

3304/DLS/INTREY
AFGH

PSR(IC)3

To: RIORDAN KEVIN, BRIG
Subject: RE: [SEEMAIL] [REDACTED] AFGHANISTAN

*** [SEEMAIL] This message may contain classified information ***

LEGAL PROFESSIONAL PRIVILEGE

Hello PSR(IC)3 and PSR(IC)3

CDF asked me to get in contact re FADTC yesterday morning. We spoke yesterday, but here are some thinking points.

I am currently getting my people (in country and in Afghanistan) to put together a more complete brief on issues relating to the taking of and treatment of detainees in Afghanistan. This report is on the basis of the information I have gleaned thus far.

- It is important to note that the people picked up by the CRU are actually arrested pursuant to an arrest warrant issued by the Attorney General of Afghanistan - so they enter the Afghan judicial system from the outset. These are not "unknown" individuals.
- Because the arrest warrant is issued to the CRU, NZDF staff have no legal power to conduct the arrest. They also have no authority to interfere with the judicial system.
- They are, however, required to report all detentions of personnel where they have been present in any capacity whatsoever, to the ISAF headquarters where those details are recorded.
- PSR(R)1
- NZDF pers are mentoring and engaging with members of the CRU. In the course of those activities they ensure that handling techniques are humane and compliant with international standards. However, the CRU is not a prosecution authority. Accordingly, detainees, if they are not released, may be transferred to other agencies within the MOI or NDS. We do not have specific oversight of the detainees once they leave the custody of CRU. PSR(R)1
- Because of the rules of confidentiality followed by the Red Cross they would not report any particular cases of abuse to us, unless it was alleged that the abuse had occurred during our custody. They would report their concerns to the Afghan Government. The ICRC are, however, more forthcoming in respect of general concerns about conditions etc. PSR(R)1
- ISAF is also actively engaged with the ICRC in relation to matters of detention. While there is no agreement or arrangement with the Red Cross by which they would (or could) report any particular instance of abuse to us, the rule of law monitoring mechanism would be the likely means by which we would be furnished with information on whether there is a situation in respect of which we should be concerned.
- The CRU are bound by the Police Law 2004 (Afghanistan) which includes limitations on the way in which detainees are restrained and use of force. It also provides that ANP may only detain for a period of 72 hours before release or unless a prosecutor from the A-G's office has enough evidence to undertake a prosecution.
- My legal officers have told me that they have not heard of any incident during our deployment which should give rise to any concern of this type.

- Of note, ISAF PSR(S)1 is working at handing over control of all detention facilities in Afghanistan to Afghan control, including training and monitoring.

K.J. Riordan
Brigadier
DGDLS

The information contained in this Internet Email message is intended for the addressee only and may contain privileged information, but not necessarily the official views or opinions of the New Zealand Defence Force. If you are not the intended recipient you must not use, disclose, copy or distribute this message or the information in it. If you have received this message in error, please Email or telephone the sender immediately.

PSR(IC)5