

~~NATO/ISAF SECRET~~

ISAF SOF TF 81 LSO IS (FOC+)

From: ISAF SOF TF 81 SNO IS (FOC+)
Sent: Saturday, April 17, 2010 10:34 AM
To: ISAF SOF HQ CJ3 DIR IS (FOC+)
Cc: ISAF SOF HQ CJ3 TF 81 LNO IS (FOC+); ISAF SOF TF 81 OC IS (FOC+); ISAF SOF TF 81 LSO IS (FOC+)
Subject: RE: New COMISAF Directive regarding Detention

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Hi ^{PSR(S)1},

For the purposes of this email I will set aside the operational burden/issues that this directive creates, and will instead focus on the potential legal issues that are evident. The extra operational burden may well be substantial but it can and will be accommodated as required.

The legal position of TF 81 represents the interests of the NZ Government. Although we can and will detain individuals if the situation requires, we are focussed towards assisting ANSF in detaining individuals. As yet TF 81 has not taken a single detainee, but has assisted ANSF in many GIROA led detentions. Our legal concern is just what is a detention in this context. This has not as yet been the subject of international judicial decision making. However, we currently mentor, train, plan and conduct joint operations with ANSF where detentions are made. We also biometrically test detainees in certain circumstances, and question/search detainees through ANSF. We are now being directed to **PSR(S)1, PSR(IC)4**
In-confidence partner information Furthermore, we are to maintain a detention database for ANSF detainees. When all this conduct is viewed together it appears to me that we could be construed (for legal purposes) to be making detentions ourselves. As a consequence TF81 may be impliedly assuming the responsibility and accountability that comes with being a detaining authority. I think serious legal debate and justification within ISAF is needed on this point. I will also be taking this issue back to NZDF for legal consideration for TF81 on the implications of the directive.

From a COIN perspective I do not see how this directive assists GIROA in being accountable where ANSF detentions are being checked, monitored and reported on by ISAF. Whilst I can see the COIN benefit in encouraging ANSF to do the right thing with respect to informing detainee families etc, it is my view that reporting on such detentions made by ANSF implies that ISAF is somehow responsible for them. It also undermines GIROA responsibility and demonstrates a lack of trust/respect for their processes.

Regards

Rian

R.G. (RIAN) McKINSTRY
LT COL (OF-4)
COMD TF81 (NZL)

^{PSR(S)2, PSR(S)3, PSR(IC)3}

ISAF: ^{PSR(S)1, PSR(IC)3}

Cell: **PSR(IC)3**

From: ISAF SOF HQ CJ3 TF 81 LNO IS (FOC+)
Sent: 17 April 2010 09:09
To: ISAF SOF TF 81 OC IS (FOC+); ISAF SOF TF 81 SNO IS (FOC+)
Subject: FW: New COMISAF Directive regarding Detention

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Kind regards

,PSR(sen)1, PSR(IC)3

TF81 LNO
NZ SOF
ISAF SOF HQ CJ3

ISAF VOIP:
PSR(S)2, PSR(S)3, PSR(IC)3

From: ISAF SOF HQ CJ3 DIR IS (FOC+)
Sent: Saturday, April 17, 2010 8:44 AM
To:

PSR(IC)4, PSR(S)1

Cc:

Subject: New COMISAF Directive regarding Detention

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PSR(S)1, PSR(IC)4

PSR(S)1, PSR(IC)4

CJ3 Dir
HQ ISAF SOF
PSR(S)1, PSR(IC)4