

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER OF

**A GOVERNMENT INQUIRY INTO
OPERATION BURNHAM AND
RELATED MATTERS**

Date of Minute: 28 June 2019

MINUTE No 18 OF INQUIRY

[1] The Inquiry will post to its website a report of an investigation carried out by United States Forces into Operation Burnham in September 2010 on Monday 1 July 2019. This report was provided, in redacted form, to Messrs Richard McLeod of McLeod & Associates and Nicky Hager in response to a request made under the US Freedom of Information Act. While the Inquiry has had a classified version of this report for some time, it received the version released by the US authorities late last week. As there was no restriction on its public availability, the Inquiry intended to publish it on its website then. However, at Mr Hager's request, the Inquiry agreed to delay publication until Monday 1 July 2019 to allow him the opportunity to examine the report and the Inquiry to address possible privacy concerns.

[2] Along with the open version of the report, three video clips were provided. These are clips taken from the weapons video of two AH-64 Apache helicopters involved in Operation Burnham. These video clips show:

- (a) Individuals leaving a house in Khak Khuday Dad village carrying what appear to be weapons; and
- (b) Several engagements during which the helicopters fired on individuals, leaving some of them dead or wounded.

[3] Although United States authorities have placed no restriction on the clips being made available to the public, the Inquiry has concerns about posting them to its website so that they are freely available. On the villagers' account of what happened on the Operation, one of the videos shows their friends, relatives and/or neighbours being killed or wounded by helicopter fire. Obviously, making that footage available for public viewing and public dissemination involves understandable sensitivities from their perspective and is likely to cause them considerable distress. On NZDF's account, the relevant clip shows insurgents being killed or wounded, but even on that basis there would still be an issue as to whether, in the current climate, the Inquiry should be facilitating the public availability of footage showing people, particularly people of the Muslim faith, being killed or wounded. There is obviously a risk that the footage might be misused.

[4] While the Inquiry wishes to achieve as much transparency as possible, the Inquiry considers that the considerations noted above point powerfully in the direction of limited disclosure.

[5] In the result, the Inquiry has decided that it will not post the video clips to its website so that they are publicly available. Rather, it will enable members of the media to view and re-view the clips in a private session and to report on them, but on the basis that they will not be given, and may not take, copies of the clips, nor may they take images from them. The Inquiry will issue a media advisory dealing with the details of the private showing.

[6] It may be that the video clips will be released publicly by those who received them. Even if that occurs, the Inquiry will not be making the clips available on its website.



Sir Terence Arnold QC



Sir Geoffrey Palmer QC

Parties:
Mr Radich QC for New Zealand Defence Force
Mr Hager
Mr Salmon for Mr Stephenson