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ACTION

Your Reference:

Our Reference:

FROM: Wellington (ISED) C10004214- 17/08/2010 05:41
 TO: London p.m. WLN
 CC: Wellington, Brussels, Canberra, Defence, Immediate
 Washington, Kabul, New York, Ottawa, Routine
 The Hague, NAB, Match NZSIS
 MFAT: ISED, MEA, LGL, CEO, DS MLG, *SB*
 AIDGLO, UNHC, AMER, AUS, EUR
 AGENCIES: SEEMail:
 Manual: Defence HQNZDF (Riordan,), Defence MOD
 (PSR(C)1, PSR(IC)3)

AFGHANISTAN/DETAINEES: UK HIGH COURT RULING AND IMPLICATIONS FOR NEW ZEALAND

Summary

We seek London's urgent assistance in assessing the implications for New Zealand of the recent UK High Court ruling on transferring detainees in Afghanistan to Afghan detention facilities, and particularly the NDS facility in Kabul.

Message

Action

Grateful for your overnight advice on FCO's and/or UK MOD's views on the UK High Court ruling; UK concerns about transferring detainees to the NDS facility in Kabul; and any insights you can provide on the implications for New Zealand.

Report

As posts may be aware, there has been strong media and political interest over the last few days in New Zealand on the recent UK High Court ruling on UK detainee transfer policies in Afghanistan and the implications for New Zealand – particularly regarding the NZSAS operating in Kabul mentoring and training the Afghan Crisis Response Unit (CRU).

2 NZSAS members have not themselves detained anyone, but there have been recent references to 22 occasions during which the NZSAS were "in the vicinity" when the Afghan CRU apprehended Afghan prisoners. While New Zealand's legal obligations on detainees are clear (as is the fact that NZ personnel have not detained anyone to date), the UK ruling has generated questions about New Zealand's approach to the treatment of prisoners arrested by the CRU and transferred to the NDS facility in Kabul.

3 Minister Mapp has indicated to media that he has requested a report from NZDF on this issue, which will be provided within a month. Dr Mapp will also seek to discuss this issue with his ~~PSR(C)1~~ international counterparts during his upcoming visit to Afghanistan. In the interim, Minister McCully has requested MFAT's initial assessment within the next 24 hours of the implications for New Zealand.

4 We seek LON's urgent assistance in seeking detailed information from FCO and/or UK MOD contacts on the UK High Court ruling and UK concerns about Afghan detention facilities, particularly the National Directorate of Security (NDS) facility in Kabul, known as "Department 17", the investigating branch of the NDS in Kabul. UK views on Pol-i-Charki prison in Kabul (where convicted prisoners are held and to which some detainees have been transferred by the NDS pre-trial) would also be of interest in this context. In following up with your contacts, we would welcome any insights they can provide on the possible implications for New Zealand.

Background

5 By way of background, on 25 June 2010 the High Court in the UK handed down a judgement (of which we have a copy) in respect of a judicial review challenge to UK detainee transfer policies, filed in December 2008. The judgment relates to persons that the UK forces have actually detained themselves and who are handed to Afghan authorities by UK forces. The Court reinforces the obligation to monitor the welfare of persons transferred in those circumstances.

6 The judgment sets out disturbing evidence and allegations of widespread and serious mistreatment of prisoners – including the Afghanistan Independent Human Rights Commission's (AIHRC) 2009 report on "Causes of torture in law enforcement institutions"; UN reports between 2004 and 2009 raising concerns about torture and other inhumane treatment by the NDS, the lack of a public legal framework for the NDS and limited access to NDS facilities; and NGO concerns. The judgment also sets out the details of UK monitoring of Afghan facilities which has been principally conducted by UK Embassy officials. The court does not seek to prevent the UK forces from handing detainees over to the Afghan authorities as a general proposition.

7 The judgment refers to a moratorium placed by UK forces in early 2009 on handing prisoners across to the NDS facility in Kabul because access to UK personnel had been denied. ~~PSR(C)1~~

We would therefore welcome detailed information on the UK's concerns about the NDS facility in Kabul – particularly anything that is not covered in the ruling.

8 Any insights your FCO or UK MOD contacts are able to share on other countries' experiences and concerns regarding Afghan detention facilities, and particularly the NDS facility in Kabul, would also be appreciated.