

From: KBL
Sent: Tuesday, 11 October 2011 7:18 a.m.
To: DPMC FPA@parliament.govt.nz; PSR(IC)3 @parliament.govt.nz;
 PSR(IC)3 @parliament.govt.nz; PSR(IC)3 (ISED); PSR(IC)3 (DS
 MLG); PSR(IC)3 (ISED); ... MFA P/S (Inet); PSR(IC)3
Subject: UNAMA Detainee Report
Attachments: 20111010 UNAMA Detainee Report.doc

DPMC FPA/PSR(IC)3 et al

PSR(IC)2

PSR(IC)2

We had previous points agreed by NZDF/MFAT, but I felt in circumstances they were simply outdated now. Strongly suggest MFAT and NZDF Legal look over them. I've referred quite a bit in TPs to UNAMA press release. I felt it would be prudent to do so. There's a fair amount there that could be culled if necessary, but thought it best for Welly to make those calls.

A key issue is that there is no simple answer to CRU facilities issue - see last two paras. This is something Kevin Riordan will have to pronounce on. I spent quite a bit of time trying to sort this out with NZDF Legal Officer, given sensitivities.

PSR(IC)2

PSR(IC)2

KBL

RELEASE OF UNITED NATIONS REPORT ON THE TREATMENT OF CONFLICT-RELATED DETAINEES IN AFGHAN CUSTODY

Talking Points

- We are deeply concerned by the findings of the UNAMA report on the treatment of detainees by Afghan authorities. The allegations contained in the report of torture and mistreatment of detainees are serious and troubling. The allegations are based on an extensive survey by UNAMA and are regarded as well founded and credible.
- The report was released overnight so officials have not had the opportunity to make a detailed assessment of the report. An initial reading of the report by New Zealand officials based in Kabul suggests that the report does not make for pleasant reading: it contains some disturbing and graphic accounts of torture and mistreatment. Among the report's more troubling findings is that 44% of the

detainees reported that they were subjected to torture or other forms of mistreatment

- Torture and abuse of detainees are illegal under both Afghan law and international human rights law. Such actions simply cannot be tolerated or justified, regardless of the provocation.
- The UN Special Representative of the Secretary-General for Afghanistan, Staffan di Mistura, has stated that the reported mistreatment is not institutional or Afghan Government policy. He also notes that the National Directorate of Security (NDS) and the Ministry of Interior (MOI) co-operated with UNAMA in providing access to NDS and MOI facilities.
- UNAMA has said that it expects the report to act as a catalyst for reforms in the judiciary, prosecution and law enforcement sectors, and that it will continue to monitor detainees and work with Afghan authorities to bring about change.
- UNAMA has noted that Afghan authorities have already taken steps to address the concerns raised in the report by putting in place corrective and preventative measures and initiating their own investigations into the allegations.
- While we acknowledge the difficult circumstances faced by Afghan authorities, we strongly encourage them to ensure that detainees are treated humanely and in accordance with international human rights law. We also encourage them to ensure that their investigations into the allegations are thorough and transparent.
- We are aware that the International Security Assistance Force (ISAF) introduced a number of measures in early September in anticipation of the report's findings, including suspending the transfer of detainees to 16 installations where UNAMA found compelling or credible evidence of torture and mistreatment, and ISAF has instigated an inspection and training regime in those affected facilities.

New Zealand Specific

- The New Zealand SAS has detained only one person during its current deployment (since 2009). That person is in a joint US/Afghan facility. The UNAMA Report only relates to Afghan Government facilities. We continue to monitor the treatment of the detainee.
- If raised: ceasing completely the transfer of Coalition detainees to Afghan authorities is not a practical option, but ISAF's response to the UNAMA report has been swift and wide-ranging in recognition of the importance of this issue.

Background

The UN Assistance Mission in Afghanistan (UNAMA) released a report yesterday (10 October) titled: "Treatment of Conflict-Related Detainees in Afghan Custody". The report is based on interviews conducted over the period October 2010 – August 2011 with 379 conflict-related detainees at 47 Afghan facilities. The report found that 166 (or 44%) of the 379 detainees interviewed by UNAMA were subjected to torture or other forms of mistreatment.

2 In response, ISAF has undertaken a series of measures including:

- suspending the transfer of detainees to all 16 facilities apparently named in the report where compelling or credible allegations of abuse have been reported;
- joint ISAF/Afghan inspections of named facilities and any facilities where ISAF receive credible reports of detainee abuse;
- re-training on Human Rights, interrogation and detainee treatment for staff at named facilities;
- support to Afghan officials responding to the report, and investigating the allegations contained within it;
- conduct of ISAF monitoring visits to all 16 facilities identified, that have ISAF transferred detainees and persons detained as a result of combined operations;

3 The New Zealand SAS in Kabul have only taken one detainee during their current deployment (since August 2009), which reflects their role of mentoring the Afghan Crisis Response Unit (CRU). The CRU does make arrests during partnered operations with the SAS, pursuant to an arrest warrant obtained under Afghan Law. The one person detained by the SAS is in a joint US/Afghan facility and is not affected by the report (which only looks at Afghan facilities). We are monitoring the detainee's treatment on a regular basis and so far he reports that he has been well treated.

PSR(IC)6

PSR(IC)6

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- Torture and abuse of detainees are illegal under both Afghan law and international human rights law. Such actions simply cannot be tolerated or justified, regardless of the provocation.
- The UN Special Representative of the Secretary-General for Afghanistan, Staffan di Mistura, has stated that the reported mistreatment is not institutional or Afghan Government policy. He also notes that the National Directorate of Security (NDS) and the Ministry of Interior (MOI) co-operated with UNAMA in providing access to NDS and MOI facilities.
- UNAMA has said that it expects the report to act as a catalyst for reforms in the judiciary, prosecution and law enforcement sectors, and that it will continue to monitor detainees and work with Afghan authorities to bring about change.
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PSR(IC)6