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Inspector General

United States
Department of Defense



DEPUTY INSPECTOR GENERAL FOR INTELLIGENCE

**Inspection of DoD Detainee
Transfers and Reliance on Assurances (U)**

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MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF DEFENSE,
DETAINEE POLICY

SUBJECT: Inspection of Department of Defense Detainee Transfers and Reliance on Assurances (Report Number DODIG-2012-055) (U)

(U) This is the second annual inspection conducted pursuant to a recommendation of the Special Task Force on Interrogation and Transfer Policies (the Special Task Force), an interagency task force established by Executive Order 13491, January 27, 2009.

(U) We reviewed assurances that individuals transferred between August 2010 and August 2011 from DoD custody to foreign nations would not be tortured; specifically, the process for obtaining assurances, the content of the assurances, the implementation and monitoring of the assurances, and the post-transfer treatment of persons transferred from Guantanamo Bay Detention Facility (GTMO), Afghanistan and Iraq. We conducted the inspection independently, but in coordination with the Office of Inspector General of the Department of State.

(U) A total of 1,064 detainees were reported transferred from DoD custody in Iraq, Afghanistan and GTMO between August 2010 and August 2011. This is down from the 4,781 that were reported in our report, "Inspection of DoD Detainee Transfers and Reliance on Assurances," Report No. 11-INTEL-01, December 3, 2010. The decline is primarily the result of DoD turning over control of the Taji Theater Internment Facility and a portion of the Cropper Theater Internment Facility to the Iraqi Government prior to August 2010. The transfer of those detainees was documented in last year's report.

(U) Background

(U) Executive Order 13491, January 27, 2009, established the Special Task Force on Interrogation and Transfer Policies to bring together officials from DoD and U.S. Intelligence Community to identify policies and procedures to ensure that interrogations are conducted in a manner that would strengthen national security consistent with the rule of law. The Special Task Force made policy recommendations with respect to scenarios in which the United States moves or facilitates the movement of a person from one country to another or from U.S. custody to the custody of another country to ensure that U.S. practices in such transfers comply with U.S. law, policy, and international obligations and do not result in the transfer of individuals to countries where they will face torture.

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(U) As defined in the Special Task Force's report, the four areas with direct DoD involvement with detainee transfers are GTMO, Afghanistan, Iraq, and Geneva Conventions transfers. Between August 24, 2010, and August 23, 2011, 3 detainees were transferred from GTMO Detention Facility, 802 detainees were reported transferred or released in Afghanistan, and 259 detainees were reported transferred or released in Iraq. There were no Geneva Convention transfers. There were also three cases involving persons captured off the coast of Somalia that do not fall into the Special Task Force's seven definitions of types of transfers, but were detained by the U.S. and transferred from our custody.

(U) Policy

(U) As was discussed in the Inspection of DoD Detainee Transfers and Reliance on Assurances report from last year, the DoD has a number of directives and policies that address how detainees should be treated while in DoD custody. In general, the policies do not specifically address how the detainees will be treated once transferred to another country.

(U) The Special Task Force recommended that the DoD should promulgate policies or directives that include an express statement that the DoD may not transfer any person to a foreign entity where it is more likely than not that the person will be tortured. DoD Directive 2310.01E, "The Department of Defense Detainee Program," is still undergoing review. The DoD Inspector General recommended in last year's report that relevant recommendations should be included.

(U) GTMO Transfers

(S) NOTE: INFORMATION REFERRED TO OTHER GOVERNMENT AGENCY FOR RELEASE DETERMINATION
[REDACTED]

(U) The significant decrease in the number of detainees transferred from GTMO over last year's transfers is a result in part of the National Defense Authorization Act for Fiscal Year 2011 (NDAA FY 2011). It prohibits using DoD funds to transfer GTMO detainees to foreign countries unless stringent conditions are met to ensure the detainee does not return to terrorist or insurgent activities. Furthermore, the act precludes transfers to

countries where there is a confirmed instance of a former detainee reengaging in terrorist or insurgent activities following his transfer. The Secretary of Defense may waive the transfer prohibition due to previous cases of detainee reengagement by certifying that a current detainee transfer is in the national security interest of the United States. The NDAA FY 2011 transfer restrictions identified above do not apply to transfers conducted to comply with a federal courts release order. Of the three transferees, two were resettled in Germany prior to the enactment of NDAA FY 2011 and the third was a court order release to Algeria.

