

**COMCFC-A ASSESSMENT AND ESTIMATE FOR
TRANSFER OF DETAINEE OPERATIONS TO THE GOA**

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**This document is a recommended proposal in response to the CENTCOM
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BLUF: The Government of Afghanistan will not be capable of managing a Detainee program before FY06 – early FY07. This assessment is based upon an analysis of five areas: The GOA Prison System and Reconciliation Initiative; US Department of State Mission Performance Plan FY2006, Current Detainee Operations with CFC-A CJOA, ISAF Expansion Stage III, Afghan Detainees at GITMO.

Government of Afghanistan

Prison Systems: Prisons and Detention Facilities in Afghanistan are extremely poor. The majority of facilities are either destroyed or not in adequate working order. Prison reform falls under the lead of United Nations Agencies for rehabilitation and reform. Only Italy has provided significant financial resources to this area. A recent paper issued jointly by The Italian Justice Project, UNAMA & UNODC concluded that:

- An estimated 20-year \$161 million dollar program to develop an adequate infrastructure of standard prison facilities is needed to house an expected prison population of 23,000.

- GOA currently owns operational prisons in 8 of its 32 provinces: Herat, Jawzjan, Kabul, Kandahar, Nangahar, Helmand, Parwan and Konduz; and one central prison at Pol-e-Charki. Three (Helmand, Parwan and Konduz) of the eight prisons require extensive renovation. The remaining 24 provinces either rent facilities or make use of other available government buildings. Total capacity of each prison facility is unknown. The MOJ estimates that as of 14 Jan 05 there are a total of 4,234 prisoners and pre-trial detentioners currently in the prison system.

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- GOA Central Prison (Pol-e-Charki). Renovation of two of the four cell blocks has created space for approximately 1200 prisoners under conditions meeting minimal standards. It is expected that the United Nations Office for Drugs and Crime (UNODC) will build a Women's prison and juvenile detention facilities in Kabul by 2006. Renovation of additional space at Pol-e-Charki has been authorized by the UK for narcotics offenders, utilizing funds provided by the UK and Canada for counter narcotics efforts. Rehabilitation will be performed by the UN agencies and is purported to be completed in 2006. The US is building a small Counter Narcotics Justice Facility with a 50 person capacity & includes a secure court facility. Estimated completion is August 2005.

- Security at all of the existing facilities is medium at best. Most facilities use rooms with a locked door to hold numerous offenders. The security is provided mainly by human assets and not technical means.

- The original UN plan for prison reconstruction envisioned four provincial prisons to be completed in 2004, with twelve additional being completed in 2005. The UN did not begin work on any provincial prisons in 2004.

- The lack of donor nation funding will continue to promote a haphazard prison rehabilitation program driven by special needs (e.g. Pol-e-Charki and the counter narcotics justice facility). As such, a timetable for construction, completion, and operation can not be established.

Program Tahkim e Solh (PTS) (Strengthening Peace Program): This GOA initiative to repatriate former anti-coalition forces (Taliban, HIG, etc) as well as exiles back into main-stream society has a measurable impact on current detainee operations. The intent of this program is to allow those ACM forces currently in the field an opportunity to lay down their arms and reintegrate back into society. PTS is a critical component to GOA and CFC-A efforts at degrading ACM C2, combat strength, and effectiveness. If successful, PTS will significantly reduce the number of ACM attacks and their severity during the next year. The successful implementation of PTS hinges on the ability of the GOA to focus its initial efforts to this end. Transfer of detainee operations could complicate and/or delay its successful implementation. Although the potential exists for ACM members who have committed much worse acts than those currently being detained to be paroled in lieu of incarceration, COMCFC-A LLEC release authority can

be applied to mitigate the current in country detainee population. Once PTS is fully implemented then CFC-A will reassess the role of continued detainee operations and its transfer to the GOA.

