

COALITION PROVISIONAL AUTHORITY
BAGHDAD

UNCLASSIFIED
INFORMATION MEMO

March 22, 2004

FOR: THE ADMINISTRATOR
FROM: Dobie McArthur, Senior Advisor for Detainee and Prisoner Issues
SUBJECT: Analysis of Detention Operations

You requested input on detainee operations. Because most of the items discussed are within the purview of CJTF-7, this is an information memo rather than an action memo. It does, however, address areas that you may wish to discuss with LTG Sanchez. The recommendations are premised upon the following assumptions:

- CJTF-7 will continue military operations after the July 1 transfer of authority to the transitional government, and will continue to have authority to detain and hold individuals deemed a threat to security after the transition. (That authority has yet to be defined, but without it, any discussion of detainee operations is moot.)
- The transition to Iraqi control in July will not eliminate, and may in fact accelerate, anti-Coalition activity. Therefore, the need to detain individuals deemed a threat to security will not diminish substantially.

These recommendations are offered to resolve problems that are occurring alongside some very positive developments on the detainee front:

- The Arabic language version of the detainee roster has been available on the CPA website since February 16, (b)(6) and the staff of the Iraqi Assistance Center (IAC, directed by (b)(6) and the General Information Centers (GIC) completed this census in January. This information has been very helpful in providing information to Iraqi families about detainees.
- A complete new census of the population at Abu Ghraib was recently conducted, and procedures are now in place to update the list weekly. (b)(6) and the staff of the IAC and the GICs completed the new census, and CJTF-7 has added linguists to the detainee induction process to capture the information for the Arabic lists as part of routine in-processing.
- At the direction of (b)(6) Senior Advisor for Prisons within the Ministry of Justice, and with the cooperation of CJTF-7, a census of criminal detainees has also been conducted, and the results will be made available publicly. This will make it possible to track individuals who came into Coalition custody as a Security Internee but were

UNCLASSIFIED

reclassified as a Criminal Detainee, or who were criminals from the start but were under Coalition control.

- The Ministry of Justice has been reviewing the cases of individuals who were reclassified from Security Internee to Criminal Detainee, and has been releasing those against whom the evidence is insufficient to support a trial, either because the file is incomplete or witnesses are not available.
- The Reception Trailer at Abu Ghraib has been in operation since early March, and is able to handle about 100 requests for information per day. In more than 95% of all cases, the staff of the reception trailer has been able to identify and confirm the status of the individual about whom the request was made. (b)(6) worked tirelessly to get the reception trailer in place and to train the staff to respond to detainee inquiries.
- Detainees are now being transported closer to their home towns. They do not get door-to-door service, but CJTF-7, and particularly (b)(6) has made extraordinary efforts to get released detainees at least close to their home town.
- CJTF-7 is now providing detainees a \$10 stipend upon their release.
- The recently established standing Review and Appeal Board has been considering almost 100 cases per day since February 17th, and has cleared more than 2,000 detainees for release. Without their efforts, the detainee population would be substantially larger than it is today.

Recommendation I - Harmonize Tactics with Strategy

The first of the four principal objectives or "core foundations" listed in the CPA transition plan is that of establishing a secure and safe environment in Iraq. Unfortunately, several of the current tactics employed by CJTF-7 in conducting detention operations are inconsistent with, if not contrary to, that strategic goal. Coalition Forces are operating in an environment that is both complex and hostile, and therefore should be given some latitude with regard to the specifics of how they conduct operations, but they should not lose sight of the fact that military operations are a means to an end rather than the end itself. Where conflict exists between the strategic aim and the tactics employed to reach it, the tactic must be changed rather than the strategic aim.

A prime example of the conflict between tactics and strategy is the effort to create a media event on March 21 highlighting a large release of detainees. The number released was ultimately lowered from the initial goal of 500 to around 200, which is one third the number that would have gone out during the same period if normal procedures had been followed rather than attempting to stage a media event, but the negative effects are still the same. In addition to administratively holding up the release of individuals who had been cleared to go and paralyzing an already overwhelmed system for in-processing and out-processing security internees, staging a media event highlighting a large release signaled a conciliatory approach that is not being backed up by other actions. The media event may produce a short term benefit, but risks making the Coalition look disingenuous if releases are done with fanfare while captures go on unremarked and unabated. The tactic of seeking publicity for releases without a concomitant change in policy leading to fewer detainees being captured in the first place undermines our

UNCLASSIFIED

Page 2 of 7

UNCLASSIFIED

credibility with the Iraqi public. Diminished credibility leads to less Iraqi support for Coalition military operations, which is inimical to the goal of freeing Iraq of terrorists. The following analysis shows that the Coalition is, in fact, continuing to capture more than it releases.

