



THE OFFICE OF THE MINISTER FOR DEFENCE

THE HON JOEL FITZGIBBON MP

Dr Kristine Klugman
President
Civil Liberties Australia
Box 7438
FISHER ACT 2611

25 FEB 2009

Dear Dr Klugman

Thank you for your letter of 26 January 2009 to the Minister for Defence, the Hon Joel Fitzgibbon MP, concerning Australian Defence Force (ADF) detainee management procedures. The Minister has asked me to respond on his behalf.

The Australian Government takes its responsibilities for detainee management very seriously and ensures that appropriate safeguards and assurances are in place that comply with Australia's obligations under domestic and international law. Australia's detainee management policies and procedures require ADF personnel to treat all detainees humanely, with dignity and respect, and in accordance with Australia's obligations under domestic and international law. ADF personnel receive training in the laws of armed conflict and receive specific instruction on the management of persons who have been detained.

Due to the ongoing nature of the operations in question, the ADF does not disclose exact numbers of detainees apprehended for security reasons. Defence can confirm that a number of detainees have been apprehended by the ADF and transferred to coalition authorities. These transfers have taken place under negotiated arrangements and memoranda of understanding. While the specific details of these arrangements remain classified, the arrangements contain assurances from the receiving State that the treatment of detainees will be humane and consistent with the fundamental humanitarian principles of international humanitarian and human rights law.

Prior to 30 December 2008, under Australia's detainee management approach for Operation CATALYST in Iraq, Australian forces were directed to transfer any detainees to the United Kingdom, as part of Multinational Forces-Iraq. On 30 December 2008, Australia signed a memorandum of understanding with the Government of Iraq providing a legal basis for Australian forces' continued presence in Iraq. In exercising full sovereignty, Iraq is the responsible detaining authority, managing detainees in accordance with applicable Iraqi law. Australia no longer has combat forces in Iraq.

Under Operation SLIPPER in Afghanistan, Australia has an arrangement with the Netherlands, as the lead International Security Assistance Force partner in Oruzgan province, that Dutch forces will handle any ADF-apprehended detainees. The Dutch Government has provided assurances that ADF detainees will be treated humanely and in accordance with applicable law. The Dutch forces transfer detainees to the Afghan authorities in line with International Security Assistance Force procedures and under standing arrangements between the Netherlands and Afghanistan. Treatment of detainees is monitored by Dutch officials, the International Committee of the Red Cross, United Nations agencies and the Afghan Independent Human Rights Commission.

The Afghan Government has provided assurances to the Netherlands that detainees transferred to Afghan authorities will be treated in accordance with international human rights standards and that the death penalty will not be imposed. Australia has received similar assurances from the Afghan Government. Australia and its partners regularly engage with the Afghan Government regarding the appropriate treatment of detainees.

Under previous arrangements in Afghanistan, the ADF transferred detainees to coalition force authorities. Prior to these transfers, the Australian Government received assurances from the United States and Afghan Governments that ADF-apprehended detainees transferred into their custody would be treated in a humane manner and in accordance with international standards. Australia has conducted monitoring to ensure appropriate treatment of ADF-apprehended detainees.

Australia conducts thorough inquiries of all allegations of detainee mistreatment. Any concerns about any allegations of detainee mistreatment are conveyed to the relevant authorities. Australia seeks to be advised of the outcome of any investigation and monitors the results of any Court proceedings. A small number of detainee mistreatment allegations have been made against Australian forces operating in Oruzgan province in Afghanistan. Investigations into these allegations of mistreatment in Afghanistan have shown them to be unfounded, based on the witness statements and medical evidence.

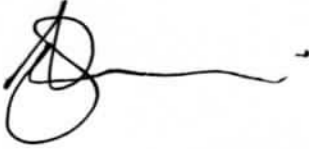
The Australian Government does not support extraordinary rendition. The Government believes that countries have a responsibility to protect their citizens from terrorism in a manner that accords with their obligations under domestic and international law. Any detention and movement of alleged terrorists should be consistent with applicable laws and legal obligations.

With regard to Diego Garcia, I can confirm that Australia provides no support to ship or flight movement of detainees, or logistical support, to either United States or United Kingdom authorities and there is no policy of doing so. In 2001-02 Australia did deploy a Royal Australian Air Force F/A-18 contingent to provide air defence support to Diego Garcia as part of the Australian contribution to the International Coalition against Terrorism.

The Australian Government takes its responsibilities towards detainee management very seriously and at all times Australian personnel overseas are expected to act in compliance with Australia's obligations under domestic and international law.

Your interest in this matter is appreciated.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized initial 'S' followed by a horizontal line that tapers to a point on the right.

TYSON SARA
Senior Adviser