

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Group: 3

Program: Other Agency

Question: BE14/011

Senator Rhiannon asked the following question at the hearing on 26-29 May 2014:

Senator RHIANNON: On Tuesday, 11 March The Guardian reported that the AFP liaison officers in Columbo refused to see a Sri Lankan man who complained of torture, when he was in Sri Lankan police custody, after he was returned from Australia. Is this report accurate and, if so, why did the AFP officer in this case refuse to speak with the detainee to assess if he had been hurt?

Mr Negus: From the report I have with regard to that, the AFP understands that this alleged incident occurred on 14 August 2010. We have no jurisdiction in Sri Lanka and did not investigate the matter. On 19 August 2010, an AFP officer attended a briefing with the maritime human smuggling unit regarding an investigation of alleged people-smuggling activity. During the visit the AFP officer discreetly observed Mr Mendez while he was being interviewed by the Sri Lankan officers. At no time did the AFP officer speak to or engage with Mr Mendez, although Mr Mendez was observed from a separate room. The AFP officer did not observe any mistreatment of Mr Mendez and this observation was over a period of about 25 minutes. Really, this is a matter for the Department of Foreign Affairs and Trade. The AFP do not have any jurisdiction in Sri Lanka. We cannot walk in and claim to do things on behalf of the Australian government in that space. Again, the Department of Foreign Affairs and Trade is probably the appropriate agency to deal with the rest of your question.

Senator RHIANNON: As the AFP had somebody there, clearly there is relevance. The cable, as reported in The Guardian, sent to Canberra from the high commission in Columbo in August 2010 states that the man was arrested as a result of a disruption—that is the word that is used: 'disruption'. It was in operation, I understand, to combat suspected people smuggling. You have just confirmed that one of your officers did attend what you call a briefing. Was the AFP involved in the so-called disruption?

Mr Negus: I think we have gone through this a couple of times before at previous estimates. We provide intelligence and information, and exchange material with the Sri Lankan authorities, but we do not have operational powers and we do not provide an operational resource in-country. As I said, our officer being there was incidental to the fact that this person was being interviewed. He did observe him. He did not observe any mistreatment over that 25-minute period, and the observation was from an adjoining room, rather than being part of a process of interrogation or discussion.

Senator RHIANNON: Again, you have not actually answer the question, which was this: was the AFP involved in the so-called disruption? And I understand that the disruption occurs before the incident where the man is hurt. Was the AFP involved in the so-called disruption?

Mr Negus: It depends how wide you cast your net. If you are saying that the provision of intelligence and the exchange of intelligence means that we are involved in disruption, the answer is yes. If you are asking if we had operational officers on the ground out there working with the Sri Lankan authorities, the answer is no.

Senator RHIANNON: I understand that the man who complained of torture said that he received a call from the Australian high commission days before the incident. Was the AFP made aware that the high commission had called him?

Mr Negus: I am not aware of that. Perhaps we could take that on notice. Senator RHIANNON: Will you take it on notice. What is the policy and practice for the AFP following up any complaints of torture and mistreatment in Sri Lanka?

Mr Negus: If we had any particular advice or knowledge in-country we would report that through the Department of Foreign Affairs and Trade through the high commissioner or the ambassador.

Senator RHIANNON: The question was about the policy and practice. So you do have a protocol that it goes first to the high commissioner? Can you expand on what the process is?

Mr Negus: Mr Wood just reminded me that we have tabled that before. People working in-country work under the same provisions as DFAT, and they would be advised if any of that material came to our notice.

Senator RHIANNON: What directive has the AFP had from either DFAT, PM&C or any Australian government official about how to respond to cases of torture in Sri Lanka of asylum seekers returned by Australia?

Mr Negus: I am just trying to clarify this to answer the question appropriately. There is no separate protocol in regard to people smuggling or those types of matters. This would be a general protocol with Department of Foreign Affairs and Trade that if any of that material came to our notice we would report that to them. So there is nothing specific in regard to that.

Senator RHIANNON: Since people from Sri Lanka who have come to Australia have been returned to Sri Lanka, you have received no additional briefings about how that should be handled, and no updates to the protocol?

Mr Negus: We have almost 100 people working offshore as liaison officers and doing a whole range of things in many parts of the world—many troubled parts of the world I might add, as well. We do not need to be told that if we see something unacceptable to Australian standards and against Australian law we should report it. I think the officers we put across there are well skilled in making those judgments, and they would report things out of just their duty as federal police officers, rather than needing a protocol to tell them what to do.

Senator RHIANNON: That was not my question. I was not doubting the commitment to common decency. My question is: has there been any new directive, or changed directives, or advice, or protocols or any briefings since the change in government policy, with people who have sought asylum in Australia being sent back?

Mr Negus: Not that I am aware of. Perhaps if I do take it on notice just to be absolutely clear, because it is not something that has been brought to the attention of me or my officers here.

Senator RHIANNON: Thank you.

The answer to the honourable senator's question is as follows:

1. The Australian Federal Police (AFP) is not aware of any telephone call being made by the Australian High Commission in Colombo to Mr Mendez. Questions on this matter should be directed to the Department of Foreign Affairs and Trade (DFAT).

-
2. The AFP has no role in monitoring individuals after they have returned to their country of origin from Australia and is not aware of any specific protocol. Questions on this matter should be directed to DFAT.