Since the first of the year, CJTF-7 has been capturing an average of 80 detainees per day. In the early part of the year, the number of cases going before the Review and Appeal Board was not sufficient to keep pace, and the detainee population was rising. On February 15, LTG Sanchez authorized the establishment of a standing Review and Appeal Board to increase the number of cases reviewed. Slightly less than 100 cases per day (2672) went before the board from February 17 through March 18. Of that number, almost 80 % were recommended for release (2140/2672), which equates to about 70 per day. The cases that went before the board were broadly representative in terms of the units involved in the captures and the length of time that the individuals had been in detention. It appears that the cases going before the standing board in the first two weeks of its operation, which had a higher percentage of individuals who had been in detention since last summer, produced a higher rate of recommended releases than in the last two weeks. Analysis of these results implies that a 65-70% release rate is more likely to prevail over the long run. *Thus, even if we assume an 80% release rate and continue to present about 100 cases per day to the board, we are only going to hold our detainees population steady, not decrease it. If we assume that the 65-70% release rate predicted by trend analysis is more accurate, then we will actually see a net increase in the detention population of 10-15 individuals per day.*

There is no quantitative answer to the question of how many detentions are necessary to improve security in Iraq. The only appropriate answer is, "As many as it takes." However, when 80% (or even 65%) of the individuals whose files are considered by the Review and Appeal Board are recommended for release, it is very likely that the manner in which detention operations are being conducted is undermining our strategic aims, in other words, our tactics are at odds with our strategy. With such a high release rate, one of two things is happening - either we are holding 4 out of 5 (or 2 out of 3) detainees for several months without adequate cause, or we are letting dangerous individuals back out on the street because the case files do not contain sufficient justification to continue detention. Both scenarios are unacceptable because they undermine the strategic goal of improving security, although through different mechanisms. Releasing dangerous individuals has a direct negative effect on security, while holding others for extended periods without adequate justification undermines our effort to build Iraqi support for Coalition military operations. Even if lengthy detentions do not breed direct hostility, they risk making Iraqis ambivalent towards the Coalition. Without active involvement of the Iraqi citizenry in identifying anti-Coalition elements, the chances of strategic success are greatly diminished. Holding detainees for long periods and belatedly releasing them because there never was a good case to hold them is another example of tactics undermining strategy.

CJTF-7 has made three recent changes in processing detainee cases, but these changes are not sufficient to address the problem. One of them may actually make it worse. The first procedural change, included in the February 15 package of changes ordered by LTG Sanchez, is to empower magistrates at the division level to release individuals against whom a good case cannot be made. That remedy has been either incompletely implemented or has been ineffective because there has been no reduction in the detention population, which has actually increased

UNCLASSIFIED

Page 3 of 7

UNCLASSIFIED

since the order was signed. The second, more recent, change is to allow the Forward Operating Base (FOB) commander at Abu Ghraib to return to the divisions those detainees whose case files do not at least make a *prima facie* case for holding the individual. This change is recent enough that the results cannot yet be measured. However, any system that pits a Colonel (the FOB commander) against a Major General (the Division Commander, who already has release authority but has decided the individual should be interned - hence the trip to Abu Ghraib) isn't likely to hold up over the long term. The third change, installing LTG Metz over the Review and Appeal Board, is actually likely to slow down the release process. One of the factors leading to the recently lifted moratorium on releases was the concern of some of the division commanders that "bad guys" were being released. If the division commander could state categorically that an individual should not be released, why wasn't the case file prepared in such a way to make it obvious to the Review and Appeal Board that the individual was a continuing threat? Putting LTG Metz above the Review and Appeal Board as the deciding authority for releases will be meaningless if all he can do is second guess the board. What information will be at his disposal that is not already before the board? And, if he has no information other than what was available to the board, but is simply going to supplant their judgment with his, what is the purpose of having the board in the first place? In theory, LTG Metz could use his authority to buttress the recommendation made by the board, but LTG Sanchez already has that option and has chosen not to exercise it. On the positive side, this change will remove the colonels on the Review and Appeal Board out of the line of fire of the division commanders, but will do little or nothing to improve the functioning of the system. The net result of this change will be to apply yet another bottleneck in an already strained review process.

