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**CSIS'S ROLE IN INTERVIEWING AFGHAN DETAINEES
(SIRC STUDY 2010-01)**

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EXECUTIVE SUMMARY

In May 2010, during an appearance at the Standing Committee on Public Safety and National Security, SIRC announced that it would conduct a review of CSIS's involvement in the interviewing of Afghan Detainees.

Prior to the start of SIRC's study, CSIS had also begun its own internal study on the same topic, the final version of which was provided to the Minister of Public Safety. That study – whose general conclusions SIRC supports – was undertaken to form a chronology and general description of CSIS's involvement in this issue, and to consider its involvement from the standpoint of CSIS's legal risk.

SIRC's objective in examining CSIS's involvement in interviewing Afghan detainees was larger. It was meant to review CSIS's files to assess performance, and the efficiency and effectiveness of its policy and operations.

Given these parameters, SIRC noted two issues that warranted further consideration: first, the need for CSIS to assess and to qualify, with care and consistency, information originating from agencies that may engage in human rights abuses; and second, the need for CSIS to ensure that the management of its operations abroad mirrors, to the extent practicable, the standard of accountability and professionalism that is set and maintained domestically.

Although the issue of Afghan detainee interviews encompasses far more in scope, jurisdiction, and importance than CSIS's involvement in the file, SIRC believes that the Service's involvement with the Afghan detainees provides lessons that can be applied to other operations abroad. Although overseas operations are sometimes carried out in unique circumstances and present different challenges, early planning and guidance will help to ensure proper accountability.

1 INTRODUCTION

Originally, the tasks foreseen for the CSIS Liaison Officer included providing a wide range of security intelligence advice

as well as liaison with Afghan intelligence services and conducting intelligence collection. Thus began a CSIS commitment in support of Canadian Forces (CF),

As the Canadian Forces shifted their mission the Service's "continue to provide [DND] with proactive and timely threat-related intelligence relative to their ongoing and newly emerging Force Protection requirements in that volatile Region." However, as CF operations in Kandahar expanded and included several successful missions, one consequence was an increased volume of Afghan prisoners of war. Following a protracted discussion at the highest Forces levels, it was decided that these detainees would be processed by the CF and, if the situation warranted, transferred to an Afghan group for eventual local trial and incarceration.³ The Afghan agency selected was the National Directorate of Security (NDS), with whom CSIS had a Section 17 foreign arrangement for cooperation and information exchange

³ The December 2005 Arrangement between Canada and Afghanistan established the procedures for the transfer of detainees, while also reinforcing the commitments of both parties to meet their respective obligations under international law. Specifically, the Arrangement included: a commitment to treat detainees humanely and in accordance with the Third Geneva Convention; a commitment that persons transferred by the Canadian Forces to Afghan authorities will not be subject to the application of the death penalty; and a recognition by both parties of the legitimate role of the Afghanistan Independent Human Rights Commission (AIHRC) to monitor the status of these individuals. Document of DFAIT (Afghanistan Task Force) origin, dated to roughly September 22, 2008, entitled *Canadian-Transferred Detainees in Afghanistan*.

⁴ The existence of a CSIS-NDS arrangement, combined with the Service's expertise in interviewing would ultimately give CSIS a role in the processing of the Afghan detainees.

This review looks at the larger context within which CSIS activities, policy and decision-making evolved with respect to Afghan detainees. The report examines the role of the detainee interviews within the framework of the Service's operations in Afghanistan; the nature, utility and effectiveness of CSIS's relationship with the NDS, as well as its exchanges of information with that agency; and finally, any 'lessons learned' which could have a bearing on CSIS's future involvement in these types of overseas operations.

This report first summarizes the key findings of an internal review undertaken by CSIS so as to form a general description and chronology of CSIS's involvement in this issue, to review CSIS's knowledge (or lack thereof) of the abuse/mistreatment of detainees, and to consider its involvement from the standpoint of CSIS's legal risk. SIRC then explores two key issues in depth: CSIS's relationship with the NDS – with a focus on how CSIS managed cooperation and information exchanges with an agency suspected of human rights violations – and the guidelines for CSIS operations abroad. In both cases, SIRC offers analysis and recommendations to consider as CSIS continues to expand its activities abroad.

