

HEADQUARTERS NEW ZEALAND DEFENCE FORCE
OFFICE OF CHIEF OF DEFENCE FORCE
CDF MINUTE 25/2007

COPY

3304/DLS/INTREL/AFGH

23 May 07

COMJFNZ

INDIVIDUAL GUIDANCE ON DETENTION OF NON-ISAF PERSONNEL

References:

- A. HQ JFNZ Minute 3130/1 dated 18 Apr 07
- B. NZFOR ISAF Individual Guidance Card dated 8 Apr 07
- C. DLS Minute 3304/DLS/INTREL/AFGH dated 19 Feb 07
- D. Military Technical Arrangements between New Zealand and Afghanistan (MTA)

1. I have considered your Minute (Ref A) covering the draft Individual Guidance Card (Ref B) for dealing with persons detained in the course of operations in Afghanistan for legal clearance. I approve the issue of that card, with some minor amendments as incorporated in the copy enclosed, and on the basis that its issue is accompanied by specific guidance and training as follows.

2. The policy in respect of the searching of female detainees as proposed at Ref B para 6.a. may give rise to avoidable complications in Afghanistan. Any such search has the potential to raise allegations that the dignity of the searched female was outraged, allegations of indecency against the searcher, and claims for compensation for the person searched and her family, as well as risking the carefully established reputation of the NZ PRT. To minimise those potential risks, I want you to:

- a. If you have not already done so, investigate the issue of, and if practicable issue, metal and explosive detecting devices (such as those in use at airports) to patrols so that any search of a female can be effected with the minimum intrusion on her dignity; and with that intrusion being of a similar nature to those commonly encountered internationally;
- b. Ensure that all patrols are directed that:
 - (1) Searching of the person of a female by anyone except another female is only to be done when essential (for instance, when a search by a detecting device has indicated that there is concealed material of security concern);
 - (2) If searching the person of a female is essential, the search must be:
 - (a) Carried out in a location screened and out of sight of all except the search party;
 - (b) Carried out with a witness present, who is to observe the conduct of the search; and

- (c) Reported in writing, recording in addition to the matters required under Ref B paras 4 and 6 the reason(s) why the commander considered the search essential.

3. In respect of Ref B para 9, you should note that the MTA, at clause 15, provides:

" Detained persons ... will be handed over as soon as it is judged safe to do so by the Senior National Officer to the appropriate Afghan authorities. "

The direction in Ref B para 9 requiring your and my prior approval to any handover to Afghan authorities imposes a prior requirement on the SNO reaching his judgment that it is safe to hand over. I am advised that the requirement for that prior approval can be read consistently with the MTA. However, your and my discretion to refuse approval to hand over detainees is limited; in that the MTA directs that handover is to occur " ... as soon as it is judged safe to do so ...". Any decision not to approve must therefore be made on the basis that it is not yet safe to effect a handover. The MTA does not allow for a decision that handover to the Afghan authorities is never to occur.

4. In respect of Ref B para 12, I want you to ensure that guidance is issued that where detainees are moved over a lengthy period of time that the breaks taken include those required for cultural and religious purposes (notably Islamic prayers) as well as for physical needs.

5. In respect of Ref B para 13, I want you to ensure that guidance is issued so that the provision is not misconstrued – so that a detainee who has been restrained by plasticuffs or handcuffs and is transported in a vehicle is not to be regarded as being secured to the vehicle, which is prohibited, if he or she is secured by a seat belt fitted to the vehicle for the purpose of travel in the vehicle.


J. MATEPARAE
LT GEN
CDF

Enclosures:

- 1. NZFOR ISAF Individual Guidance for Detention card incorporating amendments