



Peace Movement Aotearoa

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NZ SAS: complicity in torture and civilian casualties

Yesterday Cabinet decided to deploy the SAS in Afghanistan again. A decision rather at odds with Prime Minister John Key's statement only last week that: "there's no place for violence in the New Zealand Parliament, of even the suggestion of violence and I think if that was the case Parliament should take a very hard line," he said. "We're the lawmakers and frankly we're meant to be role models to, particularly young, New Zealanders."¹

Not only is there more than a suggestion of violence in any SAS deployment, but it is hardly good role modeling for "the lawmakers" to breach the government's Defence Policy Framework, and to put armed forces personnel in a situation where they are likely to be complicit in torture (which is prohibited in NZ law) and implicated in killing civilians (which is apparently permitted, providing it takes place overseas).

This alert has five sections: 1) about the SAS deployment, 2) the Defence Policy Framework and human rights; 3) complicity in torture and the Crimes of Torture Act; 4) civilian casualties in Afghanistan, and 5) contact details for politicians.

1) About the SAS deployment

According to John Key's announcement yesterday, 70 SAS personnel will be deployed in Afghanistan for up to 18 months, in three rotations. He did not say whether or not the US air force will send planes to pick them up as they did in 2005.²

With regard to what they will be doing when they get there, he said: "In keeping with long-standing practice, I will be making no comment on the operational aspects of the SAS deployment."³

However, an educated guess can be made on their likely activities based on earlier Minister of Defence media releases on the SAS deployments in Afghanistan - they will be operating with special forces from other nations, planning and executing long-range reconnaissance and direct action combat missions inside Afghanistan.⁴

SAS troops previously deployed to Afghanistan have been integrated with other special forces in the Combined Joint Special Operations Task Force under US military command. Along with US Special Forces, "six foreign nations including New Zealand and Australia, also assigned some of their best "hunters and killers" to the group" which is headquartered near Bagram air base."⁵

2) The Defence Policy Framework and human rights

The government's Defence Policy Framework states:

"18. New Zealand will not engage in military co-operation or exercises with the armed forces of states which sanction the use of their armed forces to suppress human rights. This does not preclude New Zealand involvement in UN peace support or other appropriate multinational peace support operations where the armed forces of such countries are also involved."⁶

As outlined above, when SAS personnel have been deployed to Afghanistan previously, they have operated with other special forces under US command and this clearly cannot be described as mere "involvement" with "multinational peace support operations where the armed forces of such countries are also involved".

It is beyond dispute that US armed forces have been involved in a range of human rights violations in Afghanistan. According to Human Rights Watch, for example:

"International security forces, in particular US forces, have focused much of their efforts on killing or capturing al Qaeda and Taliban leaders, rather than providing a safer environment for Afghans to enjoy their basic rights.

"The US military operates in Afghanistan without an adequate legal framework, such as a status-of-forces agreement, and continues to detain hundreds of Afghans without adequate legal process. The expanding US-run Bagram detention facility holds over 600 prisoners, including children, who are given negligible legal rights. Unlike at Guantanamo, prisoners at Bagram are not allowed to see lawyers. Administrative review of detainees' cases is cursory. The detainees have no right to a personal advocate, no opportunity to review the evidence against them, and very little means of contesting the grounds for their detention."⁷

Conditions for persons detained at the Bagram air base have been described as "far worse than at Guantanamo".⁸ The BBC recently interviewed individuals held at Bagram between 2002 and 2008 (none of whom were charged with any offence nor put on trial), and reported: "Many allegations of ill-treatment appear repeatedly in the interviews: physical abuse, the use of stress positions, excessive heat or cold, unbearably loud noise, being forced to remove clothes in front of female soldiers. In four cases detainees were threatened with death at gunpoint."⁹ An expanded detention centre is currently being built at the base.

The SAS deployment is an obvious breach of the Defence Policy Framework.

3) Complicity in torture and the Crimes of Torture Act

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (which NZ signed in 1986 and ratified in 1989) makes it very clear that there are absolutely no circumstances under which torture can be justified, even in a state of war or a threat of war, internal political instability or any other public emergency.¹⁰

Furthermore, it is a criminal offence under the Crimes of Torture Act 1989, which brought the Convention into NZ law, for any public official (which includes armed forces personnel) to aid, abet or conspire with any person to commit an act of torture¹¹.

Yet that is apparently what SAS soldiers on previous deployments have done, according to an article recently published in the Sunday Star Times which stated:

"International legal experts say New Zealand broke the Geneva Convention and laws against torture when, from 2002, our elite SAS troops transferred 50-70 prisoners to the Americans at the Kandahar detention centre in southern Afghanistan.

"The centre was known by US soldiers as "Camp Slappy", and prisoners there have described being severely beaten and tortured, drenched with water and left to freeze outside in winter."¹²

The article quotes a Danish special forces operative as saying: ""We knew the prisoners were not being treated the way they should be treated. We also knew that there were innocent people among them." These two facts also caused concern to the New Zealanders, who were worried their prisoners were being mistreated by the Americans."¹³

Commenting on the Danish government's response to the evidence of severe abuse and torture being perpetrated on prisoners that Danish special forces had delivered into American custody at Kandahar: "Copenhagen University law professor Jens Elo Rytter said the Danish government made a political decision to trust the US to treat transferred prisoners well, despite evidence of mistreatment. It appeared New Zealand had followed a similar path, and "certainly, to my mind, that's a breach of the Third Geneva Convention as well as the Convention on Torture".¹⁴

The article also reported that: "The chief of the defence force, Lieutenant-General Jerry Mateparae, told the Star-Times that the rules about the handing over of prisoners had been tightened since the SAS first went to Afghanistan".¹⁵

While the rules may have been tightened, there is still no guarantee that NZ soldiers handing prisoners over to US authorities can be assured they will be decently treated as there is no evidence to suggest that US torture and inhumane treatment of prisoners has ceased.