On a final note, SIRC is mindful of the fact that the issue of Afghan detainee interviews is itself much larger in scope, jurisdiction, and import than merely CSIS's involvement in the file. The Military Police Complaints Commission and the Standing Committee on Public Safety and National Security, for example, are also contributing under their own mandates, to building a broader public account of this aspect of Canada's operations in Afghanistan. SIRC's report is therefore only one piece and its conclusions may, in time, be further informed by facts or findings which come to light via other review processes.

⁴ Discussed in greater detail in Section 4.1.

2 METHODOLOGY AND SCOPE

Shortly after SIRC announced its plan to review this file, CSIS informed SIRC that it had already undertaken its own internal review. As explored below, neither the mandate nor the conclusions of that internal report (to which SIRC was provided complete access) duplicate or pre-empt the main goals of SIRC's review.

In order to complete its review, SIRC examined a wide range of documents, including operational reporting, external correspondence, "cooperation with" files, and CSIS policy. In addition, SIRC reviewed many of the supporting documents used to compile CSIS's internal report, including the relevant reporting of all CSIS officers who have served in Afghanistan during the past eight years. Several briefings by the authors of the CSIS report, as well as personnel in International Region, were also given.

The time period of this review began with Canada's original involvement in Afghanistan in 2002, and examined CSIS documentation and policy up to the completion of CSIS's internal report in the summer of 2010.

3 CSIS'S INTERNAL REPORT ON AFGHAN DETAINEES

In the wake of media reports that CSIS had "played a crucial and long-standing role as interrogators" of Afghan detainees in March 2010,⁵ CSIS Director Richard Fadden commissioned a study of the Service's activities in the matter.⁶

The study found that the Service was involved only to a very limited degree in the CF's larger detainee capture and processing activities.

Generally lasting no longer than fifteen minutes, these interviews aimed to identify the persons captured

which would be of interest to Canadian Forces. In the words of one CSIS officer, "these were not interrogations but only quick interviews prior to a transfer to another authority. [...] We were effectively sitting in on CANSOF [Canadian Special Operations] interviews and providing advice if / when warranted."⁸ Given that the goal of these interviews was to ascertain whether or not the individual in question represented a threat to Canadian (or allied) Forces, the interview was

⁵ Murray Brewster and Jim Bronskill, "CSIS played crucial role in Afghan prisoner interrogations: documents, sources", *Canadian Press*. March 7, 2010.

⁶ Canadian Security Intelligence Service Internal Review of its Involvement with Afghan Detainees. 2010 04 26.

⁸ Answers provided for CSIS internal report from [redacted] posted to Afghanistan

recorded in operational reporting only if it revealed threat-related information.

The Service's report came to the following conclusions:

- CSIS's participation in the interviews of detainees in Canadian Forces custody was at the Canadian Forces' request;
 - the Canadian Forces were ultimately responsible for the transfer of prisoners/detainees to Afghan authorities. CSIS's role was one of facilitation, when required, between the Afghan NDS and other Canadian entities such as the CF or DFAIT;
 - CSIS officers posted to Afghanistan had no first-hand knowledge of the alleged abuse, mistreatment or torture of detainees by Afghan authorities;
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- whereas the Service appeared to be tardy in issuing directions and guidelines on the specific matter of Afghan detainees, the selection of appropriate personnel coupled with a "common sense approach" to their performance ensured that the Service's credibility and professional reputation was maintained.⁹

SIRC found that CSIS's report accurately reflects the chronology and context of CSIS's involvement in Afghanistan and in interviewing detainees, as well as how CSIS established and managed its relationship with the Afghan NDS. SIRC agrees with the report's general conclusion that decision-making concerning detainees ultimately rested with the Canadian Forces and that, for the most part, CSIS was removed from the process of transferring the detainees to Afghan custody.¹⁰

⁹ Canadian Security Intelligence Service Internal Review of its Involvement with Afghan Detainees. 2010 04 26.

¹⁰ "For the most part" is used a qualifier so as to reflect the very minor, yet existing, link which CSIS officers once had to the detainee transfer process.

SIRC believes that CSIS's internal study achieved the goals it had set out, namely, establishing and determining CSIS's legal risk in its involvement with Afghan detainee interviews. However, SIRC's objective in examining CSIS's involvement in this matter is broader, namely to examine CSIS's performance, as well as the efficiency and effectiveness of its policy and operations. SIRC thus identified two broad issues that warrant more discussion: the Service's relationship with the Afghan National Directorate of Security, and the implications of and lessons learned from the detainee interviews for overseas operations as a whole. These issues are fundamental to understanding the Afghan detainee issue, but also speak more broadly to how CSIS carries out its activities abroad.

