

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER OF

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

Date of Minute: 29 April 2019

MINUTE No 14 OF INQUIRY

Introduction

[1] After publishing its preliminary views and hearing submissions from core participants, the Inquiry determined its procedure in Ruling No 1, dated 21 December 2018. Prior to that, the Inquiry's evidence-gathering activities focussed on identifying, obtaining and analysing relevant documentation, including photographic and video material. That aspect of the evidence-gathering process has proved to be lengthier than anticipated and is still continuing. Although there is some material (mainly material controlled by overseas partners) which we have not yet received, the Inquiry has made substantial progress in analysing the contemporaneous documentation.

[2] In addition, in accordance with the Witness Protocol, Counsel Assisting have been interviewing potential witnesses and preparing "will say" statements, preparatory to the Inquiry taking evidence from them. While some potential witnesses remain to be interviewed, good progress has been made.

[3] An issue that the Inquiry has held over is the process for taking evidence from the Afghan villagers. As the Inquiry has previously noted, the taking of evidence from victims of alleged war crimes presents challenges and these are exacerbated by the security situation in Afghanistan, particularly because recent

media reports indicate that the Taliban continue to conduct attacks in Tala wa Barfak, the district where Operation Burnham occurred.¹

[4] The purpose of this Minute is to set out the Inquiry's current view about gathering evidence from the Afghan villagers. We begin by setting out a suggested approach put forward by counsel for the Afghan villagers and then explain the approach that we are currently considering. Core participants are invited to make submissions on it.

Counsel's proposal

[5] In their memorandum to the Inquiry of 20 December 2018, counsel for the Afghan villagers said that many of their clients do not have any direct means of contact; in particular, they do not have cell phones. They say that those villagers who have cell phones change numbers frequently and are often out of contact for long periods of time. Counsel say that for these reasons they have relied on intermediaries to facilitate direct contact with their clients. This involves a New Zealand-based interpreter either contacting the client directly or contacting a third party who either relays messages to and from the client or visits the client so that counsel can converse with the client via the third party's cell phone.

[6] Against this background, counsel submitted that the Inquiry should contact the villagers through the New Zealand-based interpreter they have used and that all contact should be (a) advised to counsel in advance; and (b) conducted in the presence of counsel.

[7] In their memorandum of 23 April 2019 expressing concerns about funding and timing, counsel for the Afghan villagers returned to this issue and said:

20 To take instructions from our twenty or so clients (all former villagers) and to prepare briefs of evidence for them involves numerous and significant logistical hurdles which the Inquiry is likely to be unfamiliar with. Our clients are separated in different towns and regions,

¹ See, for example, the Afghanistan Times "Tala-Wa-Barfak District falls to Taliban" (9 May 2018) <www.afghanistantimes.af> and The New York Times "Afghan War Casualty Report: Jan 25–31" (1 February 2019) <www.nytimes.com>.

often with no cell phone coverage or internet. In many cases, it is necessary to use multiple levels of intermediaries to make contact. It is necessary for our agent and our clients to travel to meet each other at a safe location, and it is often not possible for them to meet for long periods due to security concerns, thus necessitating repeated trips. This involves significant expense to arrange travel for many people on many occasions.

21 At times, it is not possible to contact our clients at all, as recently when the main highway was closed for many weeks by snow and no other form of contact could be made. Finally, our clients are impoverished and must work for a living, and are unable to afford to meet travel expenses themselves or to take significant time away from work.

22 All of the above means that the taking of instructions and the providing of information about the Inquiry is not a simple process which can be done at short notice or under urgency. Trips can take weeks to prepare, and can be prevented or postponed for all manner of logistical reasons. The need for repeated trips means that the process will inevitably be drawn out.

23 Against the possibility that the Inquiry considers that some or all of the foregoing difficulties could be addressed by communicating and dealing directly with our clients as witnesses or potential witnesses, we would point out that (i) doing so would seriously undermine our clients' right to legal representation as core participants and (ii) the logistical difficulties of adopting that course would be considerably greater than the Inquiry could possibly anticipate.

