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**INQUIRY OFFICER'S REPORT INTO THE DETENTION OF
LOCAL NATIONALS ON 29-30 APRIL 2008 IN ORUZGAN PROVINCE,
AFGHANISTAN**

References

- A. C1296066, Chief of Joint Operations Instrument of Appointment dated 16 May 2008
- B. Chief of Joint Operations Terms of Reference dated 16 May 2006
- C. Detainee Management Policy for Operation Slipper (Afghanistan) dated 5 October 2007
- D. LWP-G 0-1-7 Internment and Detention (Developing Doctrine) dated 1 June 2007
- E. Task Force 66, Detainee Management dated 8 March 2008
- F. JTF633 SI (OPS) 05-06 OP SLIPPER – Questioning, Search and Detention dated 24 September 2007
- G. Headquarters International Security Assistance Force, SOP 362: Detention of Non-ISAF Personnel dated 24 July 2007

Appointment

1. I, Colonel David Keith Connery, having been duly appointed by Lieutenant General David John Hurley, AO, DSC, Chief of Joint Operations at Reference A, to inquire into the circumstances surrounding the detention of local nationals on 29-30 April 2008 in Oruzgan Province, Afghanistan in accordance with the terms of reference (Reference B, attached as Annex A), herein submit my report.

Inquiry Team

- 2. The Inquiry Team consisted of myself and the following Inquiry Assistants:
 - a. Colonel Gary Bruce Hevey, RFD;
 - b. Lieutenant Colonel David Harold Gower Freeman;
 - c. Captain John David Cunningham; and
 - d. Chief Petty Officer Ian Kenneth McIntyre.

Introduction

3. On 29 April 2008, _____ of Special Operations Task Group (SOTG _____) detained four Afghan nationals after a clearance operation in the vicinity of _____ in Oruzgan Province (also Uruzgun), Afghanistan.

4. An incident is alleged to have occurred on 30 April 2008 when soldier _____ from the Afghan National Army (ANA) garrisoning Forward Operating Base (FOB) _____ made complaints about the mistreatment of some detainees. These allegations were eventually relayed to the Chief of the General Staff ANA and Commander _____ ANA, who requested investigations into the allegations.

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Methodology and Approach

5. I have relied heavily upon evidence gained by the Australian Defence Force Investigative Service (ADFIS) during their investigation of this incident, particularly their interviews with key witnesses. Their thoroughness gives me significant confidence in my ability to make conclusions about the allegation of mistreatment.

6. I consulted the Quick Assessment and Noting Brief by Legal Officer SOTG (Annex B).

7. Colonel Hevey and Chief Petty Officer McIntyre conducted interviews in Tarin Kowt between 27 May–1 June 2008. I have not interviewed the former detainees due to the security situation and their possible status of Taliban. Colonel Hevey also visited FOB on 12 May 2008 with the ADFIS team.

Synopsis of the Incident

8. OP was conducted between 20 April – 9 May 2008. The operation aimed

to enhance the Reconstruction Task Force (RTF) and Coalition freedom of action in Oruzgan Province. The operational concept was approved by Commander JTF 633 and HQ ISAF on 16 April 2008.

9. On 29 April, FE was operating in Oruzgan Province, Afghanistan. At approx 1630hrs FE were tasked to clear a compound of interest (COI), which suspected as being the location of a Taliban individual. As part of the tactical operation to clear the compound, FE elements were engaged by small arms fire. A short and intense gun battle ensued, during which a number of Taliban were killed. Four detainees were taken as the compound and the immediate area were secured. FE and the detainees moved to FOB at around 2000hrs that day. All four detainees were held in walled pens during the night and guarded by FE soldiers.

10. At approximately 0500hrs on 30 April, soldier from the Afghan National Army (ANA) unit occupying FOB became agitated at what they perceived as disrespectful or harsh treatment being given to the detainees. This concern led to allegations by ANA soldier of FE soldiers treating the detainees in humiliating and violent ways. These allegations were raised during a meeting between the Australian, Afghan and Dutch commanders present in FOB around mid-morning of 30 April. This meeting led to some positive steps to diffuse the tension.