4 CSIS'S RELATIONSHIP WITH THE AFGHAN NATIONAL DIRECTORATE OF SECURITY (NDS)

In accordance with s.17 of the *CSIS Act*, CSIS may enter into an arrangement with a foreign agency after gaining the approval of the Minister of Public Safety and consulting with the Minister of Foreign Affairs. CSIS sought approval to establish a foreign arrangement with the NDS

In the process leading up to seeking formal approval, CSIS undertook preliminary consultations with DFAIT officials

CSIS pledged to take a cautious approach and to closely scrutinize the content of the information provided to, or obtained from, the NDS to ensure that none of the information exchanged could be used in the commission of acts which would be regarded as human rights violations.

The Service brought this information to the attention of the Minister of Public Safety in its request to enter into a relationship with the NDS.

Accordingly, the Minister of Public Safety directed CSIS to keep the Canadian Head of Mission "informed From this point onward, CSIS began to while continuing to inform and engage the Department of National Defence and the Department of Public Safety when appropriate.

The Service's relationship with the NDS consisted of exchanges of information,

Notwithstanding this productive working relationship, CSIS's assessment of the NDS was both cautious and measured.

CSIS continued to stress that most allegations of human rights abuse were unconfirmed,

In the course of this review, SIRC found no indication that in the period during which they conducted detainee interviews, CSIS officers posted to Afghanistan ever had first-

hand knowledge of abuse, mistreatment or torture of detainees by Afghan authorities.

Our review found that CSIS made efforts to contextualize NDS-originating information in order to assess its importance and credibility.

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Given the ongoing human rights concerns with this Afghan partner, and the possibility that information provided to CSIS by this agency could have been derived from torture, CSIS took care to emphasize the need to mitigate this risk by managing its relationship and exchanges of information with the NDS carefully.

4.1 Information Sharing / Caveats

As one of its risk-mitigation techniques, CSIS employed the use of caveats, that is, qualifying statements which accompany information sent from CSIS to a partner agency. Caveats are designed to help agencies assess information provided by CSIS, but originating from a third party whose practices and methodologies may differ. This practice is also employed by CSIS's closest allies:

¹⁶ It should be noted here that, by and large, these are the strategies identified by Justice O'Connor in his report to help mitigate the risks of dealing with foreign agencies suspected of human rights abuses. See, for example, *Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar* (O'Connor Inquiry), "Report of the Events Relating to Maher Arar: Analysis and Recommendations," Recommendation 14 and its subsequent discussion on the use of caveats.

It was not until April 2007 that CSIS policy began to address this issue formally; at that point, CSIS operational policy was revised to state that all reporting must “clearly indicate” when information or intelligence is used from a foreign country which “has a questionable human rights record”.¹⁹ This change echoes Justice O’Connor’s recommendation in September 2006 that “information received from countries with questionable human rights records should be identified as such and proper steps should be taken to assess its reliability.”²⁰ In late 2008, in an effort to provide further guidance on the matter, the Deputy Direction Operations issued a *Directive on Information Sharing with Agencies with Poor Human Rights Records*.

CSIS employed a number of tools to help mitigate the risks arising from sharing information from and with the NDS,

¹⁹ CSIS Policy OPS-501-3-1

²⁰ *Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar* (O’Connor Inquiry), “Report of the Events Relating to Maher Arar: Analysis and Recommendations,” Recommendation 15.

However, SIRC found that it was not until late 2008 that CSIS issued specific direction

4.2 The Deputy Director Operations Directive of 2008

Discussion of CSIS's cooperation with foreign entities suspected of human rights abuses is not new: in SIRC Studies 2003-03 and 2005-02, SIRC raised the issue of exchanging information with, and properly documenting, foreign agencies with poor human rights records; and, in SIRC Study 2005-06: *Review of Foreign Arrangements with Countries Suspected of Human Rights Violations*, SIRC explored the complexities of managing relationships with countries suspected of such abuses,²² In response, CSIS indicated that it was conscious that, given efforts to expand its role and activities abroad, the issue of human rights would "continue to present us with significant challenges."²³ In a later follow-up, SIRC was told that CSIS "gives due consideration to the human rights factor in everything we do as an intelligence service," adding that given the limited contact with agencies from countries the possibility that potentially tainted information would be given considerable weight in CSIS's intelligence assessments was low.²⁴