Two actions are necessary to address this part of the problem: 1) apply resources at the appropriate place in the detention chain - at the beginning, and 2) define reasonable risks and accept the consequences. The effect of implementing these changes will be twofold. First, they will reduce the number of individuals who are ultimately interned by identifying poor candidates for detention before they have been sent to Abu Ghraib or Bucca. Second, recognizing that no process is without risks, defining what constitutes a reasonable risk, and jointly agreeing to accept those risks, will preclude the periodic fits and starts in the release pipeline that happen now when release decisions are second guessed all up and down the chain.

The case for holding a detainee is not an avocado that ripens on the way to Abu Ghraib. Division commanders must understand that the further away a detainee gets from the spot of his capture, the less likely it is that anyone is going to be able to make a case for holding that individual. The place to focus resources is at the beginning of the detention chain. If division commanders cannot make a case for holding someone during the two weeks that they are allowed to hold individuals before sending them to the rear, then the chances of anyone else making such a case are minimal. The notion that there are sufficient resources at Abu Ghraib to conduct all the interrogations and interviews necessary to fill out the case file is not being borne out in practice. If that were the case, the board would not be recommending release for 65-80 % of the individuals who come before it. Thus, CJTF-7 must push interrogation and case review resources down to the operating units so that individuals who are ultimately going to be released are released more quickly, and the case files of those who should be held are sufficient to justify continued detention. Failure to do so will perpetuate and aggravate what is already a debilitating problem - the perception that the Coalition is holding large numbers of people without due

UNCLASSIFIED

cause. This perception alienates large segments of society and undermines the strategic aim of building rapport with the population.

The second step that must be taken is to quantify risks and accept the consequences of actions that produce results within the risk areas that have been so defined. In the past month, there have been three types of releases that contributed to the recent moratorium on releases. The first case involved an individual who was released even though there was a reward posted for his capture. This apparently resulted from a breakdown of communications, and steps have been taken to prevent a recurrence of that situation. The second type of release that generated concern was when members of the IGC were upset about the release of particular individuals whom they wanted held as war crimes suspects. Upon further reflection, it is now clear that the fact that the IGC is upset with a particular release is not a sufficient justification for continuing to hold someone because, were we to hold someone who had been cleared by the Review and Appeal Board on nothing more than vague concerns of the IGC or the fledgling Iraqi Special Tribunal (IST), we would be skirting the margins of creating political prisoners. The task now is to find a mechanism for balancing the risks that potential war crimes subjects and/or witnesses will be released - and will flee the country and seek asylum, as did Sa'dun Hamadi - against the risk of unjustly holding individuals. The third type of controversial case involves the release of individuals that division commanders do not think should be released. As previously noted, if commanders do not want an individual released, it is their duty to present a case that justifies detention.

The following steps would help to harmonize detention tactics and strategy:

- 1) Abandon efforts to create a media event highlighting a large release, and refocus the IO effort on getting the message to the Iraqi people that we have a process for reviewing cases and that we release detainees when we can. Full implementation of the conditional release program, which will require the allocation of appropriate personnel resources, will assist in making this point. If capture numbers decrease substantially, this issue can be revisited, but absent a fundamental change in direction, seeking media attention for a large release will be counterproductive.
- 2) Increase the tempo of cases going before the Review and Appeal Board so that we can, as quickly as possible, release the 65-80% of the detainee population that will eventually be released anyway. Adding a second or even a third Review and Appeal Board, with all appropriate supporting staff, is the only way to accomplish this goal. Failure to increase the tempo of case review will mean going into the transition with a Security Internee population of between 8,000 and 10,000, of which 65-80% will likely be eligible for release, but whose cases will not have been considered by a Review and Appeal Board.
- 3) Increase the standards for preparing case files so that the original decision to detain an individual is more likely to stand up throughout the process. In effect, the goal should be to increase the percentage of cases that the board votes to retain by either making the case files better or by more rapid release of individuals whose cases do not warrant detention.
- 4) Establish policy with regard to the release of detainees that the IGC or IST suspects of war crimes, implement it and agree to accept the consequences up and down the line.

