

## Detainee Legal Processing

### General.

Procedures have been implemented for the legal processing of detainees since the inception of hostilities. These methods have undergone revision over time and now are centered on the identification and processing of Security Internees (including High Value Detainees) as well as Criminal Detainees. While the EPW mission remains significant, there is very little legal processing of EPW's as they are in a hold status until a determination is made to either release them or prosecute them before military commissions.

Security Internees are defined as those persons who are detained by Coalition Forces when necessary for imperative reasons of security. In accordance with Article 78 of the Fourth Geneva Convention, persons held as Security Internees are afforded the right of appeal of the decision to intern them. The decision to intern a person shall then be reviewed not later than six months from the date of the induction into the internment facility.

CJTF-7 has developed and implemented procedures designed to insure that all persons detained are treated in accordance with all applicable laws and that there is timely processing. FRAGO 749 sets forth the requirements and details concerning the capturing, detaining, and processing of detainees. Additional guidance has been provided to commanders to facilitate consistent processing of those persons identified as a Security Internee.

### Observations.

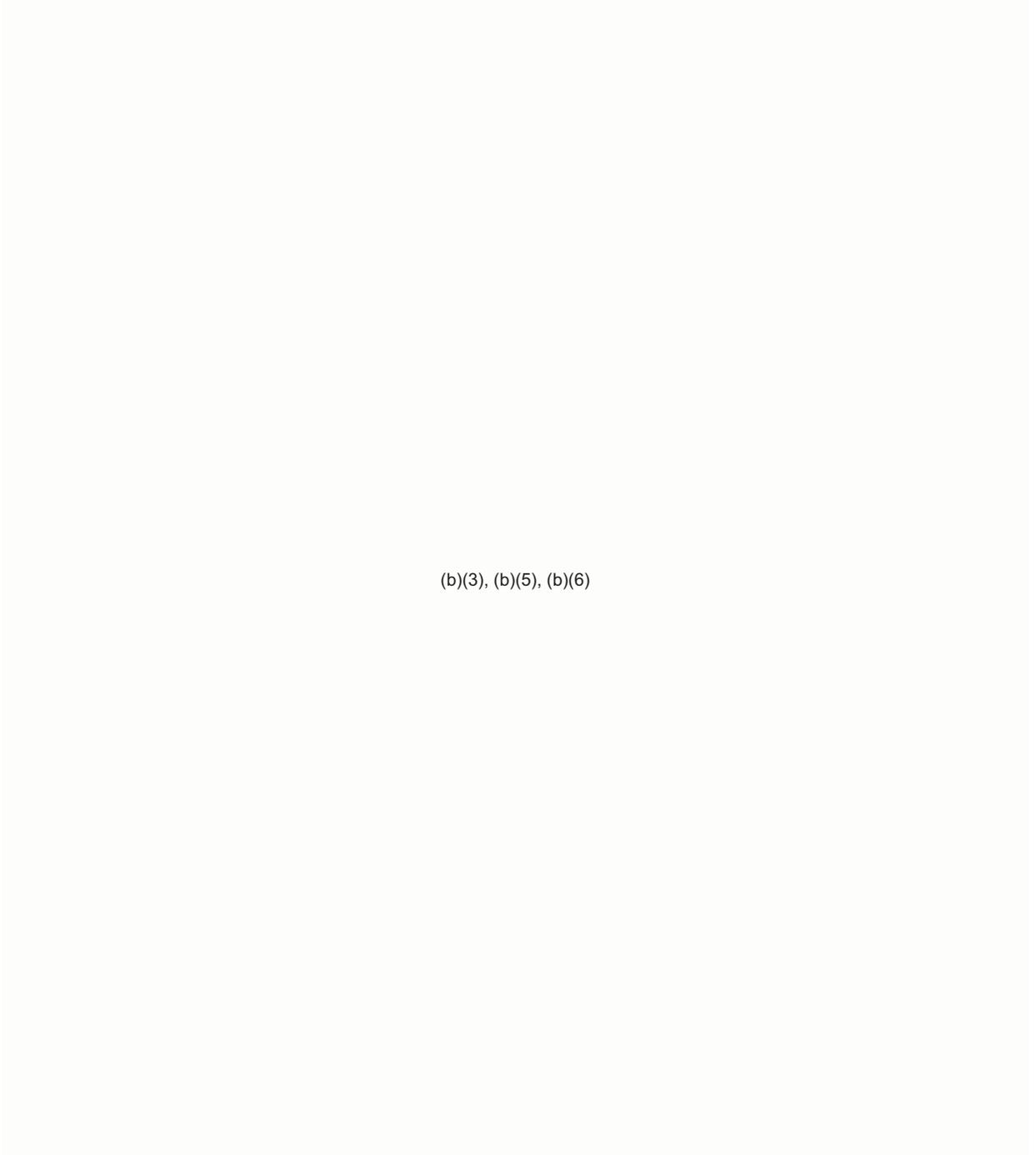
1. The Fourth Infantry Division has supplemented the guidance from CJTF7 and added a Detainee Disposition Worksheet and a Detainee Inquiry Response Form. Use of the Detainee Disposition Worksheet seems to more clearly identify the capturing unit, thus making subsequent communication easier. In addition, the form, to the extent the recommendations can be obtained in the field, documents the staff recommendation as to whether the person should be released after processing, held or turned over to the Iraqi police. It also provides an opportunity for the capturing unit to concur or non concur where release may be later contemplated and further states the 4<sup>th</sup> ID's recommendation to the CJTF-7 Review Board. The Detainee Inquiry Response Form is used by 4<sup>th</sup> ID to respond to inquiries from families of those persons captured by the 4<sup>th</sup> ID.
2. At present there are approximately 3400 Security Internees in custody. As many as 4300 have been interned and approximately 900 have been released. The future trend will likely continue, although it is driven by a number of factors (e.g., number of missions by Coalition Forces, frequency and accuracy of new intelligence information and the activity of any anti-Coalition forces).