US Department of State Mission Performance Plan FY2006: The FY06 MPP, Performance Goal Paper – 4, *Law Enforcement and Judicial Systems*, Strategy 6 states, “*Work with the Government of Afghanistan and the international community (especially U.K., Germany, and Italy) to improve law enforcement capabilities and reform and reestablish the criminal justice and prison systems, so as to have integral institutions necessary to support the attack on terrorism, illegal drug cultivation, production, trafficking, and associated corruption and crime.*” The tactics identified for prison reform merely state that the US Embassy assists the lead nation “Italy” and the Ministry of Justice (MOJ) in identifying donor countries to develop and construct a basic prison system that meets international acceptable standards. The FY06 MPP does not identify targets for transfer of Detainee Operations. FY04 and FY05 target timelines indicate that rehabilitation of physical structures and personnel training are underway and that the GOA begins funding of operating costs. Target for FY06 is completion of regional prison(s) construction and training of the prison guard force. The FY07 target is the earliest indication that the US Embassy believes the GOA is capable of independently operating its own prison system to acceptable international standards.

Combine Forces Command – Afghanistan (CFC-A). Current Detainee Operations are an inherent part of our continuing Counter-Insurgency Operations. Therefore, the necessity to maintain the ability for continued detainee operations is vital. The issue is not merely turning over operations to the GOA but rather, further refinement of our decision criteria for holding enemy combatants that continue to meet SECDEF criteria, releasing those that do not, or transferring to the GOA those detainees that can be prosecuted as criminals (not ECs “Enemy Combatants”) under current Afghan Law.

- Current Afghan law does not allow the GOA to retain enemy combatants indefinitely. Accordingly, the U.S. could not transfer ECs to the Afghan Government to have the Afghans continue to hold them as ECs. The U.S. could, however, release/transfer ECs (who were detained because they shot at American soldier or did something else that, **in addition to being a threat to US interests**, violates Afghan criminal laws) to the Afghan Government. The Afghan Government, in an exercise of its sovereignty, could still prosecute detainees as common criminals.

Detainee Operations Data: Relevant data to current Detainee Operations within the CFC-A CJOA is provided below.

- Number of Detention Facilities: CJTF-76 operates two detention facilities within the Country of Afghanistan (Total Capacity = 883; NET 15 Apr 05)

Bagram Detention Facility – Bagram Airfield (max capacity = 595)

Kandahar Detention Facility – Kandahar Airfield (max capacity = 288; NET 15 Apr 05)

- Current Detainee Population: Total detainees = 560

Bagram Detention Facility – 498

Kandahar Detention Facility – 62

- Profile of Detainees: 188 Detainees are currently classified as (Low Level Enemy Combatants (LLEC). A list of these detainees with pertinent data is being staffed with CJTF 76 and CFC-A for comment. Once staffing is complete CJTF76 will incorporate concerns, conduct a review board, and make final recommendation to COMCFC-A for release. COMCFC-A has release authority for detainees “in theater” classified as LLEC. This list once approved will be forwarded to the GOA for their consideration into the PTS program. The success of synchronizing this mass release with the PTS program may help to shape the future of Detainee Operations in theater.

ISAF Phase III Expansion: Turn-over of RC-South O/A Apr 06 has a profound impact on detainee operations with respect to facilities. Once TOA is effected CFC-A will lose the Kandahar Detention Facility. This is approximately 1/3 of the CFC-A’s total detention capacity. One COA being developed is to turn over the detention facility to the GOA and synchronize it with TOA of RC South to ISAF. A major issue for resolution is Kandahar Detention Facility’s location within Kandahar Airfield. If resolved, the new- internationally standard accepted facility will support, in concept, Department of State’s FY06 Mission Performance Plan and assist the GOA’s movement to independent prison operations.

GITMO Detainees: CFC-A estimates that there are approximately 123 Afghan Detainees currently being held at GITMO. Although the current capacity of CFC-A's detention facilities show available space, and the COMCFC-A has LLEC release authority it is strongly recommended that detainees from GITMO not be transferred for continued detention due to reclassification. Afghan detainees at GITMO should be retained at GITMO until all strategic value for intelligence is exhausted. Once that is determined they should be released. Transfer to theater for continued detention by US forces assumes that there would still be tactical intelligence value. Given the amount of time many of the detainees have remained at GITMO it is a relative safe assumption that little or no tactical intelligence value remains. All detainee returns from GITMO should be released. CFC-A will facilitate their further release to the GOA.