The Inquiry's approach

[8] In Minute No 10 dated 20 March 2019, the Inquiry recorded the approach suggested by counsel in their memorandum of 20 December 2018² and then said:³

The Inquiry has significant reservations about this suggestion. As the Inquiry has already explained, all witnesses will be the Inquiry's witnesses. It wishes to deal with them directly. At this stage, the Inquiry is unsure as to how many of the Afghan villagers (besides the three persons designated as core participants) it will need to hear evidence from. That will become clearer as the Inquiry acquires more information and is able to identify more precisely the specific areas of material factual dispute. Accordingly, the Inquiry wishes to reserve its position for the moment. However, as foreshadowed in Minute 4, the Inquiry intends to prepare a draft evidence-taking protocol in relation to witnesses resident in Afghanistan and will make that available to core participants for comment. The protocol will need to reflect the particular challenges of taking evidence from persons resident in Afghanistan and the need to accommodate

² Summarised at paras [5]–[6] above.

³ Minute No 10 of Inquiry dated 20 March 2019, para [28].

the ethical principles set out in Minute 6, particularly the principles of “do no harm” and “fully informed consent”.

[9] As we noted in this extract, the Inquiry wished to reserve its position concerning the need to take evidence from all of the villagers and the extent of any such evidence until it had acquired further information and had a better idea of the specific areas of material factual difference. As we have said before, the Inquiry’s investigation is necessarily iterative, and the issues that ultimately require focus are affected by that.

[10] The Inquiry is now in a position to identify an approach to gathering evidence from the villagers which it considers: (a) is practicable, and (b) will enable the Inquiry to get to the truth of what occurred during Operations Burnham and Nova, while (c) meeting the requirements of natural justice. We will discuss this under three headings:

- (a) Practicability.
- (b) Information.
- (c) Natural justice.

Practicability

[11] Ms Manning says that her clients “live across different parts of Afghanistan, many of which are inaccessible due to security risks”.⁴ As we have said, recent reporting indicates that the Taliban now control significant areas of Afghanistan, including parts of the Tala wa Barfak district. Travel within some parts of Afghanistan is difficult at any time due to poor infrastructure and security concerns, but in present circumstances is particularly unsafe. The United Nations Assistance Mission in Afghanistan reported that 2018 was the worst year for conflict-related civilian deaths since 2009, and that there was a 48 per cent increase in the number of casualties from attacks by anti-government elements targeting

⁴ Application of Former Residents of Khak Khuday Dad and Naik for recommendation as to legal assistance (6 June 2018), para [26].

civilians in 2018 compared to 2017.⁵ Complex attacks against civilians occur even in areas nominally under Afghan government control.⁶ The Ministry of Foreign Affairs and Trade warns New Zealanders not to travel to Afghanistan and says that anyone who does travel there needs to make their own security arrangements with an experienced and reputable security firm.⁷ Other jurisdictions also advise against any travel to Afghanistan.⁸

[12] Travel to Afghanistan by Inquiry members and/or staff would obviously be at considerable risk to the personal safety of those involved. Indeed, it is difficult to see how the Inquiry could responsibly ask any of its staff to undertake such a task given MFAT's travel advisory and the Inquiry's health and safety obligations. Moreover, if the Inquiry were to travel there, it would face a range of difficult logistical challenges in addition to the security issues, such as obtaining suitable premises and facilities and making travel and other arrangements for villagers that provided them with the necessary level of protection and reassurance. Obviously, the cost and time implications of all this are significant. In short, while it may be possible to take evidence in Afghanistan depending on the precise locations of the villagers, it would be a logistically challenging, time-consuming and expensive process.

[13] Fact-finding bodies seeking information during armed conflict often collect information remotely or through open source investigations rather than visiting the relevant country. For its part, the Inquiry does not see travelling to Afghanistan for the purpose of taking evidence as a viable option at this point.

[14] Second, besides the physical, security and financial challenges of travelling and working in Afghanistan at the moment, there are communication difficulties as well. Some are related to underlying infrastructure (for example, while cell phone use is reasonably common in Afghanistan, substantial areas of the

⁵ United Nations Assistance Mission in Afghanistan, *Afghanistan: Protection of Civilians in Armed Conflict Annual Report 2018* <<https://unama.unmissions.org>>, p 26.

⁶ Above, pp 25–27.

⁷ See “Afghanistan” <<https://safetravel.govt.nz>>. We note that security issues in Afghanistan intensify during elections, such as those in October 2018 and April 2019.

⁸ See Australia (<<https://smartraveller.gov.au>>); Canada (<<https://travel.gc.ca>>); and the United States (<<https://travel.state.gov>>).

country have no cellular coverage); other difficulties are linguistic and cultural. As counsel say, it is necessary to work through interpreters when communicating with the villagers, which creates some challenges, albeit not insurmountable ones. The cultural issues are more sensitive and relationships often require careful trust building through time-intensive and highly secure interactions.