The need to cooperate closely with foreign partners to counter an international terrorist threat, as well as increased public scrutiny of CSIS's use of information obtained from agencies with poor human rights records, has resulted in revised Ministerial Direction on this topic, as well as the new *DDO Directive on Information Sharing with Agencies with Poor Human Rights Records*, cited above.²⁵ Although the Directive makes great strides to promote consistent awareness at all levels of the Service of the possibility of torture-

²² SIRC would also make recommendations based on mitigating reliance on agencies suspected of poor human rights records in SIRC Study 2007-07 and SIRC Study 2009-06.

²³ Response to SIRC Study 2005-06, Deputy Director of ER&L (File 410-114, July 13, 2006). Specifically OPS-601 (Authorized Disclosure of Operational Information and Intelligence) and OPS-602 (Disclosure of Security Information or Intelligence) were noted.

²⁴ The Service's relationship with the NDS, however, is vastly different than its relationship with agencies from a country

²⁵ For example, the most recent policy on this subject - OPS 501-3.1, which was updated in July 2010 - states that CSIS officers must "clearly indicate when information or intelligence is used from a foreign agency which has a questionable human rights record", referring to the November 2008 DDO Directive as the authority for this policy.

derived information, and to enhance accountability surrounding the exchange and use of such information by requiring senior-level approval, SIRC found the wording in its preamble problematic:

The international exchange of information and intelligence is vital to safeguarding Canada's national security and public safety. In that context, however, the Service may be required to deal with foreign governments and agencies having poor human rights records. This Directive sets out the principles that will guide our actions in the sharing, seeking and use of information from such agencies or governments.

SIRC sought clarification on the wording of this Directive,

However, the DDO Directive as it is currently worded may leave CSIS vulnerable to potential challenge or criticism regarding its stance on information-sharing with agencies that have a poor human rights record:

the need to carefully manage exchanges with agencies suspected of human rights abuses to ensure proper accountability *is the expected norm in all environments*. This principle is reflected in Ministerial Direction provided to the Service in late 2010, which specifically states that "in situations where a serious risk to public safety exists, and where lives may be at stake, I expect and thus direct CSIS to make the protection of life and property its overriding priority, and share the necessary information – properly described and qualified – with appropriate authorities."²⁷ (emphasis added).

²⁷ Minister of Public Safety to CSIS Director, December 7, 2010.

SIRC recognizes that urgent operational imperatives may sometimes necessitate that employees be relieved from administrative requirements to allow for the exchange of critical information in a timely fashion. However, SIRC recommends that CSIS re-word the preamble of the Directive governing exchanges with agencies suspected of having poor human rights records to clarify that CSIS personnel are not exempt from the Directive's principle and standard of accountability.

5 IMPLICATIONS FOR CSIS OVERSEAS ACTIVITIES

CSIS's activities in Afghanistan speak to a range of broader implications for both operations and operational policy. This section examines some of those implications, and offers analysis that ultimately stretches beyond the specific confines of the Afghan operation.

5.1 Records Management

CSIS's internal report was unable to quantify precisely how many detainee interviews took place. While recognizing that the detainee interviews in question were usually short, SIRC is concerned that CSIS did not more fully document its role by keeping fuller records that would confirm the numbers and details of the detainee interviews that occurred prior to April 2007. As stated earlier, detailed records of a CSIS detainee interview can be found today only if the detainee revealed something of operational importance, and hence became part of reporting on a S. 12 threat.

As CSIS's internal report notes, although Canadian Forces' processes for administering detainees was well-documented, CSIS's "involvement in the interview process was less structured," and CSIS employees "would rely on the Canadian Forces to document the Service's involvement in the interview,"

SIRC found that in addition to such incomplete documentation, many of the information exchanges were not properly tracked in operational reporting,

In recent years, SIRC has suggested that given the growing complexity of operational conditions abroad, CSIS's information management practices abroad should strive to replicate the professional standards set for domestic operations.³²

SIRC believes that should CSIS continue to expand its activities abroad and to provide support to Canadian efforts in volatile regions of the world, it will need to improve its record management practices in those regions. In doing so, CSIS would improve its own internal accountability: the CSIS Director commissioned the internal review of CSIS's involvement with Afghan detainees in part because, when the issue surfaced in the media, CSIS could not provide its senior management with a comprehensive account of its involvement in this matter. Moreover, growing demands by judicial inquiries and the courts to produce comprehensive documentation, underscore the importance of rigorous records management.

