

MEMORANDUM FOR OPMG, Corrections Branch

SUBJECT: DODD 5100.77 / DODD 2310.1 / AR 190-8 Crosswalk – Analysis and Assessment

1. References:

- a. DoDD 5100.77, *DoD Law of War Program*.
- b. DoDD 2310.1, *DoD Enemy POW Detainee Program*.
- c. AR 190-8, *Enemy Prisoner of War, Retained Personnel, Civilian Internees and Other Detainees*.

2. Facts/Points of Clarification.

- a. The execution of HQDA responsibilities for Enemy Prisoner of War and Detainee operations transferred to the Provost Marshal General (PMG) from the Army Deputy Chief of Staff for Operations and Plans (DCSOPS) per General Order NO. 9, 26 September 2003.
- b. The Under Secretary of Defense Memorandum, dated 17 January 2002, fixed responsibility for detainees in association with the Global War on Terrorism with ASD (SO/LIC).
- c. The National Prisoner of War Information Center (NPWIC) has been re-designated as the National Detainee Reporting Center (NDRC) and the Branch PWIC as the Theater DRC.
- d. This is an OPMG internal document and represents predecisional information.

3. Purpose. This document provides an analysis of the above listed DoD and Army regulations to assess necessary changes/additions/deletions to AR 190-8 to be implemented as Interim 190-8 Policy published in 4th QTR 04. Interim Guidance will be staffed with all appropriate staffs within ARSTAFF/OSD prior to submission for approval.

4. Based on a detailed gap analysis, provided on pages 3-31, OPMG Initiatives/Plans recommends that the following points be implemented as part of the Interim Policy, AR 190-8. Additionally, we recommend that other gaps identified in the last column of the crosswalk matrix be considered from a "Corrections Branch" perspective for inclusion in interim policy:

- Add: Implement DoDD 5100.77 Law of War in commands' plans, policies, directives, and ROEs.
- Add: Implement Geneva Convention IV, Part II and III; place implementing instructions in text preceding DoDD 5100.77.1 (Law of War).

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- Change: Redefine detainee classification/categories to account for a paradigm shift in detainee operations (e.g., legal status of Security Detainees, HVDs and Criminals, etc.).
- Add: Specifically identify Detention Facility Commander responsibilities to develop and implement standards, policies, and SOPs for detainee operations.
- Add: Clarify MI/MP relationship in detainee interrogation operations and provide clear policy for the Military Police role in detainee interrogation operations.
- Add: Change refresher TNG for Law of War as currently specified in AR 350-1 to an annual TNG requirement. This will allow us to increase TNG cycle prior to staffing changes to AR 350-1.
- Add: Allegations of criminal acts or war crimes committed by or against EPW/RP (all detainees) will be investigated by USACIDC or other Service investigative agency as appropriate.
- Delete: All references requiring Detention Facility Commanders to initiate internal investigations in detainee death cases will be deleted.
- Add: Written complaints by detainees to the ICRC/protecting power (PP) will be forwarded promptly to HQDA, (OPMG) NDRC.
- Add: All ICRC communications to Detention Facility Commanders that require an official response will be forwarded with the Commander's response to HQDA (NDRC).
- Add: An autopsy will be provided in all cases in which a detainee death occurs while in US control and remains of deceased detainees will only be released by USACIDC or other Investigative Body upon completion of a determination of autopsy by OAFME.
- Add: Establish a multifunctional panel to include members from MP, Medical, Legal, MI, etc., to periodically review and/or approve rules of engagement and any changes affecting detention operations (e.g., ROE: intelligence, security, guard/detainee, etc.).
- Add: Outline responsibilities for the EPW, CI, and RP programs by specifically addressing three levels:
 1. HQDA, Executive Agent responsibilities (as exercised by PMG).
 2. Combatant Commander, TF Commander, and JTF Commander responsibilities.
 3. Detention Facility Commander responsibilities.

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- Change: Clarify and document the appropriate OSD staff proponent POC for detainee operations, (e.g., SO/LIC or ISA).

- Add: Update Regulation IAW GO NO. 9: PMG exercises SA Executive Agent responsibilities...Detainee Operations/delete entries referring to responsibility of DCSOPS for detainee policy.

- Change: Change Regulation to address appropriate levels of commands & staffs, (e.g., Secretaries of the Military Department responsibilities are already implemented by SA Executive Agent responsibility as exercised by PMG; instead, Regulation must implement policy at MACOM/ command levels, etc.

- Change: Change 3-16, paragraph title to read: "Complaints and requests to camp commanders and ICRC/protecting power" IAW paragraph 6-9.

- Add: Upon notification of an ICRC visit, Detention Facility Commanders will notify chain of command through SJA channels.

- Add: NDRC will make reports to the ICRC as required; routinely provide detainee information outlined in AR 190-8.

- Add: Written communications from ICRC to Detention Facility Commanders will be reported two levels higher for review:

1. All violations of the Law of War will be immediately reported to HQDA.

2. Lesser violations or ICRC recommended corrective actions will be remedied by the chain of command.

- Add: TDRC will expedite the centralized reporting process by providing 100% detainee accountability reports to NDRC every 24-hours.

- Add: The TDRC will immediately notify NDRC when a death occurs and follow up with final report accompanied by a signed death certificate IAW current regulatory requirements.

5. A list of Abbreviations follows this table: