
From:MFA P/S (Inet)
Sent: Wednesday, 19 October 2011 10:18 a.m.
To: PSR(IC)3 (ISED)
Cc: PSR(IC)3 (PAC); PSR(IC)3 (MOS); PSR(IC)3(LGL); PSR(IC)3
PSR(IC)3 MLG
Subject: RE: scan version of reports- combined.

Thanks ISED- our reactions are almost identical. The UK moratorium point raises questions about CRU's use of the facility- as the difference between SAS detaining a persona and CRU detaining one during an operation we have mentored can in some respects be seen as splitting hairs but the time it gets into an article. I take the point we have no legal obligations but the obvious question from media point of view, is "why not?". Of the two, I think the 31 August report raises more questions than the 18 October report, mainly over the fact UK court decision- implies we either know there is a risk of torture or its reasonable to assume we know but the CRU we mentor still continues to use the facility.

Another point that occurred to me is the level of detail provided about the AT which we say we can't release but then expound in detail through references in both reports- might be worth asking KBL if he has any views on either report in terms of his relationships in KBL (if you haven't already done so).

PSR(R)1

I'll pull together your points to Mapp's office to find out how they propose to handle them.

thanks.

From: PSR(IC)3 (ISED) [mailto:PSR(IC)3 @mfat.govt.nz]
Sent: Wednesday, 19 October 2011 9:46 am
To: MFA P/S (MIN)
Cc: PSR(IE)3 (ISED); PSR(IE)3 (ISED); PSR(IE)3(LGL); PSR(IE)3
Subject: RE: scan version of reports- combined.

Hi MFA P/S

Thanks for these. Overall, we don't see any major issues over the release of the reports. In fact, they generally provide a helpful clarification of our position. There are a few points to note:

31 August Report

The first report is dated 31 August. Dr Mapp told Parliament in May that he would be releasing "the report" in the near future. The 31 August date may raise the question of whether this is the same report as the one he's been promising to release since May.

para 1: mentions "reports from... the SAS... legal advice and... reports of [Dr Mapp's] meetings... with ministers of other nations...". Once this report is made public, Defence should expect further requests for this information.

para 15ff: The fact that the UK has a moratorium on transfers to the NDS facility in Kabul, even though ISAF regards it as the facility of choice and other ISAF forces are still using it, (even though this is correct) is likely to cause some comment.

18 October Report

para 5: comments that "to the best of our knowledge no one arrested during CRU operations since the completion of the UNAMA Report has been taken to any of the prohibited facilities". This raises the question about NZ knowledge prior to the completion of the UNAMA Report. We (MFAT) are not aware that any arrested people have ever been transferred to prohibited facilities. If NZDF does know, it might have been easier to say so up front.

Recommendations: These continue to start from the basis that the SAS has only detained one person, who says he is being well treated. Dr Mapp's recent public comments could have been taken to give some equivalence to SAS detainees (whom we have obligations for) and people arrested by the CRU (whom we don't) and therefore imply that we have some obligation for Afghans arrested by the CRU during partnered operations. While the NZDF advice seems correct to us, any implied obligation for CRU detainees does leave open the question of what we should be doing in respect of those people, particularly when (as noted earlier in the report) we have no rights in respect of their treatment. Therefore the question could be asked: why would CDF be prepared to condone the transfer of CRU prisoners to NDS, when he states in the report he would not allow NZDF prisoners to be transferred to the NDS while credible evidence of mistreatment in NDS exists? Dr Mapp will need to be ready to deal with this.

There is no mention in the report of the constructive response from the Afghan government. NDS provided responses to ten specific concerns raised in the report and adopted a relatively proactive response by outlining what measures it had taken or would be taking in response to the allegations - it noted, for instance, that some staff has been dismissed at certain institutions and that a work plan had been prepared and was already being implemented to address the issues identified in the report. In any further public comment on the report it might be worth noting Afghanistan's positive response.

Reactions from ISAF partners

PSR(R)1

PSR(IE)3

From: ...MFA P/S (Inet)
Sent: Tuesday, 18 October 2011 6:06 p.m.
To: PSR(IC)3 (ISED); PSR(IC)3 (ISED); PSR(IC)3 (ISED)
Subject: scan version of reports- combined.

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UNAMA Detainee Report: Talking Points for NZ Ambassador in Kabul in meetings with Afghanistan representatives

MFAT and NZDF think it important to place on record early New Zealand's concern at the findings of the UNAMA Detainees Report and to seek additional assurances as to the ongoing treatment of detainees. The purpose of the calls therefore is to:

- express New Zealand's grave concern about the findings of the UNAMA report;
- seek renewed assurances that detainees who are taken during NZSAS/CRU partnered operations will not be mistreated; and
- seek assurances that detainees taken during past NZSAS/CRU partnered operations have not been mistreated.

Talking points

- The UNAMA Report on the Treatment of Conflict-Related Detainees in Afghan Custody causes the New Zealand Government grave concern.
- We welcome the Afghan government's cooperation with UNAMA in preparation of the report and its initial proactive and constructive response. We are encouraged by the corrective and preventative measures already put in place. We also welcome UNAMA's finding that detainee mistreatment is neither institutional nor government policy.
- The New Zealand Government has regularly raised this issue with the Government of Afghanistan, including when the New Zealand Minister of Defence visited Kabul last August. We have previously received assurances from the Afghan Government covering the treatment of any detainees transferred to Afghan authorities¹.
- It is disappointing that, despite these assurances, the UNAMA report has exposed significant ongoing torture and mistreatment of detainees in Afghan custody. As a result, I have been asked by my Government to reiterate New Zealand's position on the matter, and our expectation that the assurances we have received will be honoured.
- We seek assurances that prisoners taken by the Afghan authorities during NZSAS-partnered operations in the past have not been mistreated.
- I have also been asked to seek these same assurances for any future prisoners apprehended by Afghan authorities during partnered operations with NZ forces.

¹ Those assurances are that detainees transferred by New Zealand forces to Afghan authorities will be treated in accordance with applicable international humanitarian and human rights laws and the international obligations of both governments.