3. While the Geneva Convention requires a 72-hour review, it should be noted that the CPA has concurred with CJTF7's determination that the 72-hour review requirement starts when the detainee reaches the central collection point in Baghdad. CJTF-7 has established a 14-day grace period in which persons detained and initially identified as a Security Internee should be brought to the central collection point. This was done to accommodate the transportation and security issues that Coalition Forces operating far from Baghdad were experiencing.
4. The 72-hour review is being conducted by JAG officers. In fact, regardless of whether the capturing unit has had JAG assets to conduct the 72 hour review, CJTF-7's JAG Detention Cell team is conducting in some cases a second 72 hour review. The CJTF-7 Detention cell mission is headed by Major (b)(3), (b)(6). He has done an outstanding job staying on top of this unique mission.
5. Persons determined to be Criminal Detainees are referred to the Iraqi Criminal process.
6. Individuals determined to be Security Internees at the 72-Hour Review are interned under Article 78 of the Geneva Convention. They may appeal the decision to a Review and Appeal Board. Thereafter, if the appeal is denied, or in the event no appeal is made, the detainee's case must be reviewed by an Article 78 Board within six months. No six-month review boards have been required thus far but they will begin to occur in November.
7. The number of detainees being processed has been so overwhelming that the CJTF-7 SJA has taken the initiative. The SJA has developed and implemented an interim step between the 72 Hour Review and the Review and Appeal Board (if an appeal is taken) and the 72 Hour Review and the six month review requirement in an effort to more quickly screen those cases that might warrant release by the Review and Appeal Board earlier than would otherwise occur under the normal required process. The SJA's initiative has proven to be very helpful in managing the numbers of detainees.
8. While the Review and Appeal Board, currently composed of BG Fast, BG Karpinski and COL (b)(3), (b)(6) retains release authority for all Security Internees, the creation of the Review Panel has effectively served to speed up the review process and identify those persons worthy of release while not compromising the integrity of the process. With respect to the Geneva Convention requirements, the Review Panel affords the Security Internee additional opportunities for release and therefore, additional due process and consideration. The Review Panel consists of one MP officer, one MI officer and a Judge Advocate. The Review Panel screens for the Review and Appeal Board, both the six month review requirement and the appeal requirement. The Review Panel can meet more frequently than the Review and Appeal Board and has been invaluable.

9. With the steady flow of detainees coming into the system and the impending requirement to hold 6 month reviews of Security Detainee/Internee status beginning in November, it is unlikely that the current process will be able to accommodate the numbers of cases that will need to be reviewed in the future since there will be the requirement to hold 6 month reviews and handle appeals. Recognizing this, CJTF-7 has identified the need for additional personnel, both JAG and MI assets. On 25 August 2003, the CJTF-7 SJA submitted his memorandum justifying Reserve Component Augmentee Support. A similar request has been made by the MI community.
10. In addition, as recently as 2 October 2003, the CJTF-7 SJA, again recognizing the upcoming increased demand for Security Internee case reviews, has requested and obtained approval for the creation of a separate Appellate Review Panel to review all appeals by Security Internees and a Six Month Review Panel to focus solely on the six month review cases.
11. In this manner, the Review and Appeal Board will hear only those cases that have been reviewed by a subordinate panel and recommended for release by that panel.
12. In an effort to give finality to the process of internment and to provide a definitive legal response to attacks on Coalition Forces a request has been made by Lieutenant General Sanchez to CENTCOM for assistance in the establishment of military commissions to try persons in Iraq accused of crimes against the Coalition Forces.
13. The CJTF-7 SJA has also made plans for the disposition of cases involving HVD's, regardless of their classification as either Security Internees or EPW's. Options include prosecution by the Central Criminal Court of Iraq and/or Military Commissions, depending on the allegations against the detainee (Operation Wolverine).
14. CJTF-7 has established a Criminal Review Board to review serious criminal cases involving an Iraqi victim so that a JAG legal review can be done and in those cases where a "reasonable prosecutability" threshold cannot be met, release can be ordered. In the alternative the detainees can be held as a Security Internee if the Board finds that the individual is a security threat.
15. Due to resource limitations and competing mission requirements, there have been some instances when a person ordered released has not been released in a timely manner, i.e., not within 24-48 hours, when ordered released. In some instances, the person has been inadvertently moved to another facility but not released. There has even been a delay in the receipt of some juvenile release orders. This situation is compounded by the fact that these juvenile detainees are housed with ordinary juvenile delinquents.

Recommendations.

1. Near-Term.



(b)(3), (b)(5), (b)(6)

2. Mid-Term.



(b)(3), (b)(5), (b)(6)

3. Long-term.

(b)(5)

POC.

Colonel (b)(3), (b)(6)

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