RECOMMENDED SCREENING CRITERIA FOR DETAINEES

Screening Criteria: Low-threat low level enemy combatants (LLEC) should be considered eligible for release or transfer for continued detention under Government of Afghanistan (GOA) control. All other detainees should remain under Department of Defense control. CFC-A requires clarification of the GOA criteria used to determine candidacy for the PTS program. Specifically, what determines whether a released LLEC will be held in a GOA facility or reconciled under PTS. Release of LLEC from GOA facilities will impact the United States' ability to access the detainees for intelligence.

Prior to CFC-A transfer of LLEC to GOA for continued detention, the appropriate national agency should ensure GOA will authorize US intelligence personnel access to the prisoners as well as require GOA to notify the United States of intent to release an LLEC.

An LLEC is an Enemy Combatant that is of low law enforcement and intelligence value and poses only a tactical force protection threat and does not pose a threat beyond the immediate battlefield. LLEC status is conferred only upon recommendation of the Enemy Combatant Review Board (ECRB) and final approval by the Commander CJTF-76 (CJTF-76 Detainee Operations Standard Operating Procedures, 21 January 2005).

The screening criteria utilized by the ECRB for establishment of ECs as LLECs are:

- Implicated solely by word of mouth
- Detained because recognized / believed to be Taliban / Al Qaeda / HIG
- Detained for having Anti-US propaganda
- Detained as a small time weapons smuggler (cannot be linked to supporting Taliban / HIG / Al Qaeda)
- Detained for supporting Anti-Coalition activities
- Detained for intelligence value past the latest time of information value (LTIOV)
- Detained with IED components

(Enemy Combatant Review Board (ECRB) Standard Operating Procedures (SOP), 15 January 2005)

RECOMMENDED COURSES OF ACTION

The requirement to synchronize COA with the Department of State's FY06 Mission Performance Plan for Afghanistan is not possible. The MPP does not establish targets for the turn over of Detention Operations. Other remaining targets (FY05 –FY06) involve outside agencies completing the rehabilitation of both physical structures and personnel system for prison operations. The FY07 target is the earliest indication that the US Embassy believes the GOA is capable of independently operating its own prison system to acceptable international standards. The US Embassy role is to assist the lead nation "Italy" and the MOJ in identifying donor countries to develop and construct a basic prison system that meets international acceptable standards.

COA 1: Turn over Kandahar Detention Facility to GOA Apr-Jun 06.

Issue:

- Requires de-confliction with ISAF due to location on Kandahar Airfield.

Advantages:

- Provides GOA with a new facility that meets international standards
- Supports, in concept, the DoS MPP for Afghanistan.

Disadvantage:

- Remote location for a central government facility – (possible provincial)

COA 2: Renovate Pol-e-Charki Investigative unit to serve as a detainee transfer center where the GOA will try detainees as criminals under Afghan law.

Issues:

- Current plan for the Investigative Unit has UK funding for a CN facility
- Requires State Department level coordination between USG, UK, GOA
- US CN facility under current construction creates redundancy
- UK reluctance to fund

- GOA dedication to using facility specifically for detainee/criminal related cases.

Advantage:

- Provides central location to national government agencies.
- Serves as an interim process to phase in transfer of operations over time.
- Proximity to Bagram Detention facility

Disadvantage:

- Requires outside agency coordination and approval.
- Confidence in GOA officials to try detainees as criminals.

COA3: Maintain current operations under more stringent criteria. (CFC-A Recommended COA)

Issues. None

Advantages:

- We maintain control and influence battlefield dynamics for tactical commanders
- Confidence in our system to determine release. (Proven track record – Extreme low rate of recidivism).
- Optempo of detainee operations will decrease as our AOR decreases.
- GOA PTS initiative will, over time, mitigate the size of detainee population and subsequent size of force required to conduct detainee operations.

Disadvantages:

- Requires comparable dedicated force for the near term.
- Continued Logistical Support

One point of discussion for COA 3 is the assumption that the Kandahar Detention Facility will cease to exist as a US-run once transfer of authority to ISAF is complete.