11. However, the residual concern of some Afghan soldier led them to complain to Commander ANA on 1 May 2008. This complaint ultimately reached the ANA Chief of the General Staff, General Bismallah Khan, who relayed his concerns to Commander International Security Assistance Force (ISAF). This letter asked Commander ISAF to investigate the allegations, and for the results to be conveyed to his staff.

12. In parallel, Commander ANA raised the mistreatment allegation with Deputy Commander RC (S) [RC (S)]. This led RC (S) to appoint a fact-finding

team to investigate the allegations. At the same time the Australian Chief of the Defence Force tasked ADFIS to conduct an investigation into the allegations on 4 May 2008. CJOPS established this inquiry on 16 May 2008.

Allegations

13. The allegations concerning FE treatment of the four local nationals (LN) under detention have been stated differently in various reports, including in the terms of reference (Reference B).

Given this variation, the allegations will be re-stated for this inquiry as:

- a. **Initial allegations.** Private ANA located at FOB alleged that Australian soldiers pushed or bashed the detainee Mr. against a Hesco Wall two or three times (the actual allegation was translated as: 'get from his neck and grab him in the wall backward'). Further, he said the Australian soldiers hit Mr. with a stick and then pulled his trousers off him (the actual allegation was translated as: 'the trouser he's pull it and it's disconnected the belt'). Private also claims to have seen blood on Mr. wrists and blood on the eyebrow of another detainee, Mr. (Annex E). Lieutenant of the Netherlands, the Team Leader OMLT at FOB, also said that ANA soldiers complained to him about the way detainees were handled because it was considered 'too rough' by the Afghan soldiers (Annex D). 2nd Lieutenant, ANA (Annex G, A23) said he saw dried blood on one of the detainees' hand and eyebrow, but he could not say which one.
- b. **Additional allegations.** Colonel, British Army, was appointed by RC (S) to conduct a 'fact finding' investigation into the allegations. He reported that another detainee was alleged to have a heavily bruised face after being detained by FE at FOB (Annex H).
- c. **Further allegations.** Commander ANA alleged that all four detainees were beaten up (Annex I). Brigadier General, Commander ANA, alleged that 'The four detainees were taken to camp in Tarin Kowt where the detainees were stripped naked, beaten and mistreated' (Annex J). General also alleged that Australian soldiers 'heavily beat 4 local civilians' (Annex K). Given the inconsistencies in place names and times, but not dates, I assume that all three senior ANA officers are making allegations about the four LN detained by FE on 29 April.

Forces Involved

14. The forces involved in this incident and their roles were:

- a. This unit was conducting OPERATION , and was responsible for detaining the four LN on 29 April 2008.
- b. **ANA attached to FE** . Two ANA soldiers were attached to FE . Their role was to and provide for operations (Annex D).
- c. , **Afghan National Army (ANA)**. A soldier from this company made allegations and a complaint about the way FE handled the LN detainees to his officer commanding. These allegations were repeated to Australian and Dutch commanders on 30 April 2008 at FOB , and to the Commander, ANA around 1 May 2008.
- d. **Netherlands Operational Mentoring and Liaison Team (OMLT), FOB , Task Force Uruzgun**. The commander of the Netherlands OMLT was approached by the ANA officer commanding at FOB with the mistreatment complaint on 30 April 08.
- e. **SOTG** . SOTG provided soldiers for the Detainee Extraction Team (DET), and the Detainee Manager (TF Legal Officer).
- f. . The detainees and DET were moved from FOB to Camp on a helicopter from
- g. **Netherlands Detention Facility**. The detainees were handed over to the Netherlands Detention Facility at , Tarin Kowt, around 2200–2300hrs on 30 April. An Australian medic assisted with the initial medical examinations.