5.2 Future Implications for Overseas Activities

CSIS's internal report concluded that the Service appeared "tardy" in developing direction or guidelines governing CSIS's interaction with Afghan detainees. It was only in 2007, in the aftermath of widespread allegations in the media that detainee abuses

³⁰ Canadian Security Intelligence Service Internal Review of its Involvement with Afghan Detainees. 2010 04 26 p. 4-6.

³¹ CSIS Briefing to SIRC, December 1, 2010. CSIS personnel noted to SIRC that finding and assembling the relevant documentation for their report was a significant challenge. SIRC's own research confirmed this:

³² Some examples include Foreign Post reviews (culminating with SIRC Study 2003-05) that have noted concerns related to record management abroad; properly documenting all exchanges with foreign agencies in Study 2003-06 and Study 2005-02;

could be occurring, that the DDO issued a directional statement to govern future contact with Afghan detainees, including

- that individuals “directly arrested by GoA [Government of Afghanistan] authorities or those first arrested by Canadian or allied authorities and subsequently transferred to GoA custody, are entitled to fair, humane and appropriate treatment as defined by international law and articulated in Government of Canada policy;”
- that “CSIS officers shall not be directly/physically involved in the detention of detainees nor in the custodial transfer of detainees to Afghan (or other) authorities.”

The directional statement governing CSIS’s contact with Afghan detainees, late as it was, was nonetheless quite comprehensive and established clear parameters for future contact.

Overall, this experience provided opportunities for CSIS to enhance its approach to managing operations overseas. We believe, that, in future, CSIS should strive to be more proactive when undertaking operations abroad,

In 2004, the media began reporting on allegations of American detainee abuse in Iraq,

to forge the first detainee transfer agreements with the NDS.³⁴ The situation led to the drafting of a number of rules within CF to regulate the handling of detainees and agreements between CF and the NDS concerning the treatment of, and access to detainees. Yet, CSIS’s internal report revealed that until early 2007, CSIS personnel – both in theater and at HQ – did not

consider that the systematic interviewing of detainees required specific policies or procedures.

SIRC found that there was, early in CSIS's involvement, enough information available on the situation in Afghanistan for the Service to have appreciated the complexity of the environment in which it was operating. As a result, it could have moved more quickly to put in place additional guidelines to ensure proper accountability.

More broadly, through this study, SIRC has noted differences in CSIS's management of information sharing, its record-keeping, and its overall direction with regard to operations conducted abroad. We believe that if CSIS continues to expand its operations abroad, it should take all reasonable measures to ensure that management of operations meets, as far as is practicable, the standards of accountability and professionalism that are set and maintained domestically. This would include strengthening CSIS's ability to consider the potential implications of those operations prior to undertaking them, and increasingly embracing the notion that while overseas operations present a different set of challenges, those challenges can be anticipated and planned for, and do not have to be conceived as 'exceptions' in CSIS's overall strategic planning.

6 CONCLUSION

SIRC's objective in examining CSIS's involvement in interviewing Afghan detainees was to assess its performance, and to ensure the efficiency and effectiveness of its policy and operations. SIRC noted two issues that warrant CSIS's consideration: first, the need for CSIS to consistently and carefully assess and qualify information originating from agencies that may engage in human rights abuses, and second, that CSIS should strive to ensure that the management of its operations abroad mirror, as far as is practicable, the standard of accountability and professionalism that is set and maintained domestically.

The Service's involvement in the Afghan detainee matter provides lessons that can be applied to future operations abroad. Although overseas operations are sometimes carried out in unique circumstances and present different challenges, early planning and guidance will help ensure proper accountability. In a time when the activities of intelligence agencies are under even closer public scrutiny, it is important for CSIS to demonstrate that it can carry out its activities – not only at home, but abroad – while adhering to the standards of responsibility and professionalism which Canadians have come to expect and appreciate from CSIS.