(U) Iraq Transfers

(U/~~FOUO~~) Numerous United States Forces – Iraq (USF-I) policies and procedures were in effect ensuring the humane treatment of detainees transferred to the Government of Iraq. Between August 24, 2010, and August 23, 2011, ^{DoD}~~FOUO~~ detainees were transferred to the local Iraqi government and ^{DoD}~~FOUO~~. In accordance with Article 22 of the Security Agreement between the United States and Iraq signed November 2008, detainees have been transferred to the Iraqi Ministry of Justice (MoJ). As reported by the Deputy Provost Marshal in his September 2011 memorandum “USF-I PMO [Provost Marshal Office] Response to Staff Action Tasker SJS200108107054”:

(U/~~FOUO~~) The USF-I Provost Marshal Office has also taken measures to train, mentor, and inspect Ministry of Justice prison facilities in order to ensure the safe and secure treatment of detainees transferred to MoJ facilities. Specifically, the ^{DoD}~~FOUO~~. USF-I PMO ensured Iraqi Corrections Officers (ICOs) who would be guarding the transferred detainees, received special “maximum security” training prior to working in the facility the US enduring detainees would be held. They also received on the job training from US military police prior to the transfer, US military police oversight for 2 weeks after the transfer and currently have International Crime Investigative Training Assistance Program (ICITAP) mentors providing daily advisement, training, and assistance in addition to continues oversight of detainees ^{DoD}~~FOUO~~.

(U) In his memorandum, the Provost Marshal also reported:

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NOTE: INFORMATION REFERRED TO OTHER GOVERNMENT AGENCY FOR RELEASE DETERMINATION

(U) At ^{DoD OIG (b)(7)(E)}, standards are taught on how to treat prisoners through Code of Conduct, Human Rights, and Inmate Management classes.

(U) Afghanistan Transfers

~~(S)~~ CENTCOM: (b) (1) 1.4(a) [Redacted]

~~(S//NF)~~ CENTCOM: (b) (1) 1.4(a) [Redacted]

~~(S//NF)~~ As stated in the August 4, 2005, message from the American Embassy in Kabul, the Ministry of Foreign Affairs of the Islamic Republic of Afghanistan conveyed "confirmation that the Government of Afghanistan will treat these individuals humanely and in accordance with the laws and international obligations of Afghanistan" when Afghan nationals are transferred from United States control to Afghanistan.

~~(S//NF)~~ CENTCOM: (b) (1) 1.4(a), (b) (1) 1.4(d) [Redacted]

CENTCOM: (b) (1) 1.4(a), (b) (1) 1.4(d)




(U) Extraterritorial Detainees

~~(S//NF)~~

CENTCOM: (b) (1) 1.4(a)




 occurred under the authority of the September 2001 Authorization for Use of Military Force, Public Law 107-40, which states:

...the President is authorized to use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States.

~~(S//NF)~~

CENTCOM: (b) (1) 1.4(a), (b) (1) 1.4(d)

CENTCOM: (b) (1) 1.4(a), (b) (1) 1.4(d)



(U) The second scenario involved pirates. According to the Law of the Sea Article 105:

On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.

~~(S)~~

CENTCOM: (b) (1) 1.4(a), (b) (1) 1.4(d)



(U) Follow up on Last Year's Report:

(U) We recommended in last year's report the Deputy Assistant Secretary of Defense for Detainee Policy incorporate relevant recommendations of the Special Task Force on Interrogation and Transfer Policies into the DoD Directive 2310.01E, "Department of Defense Detainee Program." Specifically the following statement should be added at the end of paragraph f under Section 4 Policy on page 3:

Specifically, the Department of Defense policy is to not transfer any person to a foreign entity where it is more likely than not that the person will be tortured.

(U) This verbiage is consistent with the policy statement in section 2242(a) of the 1998 Foreign Affairs Reform and Restructuring Act and is referenced in the Special Task Force's report. If the Task Force recommendations are determined by the Under Secretary of Defense for Policy, Detainee Policy, to be not appropriate for DoD, the decision should be approved by the Deputy Secretary of Defense. Please provide information on the time frame that the directive will be issued.



Patricia A. Brannin
Deputy Inspector General
for Intelligence and Special
Program Assessments