Involvement by Civil and Service Authorities

15. ADFIS conducted an investigation into this incident. While their report is not available yet, ADFIS provided me with statements relating to the incident.
16. RC (S) conducted a 'fact finding' investigation about this incident. This investigation was authored by Colonel and submitted to Deputy Commander RC (S) on 8 May 2008 (see Annex H).
17. The allegations attracted media attention, and the Foreign Minister, Mr. Smith, stated his concern and told the media on 10 May 2008 (including *The Australian*, *The Sydney Morning Herald* and *Hobart Mercury*) that he wanted to be kept informed of the investigation. No other civil authorities were involved in this incident.

Facts About the Detainees

18. The four LN detained by FE on 29 April 2008 were suspected of being Taliban fighters, and all were taken from a compound that had been used to engage FE in Oruzgan Province, Afghanistan. They all spent the night 29–30 April in FOB , but one was released early on 30 April. The principal sources of information about these detainees are the relevant AD 615 (ADF Record of Search, Detention, Release and/or Transfer), the OC 60 Notebook raised for each 'person under confinement (PUC)', and statements by medical practitioners and assistants. This section provides facts about each detainee, and about the allegations of mistreatment that involved each individual.

19. Mr Mr (also spelt), is a 70-year old LN from , Afghanistan.
- a. Mr. was wearing a traditional Afghan long shirt, but no under-trousers, at the time of his apprehension by FE . He was given under-trousers by the Dutch OMLT commander mid-morning on 30 April.
 - b. Mr. was examined by a medic on 30 April at 0130hrs. No visible injuries were recorded in the OC 60 after this inspection (Annex L).
 - c. He was tactically questioned by a qualified FE member on the morning of 30 April (this was not noted in Annex L). He was blindfolded and cuffed, in accordance with Reference C, while being moved from his holding pen to a tower where the questioning was conducted. SGT stated that Mr. was assisted up the tower's stairs by two FE personnel. One of these soldiers was holding Mr. head to prevent injury and another providing support and guidance by pushing him in the back, with no force being applied (Annex M, A10-43).
 - d. At 1715hrs on 30 April Mr. complained of a sore left shoulder. Annex L notes that this complaint was inspected, but no injury was found (see sub-paragraph f, below).
 - e. Annex L noted that Mr. agreed that he had been treated humanely by ISAF forces up until the point of his handover to the Dutch detention staff at 2220hrs.
 - f. The medical examination by Captain conducted upon transfer to the Dutch (at 2250hrs) showed Mr. had abrasions on the right knee and directly above the buttocks; a scar on his left shoulder; a bruise near his right elbow; and some small dots/bruises above the left breast area (Annex L, Part F). Injuries to his wrists and head were not recorded. However, Captain identified some slight marks on Mr. wrist from photographs that were consistent with being cuffed (Annex N, A86–87). These photographs also showed some fresh bruising to right shoulder (Annex N, A 90–94), but this was not detected during the medical examination (Annex N, A101–107). None of the

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other injuries were fresh (Annex N, A62). This examination was witnessed by Corporal (Annex O, A 19-31).

g. Mr. was photographed by the Dutch Detention Centre commander, Sergeant-Major , who also did not recall seeing any injuries (Annex P, A96).

h. **Assessment against the allegations.**

- i. The medical assessment conducted at by Captain and witnessed by Corporal did not record marks that would indicate that Mr. had fresh injuries from being beaten, bashed against a Hesco wall, or from being hit a number of times with a stick. He did not have cuts on, or fresh bleeding from, his wrists. This assessment was supported by the Detention Centre Commander's observations.
- ii. Statements by the ANA soldiers with FE (Annex Q, A34 and A36), and the statements by the Dutch OMLT Lieutenant (Annex F, A 137), Sergeant (Annex M, A61-2), Sergeant (Annex R, A20-2) and Sergeant (Annex S, A31)—do not support the allegation of mistreatment by PTE . Sergeant ANA, who guarded the detained LN from mid-morning, did not see any detainees being mistreated (Annex T, A53).
- iii. Mr. was detained without under-trousers, but this was not an attempt by anyone in FE to humiliate him. The situation was corrected once the problem was identified to the Dutch commander.
- iv. The assistance given to the cuffed and blindfolded Mr. while FE soldiers were moving him to tactical questioning may have been construed as rough by some, but not by others. There are no physical signs to suggest that he was injured during his movement. The description provided in the statement by SGT is consistent with common practices for moving blindfolded and cuffed detainees. I consider that assistance reasonable.

