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Australia: New Afghan prisoner policy could violate international law

The Australian government's newly announced policy of transferring prisoners detained in Afghanistan to Afghan and United States forces could violate international law, Amnesty International warned today.

On 14 December 2010, Australian Minister of Defence, Stephen Smith, announced an agreement for managing detainees, with allegedly 'high risk' prisoners handed over to the US, 'low risk' prisoners handed to Afghan forces, and the remainder of those being held released.

"The handover of detainees to the US and Afghan forces raises real concerns about potential human rights abuses," said Sam Zarifi, Amnesty International's Asia-Pacific director. "The US continues to hold prisoners without access to fair legal processes. And the Afghan National Directorate of Security, which runs some of the detention facilities, is all too often linked to disturbing accounts of torture and mistreatment."

Smith's announcement of the new framework formalises arrangements between the three countries that have been in place since the planned withdrawal of Dutch forces from Uruzgan province on 1 August 2010. Until that time, Dutch troops had taken responsibility for detainees captured by the Australian Defence Force.

"This is a step backwards for the treatment of detainees in Afghanistan," said Sam Zarifi. "Several major NATO members, including the Dutch, had put in place safeguards to ensure that detainees would not be handed over to the US and recognized the real problems associated with the NDS. With this agreement, the Australians seem to have failed to learn any of the hard lessons of the recent past."

According to the Australian Ministry of Defence, Australia has apprehended more than 300 detainees in Afghanistan since 1 August who were held at a temporary facility at Tarin Kowt in Uruzgan. Most were subsequently released, but 64 prisoners were handed over to US or Afghan forces, with the majority transferred to the Afghans.

By handing over detainees to the NDS, where they are at risk of torture or other ill-treatment, Australia could be in violation of its international obligations to protect individuals from such treatment. International law strictly prohibits states from transferring detainees to situations where they face this risk.

Smith said that the Australian government relied on assurances from the Afghan and United States governments as to the proper treatment of detainees as well as "formal arrangements" including, he claimed, monitoring by the International Committee of the Red Cross and site visits by Australian officials.

"The diplomatic assurances that Australia says back up this agreement should be viewed with extreme

caution, given the very poor record of the US and Afghan governments when it comes to mistreating detainees,” said Sam Zarifi. “We need much clearer answers about the nature of the ‘detainee management framework’ the Australian government has announced.”

In June this year, a UK high court imposed strict restrictions on the transfer by British forces of detainees to Afghan facilities, particularly those operated by the National Directorate of Security. The court heard that detainees had suffered from a variety of abuse, including beating, electrocutions, forced stress positions and sleep deprivation.