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20 October 2011

Minister of Defence

## **DETAINEE TREATMENT - AFGHANISTAN**

1. As you are aware, the United Nation Assistance Mission in Afghanistan (UNAMA) has released a comprehensive report on the treatment of conflict-related detainees in Afghan custody. We have been expecting this report for some time and the International Stabilisation Force in Afghanistan (ISAF) has already taken measures in anticipation of its contents. As the UNAMA Report impinges upon many of the matters covered in my report to you concerning Detainee Arrangements in Afghanistan, it is necessary to assess its content and recommendations in order to provide you with the greatest degree of surety relating to our operations in that country.

2. In summary, although the UNAMA Report concludes that torture and mistreatment in Afghan law-enforcement agencies is not institutionalised in all facilities, it demonstrates a significant incidence of such abuses.

3. The Report concludes that troop-contributing nations must continue to partner and train Afghan organisations in order to lift them up to internationally accepted standards of behaviour.

4. In this respect the UNAMA Report reinforces my previous advice to you that the New Zealand Government and the public can be assured that the NZDF is acting in full alignment with the intent of the United Nations and in accordance with international standards of human rights.

### **The UNAMA Report**

5. The UNAMA Report is well-researched and is accepted as credible by ISAF. It details torture and abuse in some facilities run by the National Directorate of Security (NDS), Afghan National Police (ANP) and Ministry of Justice. These findings are of considerable concern.

6. I note, however, that the Report states that torture does not appear to have been officially authorised in the NDS facilities UNAMA observed. In some facilities UNAMA observed, more investigation is required to determine whether torture is used systematically in the facility. The Report states:

UNAMA concludes on the basis of the findings of this observation programme that the use of torture is not a *de facto* institutional policy directed or ordered by

the highest levels of NDS leadership or the Government. This together with the fact that NDS cooperated with UNAMA's detention observation programme suggests that reform is both possible and desired by elements within the NDS.<sup>1</sup>

7. As previously advised, during partnered operations with the Crisis Response Unit (CRU) individuals may be arrested under warrant by Afghan authorities and subsequently prosecuted in accordance with Afghan Law. The NDS is one such prosecuting authority.

### **NZDF reaction to the Report**

8. Since becoming aware of the likely content of the UNAMA Report in early September NZDF forces in Kabul have ensured that they know where persons who are arrested during CRU operations are taken after arrest. CRU take the people they have detained to the holding cells at the Ministry of Interior where they are held until they are either released or their case comes up before a judge. To the best of our knowledge no one who has been arrested during CRU operations since the completion of the UNAMA Report has been taken to any of the prohibited facilities. Other facilities such as NDS 17 (now called NDS 40) in Kabul have not been prohibited by ISAF, but remain subject to further examination. We will continue to monitor this examination carefully.

### **The ISAF response**

9. We have been working closely with ISAF as it has developed initiatives to implement appropriate programs to improve detention operations and establish safeguards to prevent future mistreatment. ISAF have announced a six-phase plan in response to the UNAMA report which includes:

- facility inspection,
- remediation training in human rights and detainee treatment,
- formal certification of facilities by the Commander ISAF,
- provision of support to accountability actions being taken by the Afghan Government,
- monitoring detainees in the long-term, and
- facilitating transparency and communication among ISAF and Afghan Government detention operations.

10. Given the size and nature of the force deployed, it is not within the NZDF's capability to unilaterally assume a comprehensive monitoring role. Our activities fit within a larger scheme of ISAF involvement. Other elements of ISAF and civil society are responsible for partnering and mentoring the other parts of the Afghan legal system and we are confident that they have the willingness and capability to effect the recommendations of the UNAMA Report in that regard. Within our resource constraints we will ensure that we continue to play an active part in ISAF measures to extend its overview of detention activities by Afghan forces. Our legal adviser in ISAF Headquarters is involved in the further development of the ISAF plan

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<sup>1</sup> UNAMA Report p11.

and we are taking a proactive approach from within ISAF HQ to respond to this report.