[15] The events at issue as far as the villagers are concerned occurred in 2010 in conditions of armed conflict. Besides the usual issues associated with the fallibility of human memory, research indicates that around 42 per cent of the Afghan population suffers from post-traumatic stress disorder (PTSD) and over 68 per cent show signs of major depression as a result of the years of armed conflict there.⁹ The experience of the International Criminal Court (ICC) in dealing with the victims of alleged war crimes in situations of this type is instructive. New Zealand is party to the Rome Statute of the International Criminal Court (Rome Statute) and has made provision in New Zealand law for the punishment of certain international crimes and to enable New Zealand to cooperate with the Court.¹⁰ Article 68(1) of the Rome Statute is directly applicable in New Zealand in certain circumstances.¹¹ It requires the ICC to “protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses” and then goes on to give some context to that. Accordingly, the ICC’s practice is generally not to require oral evidence from vulnerable “in-country” witnesses at the pre-trial stage but rather to rely on other evidentiary sources (such as satellite imagery, videos, photographs and information provided by, for example, refugees).

[16] In Minute No 4, the Inquiry noted that witnesses such as the Afghan villagers were likely to be particularly vulnerable and said that it would make every effort to ensure that their evidence was provided to the Inquiry in a way that did not place them at physical or psychological risk.¹² It raised the possibility of utilising

⁹ Barbara Lopez Cardozo and others “Mental health, social functioning, and disability in postwar Afghanistan” (2004) 292(5) *Journal of the American Medical Association* 575.

¹⁰ International Crimes and International Criminal Court Act 2000, s 3. See also, for example, ss 8–13.

¹¹ Section 6(1) and (2)(e).

¹² Minute No 4 of Inquiry dated 14 September 2018, para [84].

some form of audio-visual link to take evidence. In Ruling No 1,¹³ we confirmed the Witness Protocol which had been distributed in draft with Minute No 4¹⁴ and noted that the Inquiry had yet to consider a separate process for the Afghan villagers. We had in mind the ICC's practice of developing protocols for vulnerable witnesses in particular cases that reflect their particular needs and vulnerabilities in terms of evidence-taking.

[17] Our understanding is that in Afghanistan, where ethnic, tribal and religious connections are vitally important and the central Government has limited significance for many inhabitants, a relationship of trust, established over time, is a prerequisite to obtaining reliable accounts from people such as the villagers. This suggests that alternative processes of the type used in litigation in New Zealand from time to time (such as taking evidence by audio-visual means) are unlikely to be productive, even if technologically feasible.

[18] Counsel for the Afghan villagers note in the extracts set out above that they have worked through intermediaries in communicating with their clients, often multiple intermediaries. Because of the language difficulties, the use of one type of intermediary—an interpreter—is inevitable. However, the use of intermediaries in the evidence-gathering process, particularly multiple intermediaries, creates risks for reliability and requires particular caution, as the ICC and others have noted. The Inquiry does not consider it appropriate for it to use the New Zealand-based interpreter who counsel have used to communicate with their clients, given solicitor/client privilege and other issues; nor does it consider it appropriate to work through the local agents used by counsel.

[19] As the Inquiry sees it, there is no obvious way of taking evidence from the Afghan villagers that involves both an acceptable level of risk and sufficient assurance of reliability. Moreover, in their memorandum of 23 April 2019, counsel appear to suggest that even with all necessary funding, it would not be possible to provide full evidentiary accounts from their clients in time to permit the Inquiry to

¹³ Ruling No 1 of Inquiry dated 21 November 2018, para [79](b).

¹⁴ That Protocol reserved the position of the Afghan villagers for further consideration: see para [85].

meet its (already extended) reporting deadline. While the delay and cost involved are not determinative, they are relevant – s 14(2) of the Inquiries Act requires that when making a decision as to its conduct, an inquiry must have regard to “the need to avoid unnecessary delay or cost in relation to public funds ...”

[20] While, unlike the ICC, the Inquiry is undertaking an investigation and not making decisions about instituting a prosecution or conducting a trial, it is required to reach a view on the facts. It must therefore have appropriate input from the villagers. Before determining how that evidentiary input should occur, it is helpful to consider the particular areas in which the Inquiry is likely to need assistance from the villagers, given its work to date.