Perhaps in response to this, John Key said yesterday that the SAS would be most likely to hand any detainees over to Afghan authorities, and: "Like New Zealand, Afghanistan is a party to the Geneva Convention," he said. "New Zealand has already received an assurance from the Afghan government that all transferred detainees will be treated humanely according to these conventions and international law."¹⁶

This is absolutely absurd, as there is similarly no guarantee of freedom from torture for prisoners handed over to Afghan authorities, indeed it is extremely likely that the opposite will be the case. The Afghanistan Independent Human Rights Commission (AIHRC) has reported that fewer than 20 per cent of Afghan law-enforcement officials are aware it is illegal to torture someone accused of a crime, and that "torture and cruel, inhumane and belittling behaviour" is widespread among that country's law-enforcement agencies."¹⁷

Furthermore, Amnesty International's 2009 Report on Afghanistan states: "NATO and US forces continued to hand over detainees to the NDS, Afghanistan's intelligence service, which perpetrates human rights violations including torture and arbitrary detention with impunity."¹⁸

So what exactly are SAS soldiers going to do with any prisoners to avoid violating the Convention against Torture and committing criminal offences under the Crimes of Torture Act? Bland assurances from John Key, in the face of evidence to the contrary, are not sufficient either for the SAS, nor for NZ to fulfill its legally binding obligations as a state party to the Convention.

4) Civilian casualties in Afghanistan

The combat operations of previous SAS deployments have included "short-duration strikes and other small-scale offensive operations to seize, destroy, capture, recover or inflict damage on designated personnel or material"; and guiding "precision weaponry", that is, marking targets for bombing runs and missile strikes.¹⁹

The latter remain the largest cause of civilian deaths and injuries by pro-government forces (PGF), as indicated by the UN Assistance Mission in Afghanistan's (UNAMA) recent report on civilian casualties in the first half of this year:

"Operations carried out by the Government of Afghanistan and its allies "have resulted in a rising toll in terms of civilian deaths and injuries and destruction of infrastructure, including homes and assets, which are essential for survival and the maintenance of livelihoods," stated the report. UNAMA noted that international military forces have tried to minimize the number of civilian casualties resulting from their operations. Nevertheless, "airstrikes remain the largest cause of civilian deaths attributed to PGF during the first six months of 2009," with 40 incidents of airstrikes since the beginning of 2009 in which 200 civilians reportedly lost their lives."²⁰

A Human Rights Watch release in response to the bombing of Garani village in May, when at least 100 civilians were killed, pointed out: "The US, working with its Afghan counterparts, should have known that there was a large civilian population in the village at the time of the airstrikes," said Adams. "The US needs to answer some basic questions about the sources and quality of information it requires before authorizing these kinds of devastating bombing runs."²¹

Whatever benefit the government anticipates it might get from the US government as a result of this deployment, is it really worth the possibility that the next murderous airstrikes on Afghan civilians will be a result of information supplied by the NZ SAS? To borrow a phrase from the lotto advertisements, how great would that feel?

5) Contact details for politicians

If you wish to convey your views about the SAS deployment to politicians, as well as sending them to your local MP - contact details for all MPs are available at <http://www.parliament.nz/NR/rdonlyres/5858C8A5-ACDF-4B35-8D7A-3ABB7B19ACDB/92234/listofmembers0107092.pdf> or by phoning Parliament, tel (04) 471 9999 - you could send them to the following in particular:

- John Key, Prime Minister, at parliament: Freepost Parliament, Private Bag 18-888, Parliament Buildings, Wellington 6160, fax (04) 473 3689, email j.key@ministers.govt.nz; electorate office: PO Box 258, Kumeu 0841; fax (09) 412 2497, email john.key@national.org.nz or email genelle@johnkey.mp.net.nz You could also leave a comment on his web site at <http://johnkey.co.nz/index.php?archives/778-Afghanistan-review-decisions-announced.html>
- Wayne Mapp, Minister of Defence, at parliament: Freepost Parliament, Private Bag 18-888, Parliament Buildings, Wellington 6160, email w.mapp@ministers.govt.nz or fax (04) 817 6512; electoral office: PO Box 33 017, Takapuna, North Shore City, fax (09) 486 5336.
- Murray McCully, Minister of Foreign Affairs, at parliament: Freepost Parliament, Private Bag 18-888, Parliament Buildings, Wellington 6160, email m.mccully@ministers.govt.nz or

fax (04) 817 6510; electoral office: PO Box 35 657, Browns Bay, North Shore City, email murray.mccully@xtra.co.nz or fax (09) 479 8089.

It is very helpful for our work on this if you can send us a copy of any letters or messages you write (bcc if by email), and of any replies you receive, to Peace Movement Aotearoa, PO Box 9314, Wellington 6141, fax (04) 382 8173, or email pma@xtra.co.nz

References

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This action alert is online at <http://www.converge.org.nz/pma/nzsas09a.htm>