20. Mr. . Mr. is a 25-year old LN from . His left leg was amputated below the knee about six-to-seven years before the incident, and he had a walking stick.

- a. Mr was examined by a medic on 30 April at 0130hrs. No visible injuries were recorded in the OC 60 at this time (Annex U). He was examined again by a medic at 1700hrs on 30 April. He complained of a slight pain in his stump.

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- b. Annex U noted that, at 2110hrs, Mr. [redacted] agreed that he been treated humanely by ISAF forces up to that point.
- c. Mr. [redacted] was handed over to the Dutch detention staff at 2110hrs on 30 April (Annex U). The subsequent medical examination showed small bruises on the left and right elbows, a small bruise on his right shoulder blade, an abrasion on his nose, and scars near the place of amputation on his left leg (Annex U, Part F).
- d. **Assessment against the allegations.** The medical examination of Mr. [redacted] did not show injuries indicative of being beaten on 29–30 April. He had an abrasion on his nose, and this may have bled at some time on 30 April. The cause of the abrasion is not clear. The bruises to his elbows and right shoulder may have been sustained during his handling on 29–30 April. However, none of the bruises or cuts on Mr. [redacted] were described as major in the medical reports.
21. Mr. [redacted] is a 29-year old LN from [redacted].
- a. Mr. [redacted] was examined by a medic on 30 April at 0130hrs. No visible injuries were recorded in the OC 60 at this time (Annex V).
- b. Annex V noted that, at 2230hrs on 30 April, he agreed that he been treated humanely by ISAF forces up to that point.
- c. Mr. [redacted] was handed over to the Dutch detention staff at 2250hrs. The medical examination by Lieutenant Colonel [redacted] showed only small scars (not fresh abrasions or cuts) on his eyebrow, nose and right buttock (Annex V, Part F). He had some 'blue spots', but not cuts that may have bled, on his wrist (Annex W, A32).
- d. **Assessment against the allegations.** The medical examination did not show any markings or injuries that suggest Mr. [redacted] had been physically abused (Annex W, A 37). While he had scars on his eyebrows and nose, Lieutenant Colonel [redacted], who cites formal training in establishing the age of wounds, thinks the scars on Mr. [redacted] eyebrow and nose were older than one or two days and would not have bled recently (Annex W, A 23–30).
22. Mr. [redacted]. All details about Mr. [redacted] detention were lost when his PUC Notebook was inadvertently destroyed. Statements reveal that he was released in the field from FOB [redacted] at about 0630hrs on 30 April after tactical questioning because had no intelligence value. Evidence concerning his physical condition was not retained. No specific allegations were made about his treatment, except by the senior Afghan officers.

Conclusions about the Detainee Mistreatment Allegations

23. The facts available to me lead to conclude that there is no physical evidence to support the initial allegations made by Private [redacted].

24. It is possible that one of the detainees had a cut above the eye and had some blood on his nose as 2nd Lieutenant [redacted] alleges, but who that detainee was and how the injury was sustained cannot be established from the evidence available. Given the detail of the medical examinations, it is unlikely these injuries were major or caused by anything other than appropriate handling while being detained during a combat operation.

25. Since none of the detainees' with medical records mentioned bruised faces, the additional allegation relayed to Colonel [redacted] cannot be substantiated. Further, based on the evidence available to me, I do not believe any of the detainees were beaten up, stripped naked or mistreated by FE [redacted] on 29-30 April 2008.