### **Detention by NZDF**

11. The lessons of the UNAMA Report apply equally to persons actually captured by ISAF Forces and those arrested by Afghan authorities. The one person who was detained by the NZDF and who has been transferred to a joint US / Afghan facility is still being routinely monitored and has not been transferred to any of the facilities named in the report.

### **Recommendations to troop contributing nations**

12. I have given careful consideration to the recommendations made by UNAMA to troop contributing nations and concerned states. All four clearly anticipate that interaction with Afghan authorities will continue. None of them suggest in any way that members of ISAF should stop cooperating with or partnering Afghan forces or institutions or that by partnering with Afghan authorities, ISAF forces are in any way complicit in the incidents of abuse.

13. Three of the four recommendations encourage States to increase their level of training and mentoring of Afghan forces and institutions in order to combat such abuse.

14. I address each of the recommendations as follows:

- **Suspend transfer of detainees to those NDS and ANP units and facilities where credible allegations or reports of torture and ill-treatment have been made pending a full assessment.**

15. NZDF Orders for Detainee Handling require that no person detained by the NZDF in Afghanistan is to be handed over to any other authority without specific permission from me. I will not allow the transfer of any person to a facility that is listed in the UNAMA Report, or in respect of which credible allegations or reports of torture and ill-treatment exist. Having reviewed our procedures in this regard I consider this to be the best safeguard possible. A list of the named facilities will be sent to the NZDF force elements in Afghanistan (NZSAS and NZ Provincial Reconstruction Team) to ensure that no transfers to the listed facilities are made.

- **Review monitoring practices at each NDS facility where detainees are transferred and revise as necessary to ensure no detainees are transferred to a risk of torture.**

16. There is no person who has been captured or detained by the NZDF who is in the custody of the NDS. I will not allow any such transfer from the NZDF to the NDS to occur while credible evidence of mistreatment in NDS facilities exists. Monitoring practices in respect of any other facility which may, in the future, need to be used will be under constant review. Monitoring currently takes place in respect of the detainee held in the Joint US / Afghan facility.

- **Review policies on transferring detainees to ANP and NDS custody to ensure adequate safeguards and use participation in joint operations, funding arrangements, the transition process, intelligence liaison relationships and other means to stop the use of torture and promote reforms by NDS and ANP.**

17. NZDF policies on transferring detainees have been reviewed and are considered to be robust and appropriate to deal with the concerns raised by the UNAMA Report. NZDF uses its partnering position with the CRU of the ANP to train members of that unit to conduct arrest and detention in a humane, professional and lawful way. There is no allegation that members of the CRU have ever mistreated a person arrested or detained by them.

- **Build the capacity of NDS and ANP facilities and personnel including through mentoring and training on the legal and human rights of detainees and detention practices in line with international human rights standards.**

18. NZDF does not mentor or train members of the NDS. NZDF does however, train the CRU in the professional and humane conduct of their duties. NZDF is also providing support to Rule of Law initiatives in Afghanistan.<sup>2</sup> In the light of the UNAMA Report we are examining further opportunities to develop training in this regard.

- **Increase efforts to support training to all NDS and ANP interrogators and their supervisors in lawful and effective interrogation methods, and alternative investigative approaches (such as forensics).**

19. NZDF does not currently train or mentor NDS or ANP interrogators or supervisors. Due to the small size of the NZDF force, we concentrate on training and mentoring the CRU.

## Conclusion

20. In summary, although the incidents referred to in the UNAMA report are a cause for concern, the ultimate conclusion of the report is consistent with my previous advice to you. The UNAMA Report clearly endorses the view that involvement in mentoring and training Afghan Authorities in the professional and humane conduct of their duties is viewed by the United Nations as a vital step in reducing mistreatment. I am confident that our activities in Afghanistan play an important part in this process.



**R.R. JONES**  
Lieutenant General  
Chief of Defence Force

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<sup>2</sup> An NZDF legal adviser is currently posted to the Kharmard District and is working with the GIRoA officials to increase competence and respect for rule of law.