UNCLASSIFIED

Page 5 of 7

UNCLASSIFIED

II - Improve Information Management/Technology used for Detainee Operations

The information management technology used by CJTF-7 to track detainees is completely inadequate to the task. The absence of a comprehensive and capable detainee tracking and reporting system is not the fault of CJTF-7, at least not initially, but after more than ten months of occupation, this problem should have been solved. A number of bright and industrious soldiers have cobbled together a wide array of single-purpose systems that - while serving the one purpose for which they were designed - are incapable of accomplishing all the things that need to be done with regard to detainees. The adverse consequences of relying on this hodge-podge of tracking and reporting systems are as predictable as they are severe:

- Errors are rampant as data must be manually keyed into several tracking systems, spread across three computer systems (NIPR, SIPR, and CENTRIX). In one recent 15 day period, "administrative correction for reporting error" of the daily losses and gains in the detainee population approached 20 percent, making efforts to ascertain the number of releases and new-inductions next to impossible.
- Maintaining unclassified information on classified systems reduces the number of people who can have access to it. This is inefficient as it concentrates the workload on individuals who have security clearances, when much of the work (tracking lists of detainees to determine who is coming up for release, for example) could more easily and effectively be performed by administrative staff, including Iraqi nationals without security clearances.
- Data latency between the systems means that decisions are often made on incomplete and inaccurate data. This increases the workload on an already overloaded administrative staff, which must frequently spend inordinate amounts of time tracking updated information that should be readily available.

The solution to the problem is relatively straightforward - establish a Tiger Team of industry and military experts, with a six month mandate to design and implement a system that:

- 1) Is web-based and unclassified
- 2) Is capable of accepting input from all the existing single-purpose systems (hereinafter referred to as "source databases"), which are primarily in Microsoft Excel and Access
- 3) Makes use of pre-existing Iraqi records and databases (Oil-for-Food Ration Card data, military records, etc.)
- 4) Is capable of accepting input and producing output in both English and Arabic
- 5) To the maximum extent possible, relies on electronic input and files rather than paper
- 6) Captures (appropriately safeguarded) biometric data on all detained individuals, including IAFIS-compliant fingerprint data
- 7) Is available at the division level, at a minimum, and at lower levels if possible
- 8) Contains a unique identifying number that is assigned to every individual who comes into Coalition custody. [Although doctrine requires this now, it is not happening in practice.]

UNCLASSIFIED

Page 6 of 7

UNCLASSIFIED

- 9) If necessary, is characterized by a single "air gap" to address classification issues. If some of the information required for detainee operations must remain on a classified network for security reasons, the unclassified data resident in the classified source databases must be capable of being extracted in unclassified form to serve as an input for the new system. The system must be designed so there is only one such operation needed to perform an update across the classified-unclassified boundary
- 10) Meets the tracking and reporting requirements of the Coalition Forces, higher headquarters, humanitarian organizations, and other parties with a legitimate interest in detainee issues. Specifically, it must provide a capability to track an individual through the system from the time of his capture until the time of his release.

Although the benefits of creating such a system will not be apparent until well after the transition takes place, the failure to start now to resolve this problem will perpetuate what is already a massive problem - the inability to accurately identify detainees and track them from the point of capture to the point of release.

UNCLASSIFIED

Page 7 of 7

UNCLASSIFIED

Attachment 1 - Recommended Language for Response to Detainee Inquiries

- 1 -

Introduction

Thank you for your recent correspondence regarding individuals detained by Coalition Forces. I appreciate this opportunity to respond to your concerns.

Security Internees - General

International Humanitarian Law obliges an occupying power to restore and ensure order as far as possible, including the detention of criminals and internment individuals for imperative reasons of security. In addition, Coalition Forces continue to retain some Enemy Prisoners of War in custody. There are therefore three classes of persons in Coalition custody: Enemy Prisoners of War, Criminal Detainees and Security Internees. The obligations of the Coalition should be viewed in the context of the conditions that exist in Iraq. The Coalition inherited a situation whereby all the prisons had been destroyed or substantially damaged and the entire criminal population of around 60,000 had been released onto the streets. Added to this is the security challenge presented by the Former Regime Elements and foreign terrorists conducting criminal outrages against the Coalition and the people of Iraq. Eliminating this violence and dealing with the criminal elements is a necessary step toward securing peace and freedom for all Iraqis. In dealing with these matters, the Coalition has established processes that afford all persons in Coalition custody all the rights and safeguards set out in applicable International Humanitarian Law.

In relation to Security Internees the processes that have been established include review and appeal mechanisms that exceed International Humanitarian Law requirements. Moreover, steps have recently been taken to significantly increase the capacity and therefore the speed of the process. The current rate of review is about one hundred cases each day. Those who are deemed to no longer be a threat to security are being released. With regard to Criminal Detainees a massive and expensive rehabilitation effort has resulted in the substantial transfer of the administration of criminal justice back to Iraqi authorities subject to continuing monitoring by the Coalition.