Information

[21] As will be apparent from the extracts quoted above, counsel for the Afghan villagers have proceeded on the assumption that all of the Afghan villagers will give full evidentiary accounts to the Inquiry about Operation Burnham. While the Inquiry tended towards a similar view at the outset, we now consider that will not be necessary, for reasons we now explain.

[22] First, as we noted in Minute No 9,¹⁵ the Inquiry is in the unusual position of having in *Hit & Run* a full account of what the villagers and the authors’ other sources say happened during Operations Burnham and Nova. In particular, the book contains a detailed account of the conduct of the ground and air forces during Operation Burnham and its effect on the Afghan villagers and their property. The allegations made in the book are what led to the setting up of the Inquiry and it is these allegations that are referred to in its Terms of Reference as the “matter of public importance” to be investigated.¹⁶ The authors have accepted publicly that the account in the book is subject to modification on the question of precise location, but in other respects the account stands. Counsel for the Afghan villagers

¹⁵ Minute No 9 dated 12 March 2019, para [11].

¹⁶ Terms of Reference, cl 5.

have not indicated any aspect of the account in the book that they say is incorrect,¹⁷ and it would be surprising if they were to do so given that the authors' account is based substantially on what the villagers said.

[23] Second, the Inquiry has access to objective evidence of what happened during and immediately after Operation Burnham in the form of video and photographic material, virtually all of it currently classified or otherwise confidential. There are technical means of authenticating material of this type, which the Inquiry is undertaking to the extent necessary. In addition, the Inquiry has retained an independent expert, David Napier, to obtain commercially available open-source "before and after" satellite imagery of the relevant area to the extent that it is available. While this material will not answer all potential questions, it will cast significant light on some, for example the timing and location of particular events and the extent and causes of any destruction of property.

[24] International investigatory bodies often place decisive, or at least significant, weight on satellite imagery, video and similar material. Such material may, of course, have limitations and so may not be incontrovertible. But where it is, there may be little point, in terms of evidence-gathering, in seeking information from the villagers that is inconsistent with it.¹⁸

[25] Third, as we understand it, one of the authors, Mr Stephenson, spent considerable time in Afghanistan gathering the accounts from the villagers and other Afghan citizens which formed the basis of the book. He was also involved in the making of a television documentary about Operation Burnham, shown on Māori Television on 30 June 2014, in which three local Afghan people said they had knowledge of what occurred on Operation Burnham during filmed interviews.¹⁹

¹⁷ We note that counsel acted for the Afghan villagers in their judicial review proceedings against the Attorney-General and the Chief of Defence Force challenging the Government's earlier decision not to hold an inquiry into the allegations in *Hit & Run*. These proceedings were issued in August 2017 and would, presumably, have been supported by affidavits from some of the Afghan villagers. Counsel must, therefore, be aware of the detail of their clients' position.

¹⁸ This is, of course, subject to any natural justice considerations: see further below at paras [31]–[37].

¹⁹ Native Affairs "Collateral Damage" (30 June 2014) Māori Television <www.maoritelevision.com>.

[26] We understand that Mr Stephenson prepared transcripts of his interviews with a number of the villagers, which the Inquiry is accessing by means of its statutory powers. To the extent that they provide comprehensive accounts of what villagers say happened during Operation Burnham, they will obviously be helpful to the Inquiry. Subject to further discussion with Mr Stephenson about the process he followed in gathering information from the villagers, the existence of the transcripts raises the question whether they might be treated as “evidence” for the purpose of the Inquiry, or at least form the basis of the villagers’ evidence.

[27] In this context, we note that international tribunals such as the ICC have sought to limit the number of times that vulnerable witnesses such as the Afghan villagers are required to repeat their accounts. In part this recognises that such repetitions can be re-traumatising for witnesses; but it also recognises that when multiple statements are taken from a witness over time, there is a risk that there will be differences of detail between them, which may be taken (perhaps unfairly) to raise doubts about the reliability of the witness.

[28] Finally, the only Afghan villagers who have a right to give evidence under the Inquiries Act 2013 are the three villagers who have core participant status.²⁰ As we understand it, at least two of the three are among those interviewed by Mr Stephenson and for whom he prepared transcripts. This is not to say that the Inquiry will not seek evidence from other villagers, but that will be dictated by the needs of the Inquiry’s investigative work (and any relevant natural justice considerations), not by any specific legislative obligation.