26. It is clear that Mr. [redacted] was detained without under-trousers. However, I accept that the Officer Commanding FE [redacted] and his soldiers did not understand the cultural significance of this for Afghans. Lieutenant [redacted] response to obtain under-trousers for Mr. [redacted] is a good example of clear and fast thinking.

27. The LN, especially Mr. [redacted], were manhandled during their detention and during tactical questioning. However, the statement by Sergeant [redacted] and the lack of significant physical signs on any detainees lead me to conclude that the effort applied to each detainee during handling was reasonable and humane.

Damage to Service or Civilian Property

28. No service or civilian property was damaged during this incident.

Witnesses

29. I have obtained statements, or used statements obtained by ADFIS, for the following people:

30. These statements are included as annexes. There is significant variation between the statements, particularly between what Private alleges and what others saw. I am satisfied that the procedures in place, especially those for the transfer of detainees from Australian to Dutch hands, make collusion between these parties unlikely.

Environmental Conditions

31. FE returned to FOB during darkness, which prevented the Dutch OMLT or ANA garrison from observing the full composition of FE and the detainees. Most of the concern was raised after first light, at approximately 0500hrs, and the beatings alleged by PTE occurred in full daylight at around 0900hrs.

32. Other environmental conditions made little contribution to this incident.

Authority to Conduct the Operation and Detain

33. The incident occurred during OPERATION . The operational concept was approved by Commander JTF 633 and HQ ISAF on 16 April 2008. The specific operation that lead to the detainees being taken was approved by both Commander JTF 633 and the Commander Special Operations for ISAF , prior to the actual operation (Annex C).

34. The authority to take detainees, and specific guidance for capturing, processing and holding detainees, is derived from Reference C.

Contributing Factors

35. Since there is no credible evidence to support the allegations of mistreatment, the factors considered below will focus on why the allegations were made.

36. **Initial entry to FOB** . Major said that he did not inform Lieutenant about the presence of the detainees when FE arrived at FOB . As a result, no special provisions were made to prevent the ANA soldiers from seeing the detainees.

37. **Movement for tactical questioning.** Moving the detainees from their holding pens to the questioning area included moving the blindfolded and cuffed detainees up stairs. This difficult manoeuvre required close attention from the FE soldiers and was observed by ANA soldiers.

38. **Cultural differences.** A strong cultural sense of 'appropriateness' underpins the initial allegations, as some ANA soldiers at FOB objected to 'infidels'

handling Muslims and did not believe that an old man and a cripple could be Taliban. They also considered the older, trouser-less man as being 'naked' despite his long (approximately calf-length, with side-splits) shirt. This offended the ANA soldiers, leading them to believe the Australian soldiers had no respect for the modesty or dignity of Mr. . The accommodation used for the prisoners at FOB , which had previously been used for dogs, may have also increased their anger.

39. **Taliban involvement.** There is no evidence to suggest that the Taliban (or any other hostile party) played any role in these allegations.

40. **Drugs and alcohol.** There is no evidence to suggest that drugs or alcohol were factors in this incident.

41. **Other factors.** No other factors contributed to this incident.

Duty Status and Authorisation

42. All FE members involved in this incident were on duty as part of SOTG . FE was conducting an operation appropriately authorised by COMD JTF633.

Performance of Duty

43. All members of FE and others associated with this incident performed their duty in accordance with extant guidelines.

System and Method of Control

44. The robust procedures for detainee handling contained in Coalition and Australian instructions have proved a significant strength during this incident. The transfer of responsibility for detainees is another strength, as successive custodians have no incentive to collude with those who handled (or may have mishandled) detainees. SOTG has also reviewed their standing operating procedures (Reference E) after this incident to ensure they captured lessons from the incident.