Notification of Families

Under the former Ba'ath Party regime, individuals who were taken into government custody often simply disappeared. In stark contrast, the Coalition has taken several measures to ensure that Iraqi families can learn the status and location of individuals who have been detained by Coalition Forces. The Coalition maintains a list of all the individuals in detention, and this is available in specified locations throughout Iraq where families can make inquiries. The list is published in Arabic, on the CPA website, <http://iraqcoalition.org/arabic/prisoners/index.html>. The Arabic list contains the individual's name, Internment Serial Number (ISN), place of birth, address, and the place of detention. It is as complete and accurate as possible and is subject to the willingness of the detained individuals to provide the requested information. Work is

UNCLASSIFIED

UNCLASSIFIED

Attachment 1 - Recommended Language for Response to Detainee Inquiries

- 2 -

continuing with regard to the expansion of both the amount and availability of this information to make it easier for Iraqi families to find their loved ones.

Family Visits

Family and attorney visits are currently allowed for Criminal Detainees. At this time Security Internees are not able to receive visits, but a visitation facility at our largest detention center is in the process of being built, and it is expected to be in operation within the next several weeks. A certain limited number of high risk Security Internees are not permitted to receive visits and this is in accordance with permissible restrictions under applicable International Humanitarian Law. All Security Internees are nevertheless visited by delegates of the International Committee of the Red Cross who are able to pass messages to families and make representations to the Coalition regarding any matter concerning the conditions of their detention and their health.

Juveniles

From time to time Coalition Forces detain juveniles, but this happens only occasionally and only when absolutely necessary. Juvenile Security Internees are segregated from the adult population of detainees, and their cases are closely monitored by an office within the CPA. In addition juvenile cases are subject to more frequent consideration by the Security Internee Review and Appeal Board than adult cases.

Females

The Coalition holds a very small number of female Security Internees. The number varies, but is generally less than two dozen. They are segregated from the male detainee population, are housed in better conditions than the men, and their cases are reviewed for potential release more frequently than those of their male counterparts. Our treatment of female Security Internees reflects our recognition of the special status of women in this predominantly Muslim country.

Criminal Detainees

As an occupying power, the Coalition is responsible for the interim administration of Iraq, including the criminal justice system. As we move toward the transition to complete Iraqi control of the government in July, we are working to ensure that more and more government functions are in the hands of Iraqis. The Iraqi courts are now run almost entirely by Iraqis, as are many detention facilities for individuals accused or convicted of crimes. The Iraqi juvenile courts are in Iraqi hands, and are among the best managed in the system.

Other parts of the criminal justice system are currently administered jointly by the Coalition and Iraqis, and some are still primarily the responsibility of Coalition Forces. For example, should an investigation determine that an individual is criminally culpable in an attack on Coalition Forces, he is transferred to an Iraqi criminal detention facility, where his case will

UNCLASSIFIED

UNCLASSIFIED

Attachment 1 - Recommended Language for Response to Detainee Inquiries

- 3 -

be investigated by an Iraqi Investigating Judge and his trial will be before the Central Criminal Court of Iraq. In addition, Coalition Forces currently assist in the administration of Iraq's principal criminal detention facility, and frequently provide transportation for defendants to and from court, but the authority to decide guilt and punishment in these matters rests in Iraqi hands.

Why don't Security Internees get a lawyer?

Under International Humanitarian Law Security Internees are not entitled to the right to counsel as they are temporarily detained in an administrative process that does not involve or result in criminal prosecution. This process involves a review and appeal mechanism that evaluates each case. Such cases must be reviewed no less frequently than once every six months. In instances where a detainee is subsequently determined to have committed criminal offences, such as the murder of Coalition soldiers, the individual is transferred into the Iraqi criminal justice system, which does afford the right to counsel. It should be emphasized, however, that all Security Internees are entitled to and will receive visits from a delegate of the International Committee of the Red Cross who can pass on family messages and make representations to the Coalition concerning the conditions of detention and the health of the Internee.

Why can't you find a particular detainee?

There are sometimes difficulties locating particular individuals in detention, notwithstanding the extensive effort exerted to produce detailed and accurate detainee lists. Most of these difficulties stem from translation problems, the difficulty of obtaining the complete names for individuals, and the reluctance on the part of some detainees to provide accurate information. To address this problem, a census has recently been completed of our detainee population, using native Arabic speakers, and the results have been published on the CPA website, <http://iraqcoalition.org/arabic/prisoners/index.html>. The list includes a unique Internment Serial Number for each detainee, which will facilitate the location of individuals detained by Coalition Forces. We will update this list frequently to ensure that information is available to the families as quickly as possible, and in a language with which they are familiar.

UNCLASSIFIED