



30 October 2020

Major General the Hon Justice Paul Brereton, AM, RFD
 Assistant Inspector-General of the Australian Defence Force
 BP25-4-43, Brindabella Park
 PO Box 7924, Canberra BC
 Australian Capital Territory 2610

Copied:

General Angus J. Campbell, AO, DSC,
 Chief of the Defence Force

Senator the Hon Linda Reynolds CSC
 Minister for Defence

Dear Justice Brereton,

Re: Public Release of the IGADF Afghanistan Inquiry Report

We, the undersigned organisations, reflect a cross section of Australian and international human rights organisations, and the Afghanistan Transitional Justice Coordination Group, which is composed of 19 Afghan human rights organisations and individuals, dedicated to transitional justice in Afghanistan and advocating for and representing victims' groups, including before the International Criminal Court.

We are writing in relation to the Inspector-General of the Australian Defence Force (**IGADF**) Afghanistan Inquiry (**Inquiry**), being led by you as Assistant Inspector-General of the ADF.

We are encouraged that the IGADF commenced an Inquiry over four years ago into allegations of misconduct and breaches of international humanitarian law (**IHL**) by members of the Special Operations Task Group in Afghanistan, over the period 2005 to

2016. After allegations about the conduct of special forces from as early as 2009¹ appeared in media reports, and frustration over a lack of genuine investigations by the Defence establishment to investigate these allegations, this Inquiry is an important part of the accountability process and into fulfilling Australia's obligations to ensure respect for IHL by investigating violations by its forces.²

We are aware that the Inquiry is an administrative process and that there will likely be referrals made to the Australian Federal Police of incidents for criminal investigations, following the Inquiry's conclusion. We will continue to monitor the process of criminal investigations and any eventual prosecutions.

We are aware that the Inquiry is investigating:

- the conduct of SAS forces in over 55 incidents of alleged unlawful killings, including of children, and the cruel treatment of civilians, and captured combatants; and
- incidents that are relevant to the organisational, operational and cultural environment which enabled these violations of IHL.³

These allegations, some of which have been made public through extensive media reports, if proven, represent serious and grave violations of IHL, which amount to the commission of war crimes. The impact on the families and communities affected has been great, and the demands for truth, justice and accountability from the families of the victims cannot be ignored.⁴

The Afghan people have remained trapped in an unbroken cycle of a 40-year long conflict which is profoundly rooted in a culture of impunity, with many actors operating in total disregard of local and international laws and norms in the firm belief that nobody will ever hold them accountable.⁵

Media reports have suggested that the Inquiry is nearing conclusion and will report imminently. Given that the IGADF was directed to conduct an inquiry by the Chief of the Defence Force, the *Inspector-General of the Australian Defence Force Regulations 2016* state that the IGADF must provide the report of the Inquiry to the Chief of the Defence Force.⁶ The Chief of the Defence Force is empowered to release all or part of the report.⁷ The Assistant IGADF is also empowered to publicly release all or part of the report after consulting the Chief of the Defence Force.⁸

¹ Nick McKenzie and Ash Sweeting, 'Military in Afghan Cover-Up' *The Sydney Morning Herald* (11 May 2009) <<https://www.smh.com.au/national/military-in-afghan-coverup-20090510-az9p.html>>.

² See International Committee of the Red Cross, *Customary International Humanitarian Law: Volume 1: Rules*, 2005, rule 158. Citing just one of the four Geneva Conventions, see also, *Geneva Convention Relative to the Protection of Civilian Persons in Time of War* opened for signature 12 August 1949, 75 UNTS 287 (entered into force 21 October 1950), art 146.

³ IGADF, *Annual Report 2018-2019*, 8.

⁴ See, Mark Willacy and Rory Callinan, 'The Same AK-47 Was Photographed on Two Dead Afghan Civilians Killed by Australian Soldiers' *Australian Broadcasting Corporation* (15 July 2020) <<https://www.abc.net.au/news/2020-07-15/sas-soldiers-allegedly-plant-gun-on-dead-bodies-in-afghanistan/12452964>> and Nick McKenzie and Chris Masters, 'Ben Roberts-Smith Under Police Investigation for 'Kicking Handcuffed Afghan off Small Cliff'' *The Age* (22 September 2019) <<https://www.theage.com.au/national/ben-roberts-smith-under-police-investigation-for-kicking-handcuffed-afghan-off-small-cliff-20190910-p52pys.html>>.

⁵ Horia Mosadiq, *Statement by Horia Mosadiq of the Afghanistan Transitional Justice Coordination Group*, Assembly of States Parties to the Rome Statute of the International Criminal Court, 17th sess. (6 December 2018) <https://asp.icc-cpi.int/iccdocs/asp_docs/ASP17/GD%20TJCG%2006-12-2018.pdf>.

⁶ *Inspector-General of the Australian Defence Force Regulations 2016* (Cth), s 27(3).

⁷ *Inspector-General of the Australian Defence Force Regulations 2016* (Cth), s 28(1).

⁸ *Inspector-General of the Australian Defence Force Regulations 2016* (Cth), s 28H(2).

To avoid any potential prejudice to current or future criminal or civil proceedings, we are aware that parts of the final report of the Inquiry may need to remain confidential, until such time as proceedings are concluded. However, that should not stop the publication of the Inquiry's report to the public as such. We encourage you as Assistant Inspector-General to release publicly the final report, with any necessary redactions required as mentioned above, as soon as practicable, and to recommend that the complete version, be tabled and published at the conclusion of any relevant criminal or civil proceedings.

Given the strong public interest in the Inquiry, the public release of the report will demonstrate that Australia is adhering to its international obligations and is taking appropriate action to prevent future violations of IHL. The publication of the report of the Inquiry will provide an important form of truth and accountability to the defence force and the Australian people about the conduct of its forces in Afghanistan. It will also represent a first step towards the accountability sought by Afghan victims and their families.

We would be happy to discuss these matters further with you and your team.

Yours sincerely,

Australian Centre for International Justice

Transitional Justice Coordination Group – Afghanistan

Amnesty International

Human Rights Law Centre

Redress

International Federation for Human Rights (FIDH)

Center for Constitutional Rights

European Center for Constitutional and Human Rights

Center for Justice & Accountability

International Center for Transitional Justice

National Justice Project

Grata Fund

Public Interest Advocacy Centre

Conflict Analysis Network

Open Asia/Armanshahr Foundation

Justice International

World Vision Australia

Save the Children Australia

Asia-Pacific Justice and Rights (AJAR)

Australian Lawyers for Human Rights

Medical Association for the Prevention of War (Australia)

Australians for War Powers Reform (Inc)

Independent and Peaceful Australia Network

Wage Peace

The Religious Society of Friends (Quakers) in Australia