, two interrelated objectives: to improve the rule of law capacity of the GoA; and to help build the legitimacy of the GoA .

23 The new PSR(R)1 strategy had four key pillars. The first of these was securing and maintaining a permissive security environment. Consistent with the broader COIN approach, a secure environment would allow the evolution and maintenance of a robust, sustainable rule of law system.

24 Tackling the culture of impunity in Afghanistan was the second pillar of the strategy. This involved improving the access of Afghans to the justice system (both formal and traditional) and tackling corruption. Corruption, PSR(R)1 noted, was a key issue for PSR(R)1 PSR(R)1 ) and one in which significant resources had been committed. PSR(R)1 noted that there was a tendency to focus on bad news stories but there had been some notable successes also (e.g. the recent indictment on corruption charges of 86 judges). PSR(R)1 was keen to do better at reporting anti-corruption successes.

25 PSR(R)1 noted that building capacity in the corrections system and building leadership development in the justice sector were the third and fourth pillars of the new policy. PSR(R)1 was leading operational work in this area and had already made encouraging progress in them.

#### PSR(R)1 – Training and Mentoring in PSR(R)1

26 PSR(R)1 provided an overview on PSR(R)1 training and mentoring in PSR(R)1 . One of PSR(R)1 key objectives was to improve links between the central government and the provincial government in PSR(R)1 . It was pursuing three broad strands of work in this context: improving training of justice and rule of law officials; improving the physical conditions of PSR(R)1 prison; and building the capacity of central government to manage the overall detentions process.

27 PSR(R)1 was also developing community engagement initiatives. These recognised that major detention facilities such as PSR(R)1 often had an impact (e.g. additional sewage production) on the communities around them. PSR(R)1 was an insurgent target so it was important, in PSR(R)1 view, to work with provincial authorities to develop programmes designed to mitigate any unduly negative impacts of corrections facilities on the local community.

28 Beyond PSR(R)1 was also providing limited NDS training for about 20 mid-level NDS officers in Kabul via a two week training programme run by the PSR(R)1 Police College. This programme was focused on developing investigative training skills. The PSR(R)1 trainers had developed a constructive relationship with the NDS. Though



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th<sup>e</sup> had required a "continuous effort" it had been worthwhile as PSR(R)1 had found that personal relationships were critical in its dealings with the NDS.

PSR(R)1 – Capacity Building

29 PSR(R)1 updated the meeting on priorities. PSR(R)1 continued to focus on working with the GoA to deliver on its Kabul Conference undertakings in the rule of law area. Like other international partners, the PSR(R)1 viewed robust rule of law structures as being central to the broader security and COIN objectives of the international community in Afghanistan. As with PSR(R)1 and other key partners, PSR(R)1 viewed partnerships with the GoA as critical if progress was going to be continued in this area. It was also an area in which PSR(R)1 felt that international coordination could be further enhanced.

30 Prison training, PSR(R)1 noted, was one focus of PSR(R)1 current efforts. PSR(R)1 was working with the NDS to provide basic prison-officer training for between 260 and 400 recruits across Afghanistan. The PSR(R)1 was also helping to build a new prison in PSR(R)1 which it hoped would be fully operational by September 2011, with a final capacity of about 750.

Diplomatic Advocacy/Engagement Session

31 PSR(R)1 ; noted that PSR(R)1 and other countries that had been involved in detentions for some time wanted to encourage close cooperation and coordination between ISAF partners in Kabul. While sessions such as the PSR(R)1 meeting - which it was agreed would continue be held annually - were useful in terms of providing overview of key policy challenges and priorities much of the action was on a day-to-day basis on the ground.

32 PSR(R)1 said that PSR(R)1 was keen to ensure that the PSR(R)1 - which focused on working-level information exchange and coordination on detentions and related issues - continued to meet regularly in Kabul. It had met seven times in the last year and provided an important and useful focal point on the ground. PSR(R)1 said that most - if not all of the countries around the table were now represented on it.

33 PSR(R)1

34 There was acknowledgement that domestic legal issues and challenges would continue to be an issue for many members of ISAF. This was also an area in which it would be useful for ISAF partners to share information on, as often the experience of one jurisdiction could act as an "early warning" function for others.

**Comment**

35 This was a useful meeting. Reflecting, perhaps, both the growing profile of detentions issues and growing body of work undertaken by ISAF partners on them,

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attendees we spoke to said that there had been more detail and discussion at this meeting than last year's session. A clear theme discernible was that while each member of ISAF has national concerns and issues in the detentions area, there was also a sense that "we are in this together" and should work as closely and collaboratively together as is possible on them.

36 Many we spoke reiterated ~~PSR(R)1~~ encouragement about ensuring that we remained involved in the MOU Working Group process in Kabul , as this is where much of the day-to-day cooperation and information exchange on detentions issues takes place.