45. However, some minor weaknesses were observed in the tools for detainee management, standing operating procedures and aspects of doctrine. These were:

- a. Both the AD 615 form and the blank OC 60 notebook do not appear user-friendly tools that help soldiers keep accurate records about detainees. A more substantial process of validation with users should be used to determine if my concerns about these tools are valid.
- b. Reference E does not mention the OC 60. This document (or another purpose designed booklet) is a useful adjunct to the AD 615 and merits adoption as a force SOP.
- c. Reference E, paragraph 20 states that all detainees captured by SOTG will be processed at Camp . This step may not accord with the intent of References D and F, which require ADF units to hand detainees to the Dutch 'as soon as practicable' after detention. However, I understand CO SOTG's desire to ensure smooth detainee transfers. Should COMD JTF 633 agree with CO SOTG, I recommend

including this processing stage in Reference F and notifying Commander ISAF of this facility in accordance with Reference G, Annex F, paragraph 1.

46. These points have been drawn from a single case, and may not hold true for the entire system or be supported by operators. A broader review of detainee management practices would therefore be worthwhile to ensure that current doctrine, instructions and operations continue to reflect best practice.

47. The 'fact finding mission' conducted by RC (S) runs counter to the intent of Reference G, Annex E. I have not made any inquiries into why this investigation was launched, as this aspect is best handled by Commander JTF 633.

Conclusion

48. I have not found credible evidence to support any of the allegations concerning the abuse of LN detainees on 29–30 April 2008. Indeed, the physical examinations conducted by Dutch personnel show that neither had injuries indicative of beatings or mistreatment. While there were some marks on their wrists and minor bruising on each that cannot be explained, none were severe enough to attract the attention or suspicion of the Dutch detention and medical personnel involved in the handover. These injuries were likely superficial and caused by the normal practices involved in detainee handling. In total, I am confident that FE followed the policy and instructions at References C and F during this incident (noting the point raised at paragraph 45 c above).

49. I am unable to find anything to describe the treatment of the fourth detainee, Mr , because his OC 60 was inadvertently destroyed and he was released in the field. However, given the lack of substance for the other allegations I have no reason to suspect that he was mistreated by FE either.

50. I am unable to explain the cuts described by 2nd Lieutenant , but doubt these were major injuries caused by mistreatment.

51. Although he was wearing a long Afghan shirt, Mr. was detained without under-trousers and this is culturally insensitive. However, even if the FE soldiers realised the sensitivity, Mr was detained in a contact situation and getting under-trousers was probably impractical. That he was given under-trousers as soon as a problem was realised went some of the way to correcting the situation. While Mr. would probably be due an apology for this oversight under other circumstances, one would be impractical in this case.

52. The initial allegations were made because a young ANA soldier saw an old man and a cripple being detained by FE . Together with the absence of

Annexes:

- A. Chief of Joint Operations Instrument of Appointment and Terms of Reference dated 16 May 2008
- B. Noting Brief and Quick Assessment by _____ dated 6 May 2008
- C. Statement by _____
- D. Statement by _____
- E. Statement by _____
- F. Statement by _____
- G. Statement by _____
- H. Report by _____
- I. Letter from Commander _____, ANA to HQ _____ ANA dated 4 May 2008
- J. NB _____, Allegations of Torture and Mistreatment of Detainees by Australian Soldiers in Tarin Kowt dated 3 May 2008
- K. Letter from _____ to ISAF HQ dated 6 May 2008
- L. AD 615 and OC 60 – Mr. _____
- M. Statement by _____
- N. Statement by _____
- O. Statement by _____
- P. Statement by _____
- Q. Statement by _____ and _____
- R. Statement by _____
- S. Statement by _____
- T. Statement by _____
- U. AD 615 and OC 60 – Mr. _____
- V. AD 615 and OC 60 – Mr. _____
- W. Statement by LTCOL _____
- X. Email Colonel Connery to Lieutenant General Hurley, 29 May 2008
- Y. Emails Colonel Connery and Air Vice Marshal Evans, 2 June 2008