[29] The point is, then, that in the circumstances of this Inquiry, we may have access through existing material to what is effectively the villagers’ evidence. Even though Mr Stephenson prepared the transcripts for his own purposes as a journalist rather than for forensic purposes, if they are reasonably comprehensive and the underlying information was obtained in a robust way, it may be that they can be treated as “evidence” (perhaps subject to being confirmed in some way), or form

²⁰ Inquiries Act, s 17(3).

the basis of evidentiary statements.²¹ If so, that would go a considerable way to meeting the practical and other problems discussed above.

[30] However, even if that is so, there remains the natural justice issue, to which we now turn.

Natural justice

[31] We have discussed the Inquiry's obligations in relation to natural justice in Minute No 4²² and in Ruling No 1,²³ and will not repeat what is said there. The short point is that we will comply with s 14(3) of the Inquiries Act, which provides:

- (3) If an inquiry proposes to make a finding that is adverse to any person, the inquiry must, using whatever procedure it may determine, be satisfied that the person—
 - (a) is aware of the matters on which the proposed finding is based; and
 - (b) has an opportunity, any time during the course of the inquiry, to respond on those matters.

[32] Counsel for the Afghan villagers have argued that the villagers, either collectively or individually, may be subject to allegations of wrong-doing in the course of the Inquiry and this gives rise to natural justice considerations. Counsel argue that NZDF “has already levelled allegations against the Villagers, including that they fired upon armed forces or were carrying weapons; that they were terrorists or were concealing terrorists; or for some reason they were not to be dealt with as non-combatants”.²⁴

[33] The Inquiry considers that this argument overstates the position. While NZDF denies that NZSAS caused any civilian deaths, it has acknowledged in its public statements since the publication of *Hit & Run* in March 2017 that civilian deaths may have occurred during Operation Burnham as a result of errant shots

²¹ The interviews of villagers during the television documentary may also be relevant in this context.

²² Minute No 4 of Inquiry dated 14 September 2018, paras [60]–[66].

²³ Ruling No 1 of Inquiry dated 21 November 2018, paras [28]–[45].

²⁴ Memorandum of Counsel for Former Residents of Khak Khuday Dad and Naik in response to Inquiry Minute No 3 (10 August 2018), para [19].

from misaligned weapons on one of the US helicopter gunships.²⁵ This is recorded in the summary of NZDF's public responses to the allegations made in *Hit & Run* that was prepared by the Inquiry and annexed to Minute No 4 as Appendix 3 (see paragraphs 24–28) and in NZDF's public and unclassified account of the events at issue dated 7 November 2018, which was prepared at the Inquiry's request (see page 8). Obviously, if the Inquiry finds, for example, that children were killed or injured in the course of the operation, it cannot be sensibly suggested that NZDF was alleging they were insurgents. Consequently, the differences between the core participants on the issue of civilian deaths may not be as great as might first appear.

[34] That said, NZDF does, of course, contend that insurgents were killed during the operation and has pointed in its public statements to various indications that suggest the presence of insurgents in the locality (such as weapons caches and sightings of persons carrying weapons, including insurgency weapons).²⁶ If NZDF is correct on that point, difficult issues of international humanitarian law may arise as a result of the presence of civilians and insurgents in the same locality. The Inquiry will be exploring relevant legal issues (drawn from international humanitarian law, rules of engagement and such like) in the next two scheduled public hearings, and counsel for the Afghan villagers, along with other core participants, will be making submissions on those matters.

[35] We note that the account in *Hit & Run* acknowledges that several insurgents had houses in the locality where Operation Burnham occurred.²⁷ What appears to be contested is whether any insurgents were present when the operation took place. If the Inquiry were to reach the preliminary view that there were insurgents at the locality at the time of the operation, s 14(3) of the Inquiries Act may require it to explain the basis of its view and give the Afghan villagers an opportunity to respond (depending on what precisely the Inquiry's preliminary view

²⁵ Referencing an investigation into the allegations of civilian casualties carried out by an ISAF Incident Investigation Team.

²⁶ We use the term "insurgency weapons" to distinguish weapons such as rocket-propelled grenade launchers and machine guns from rifles and similar firearms that are commonly carried by men in rural communities in Afghanistan as part of their daily lives.

²⁷ See, for example, Nicky Hager and Jon Stephenson *Hit & Run* (Potton & Burton, Nelson, 2017), pp 23 and 68.

is). There may well be other instances where the obligations set out in s 14(3) would require a similar approach.

[36] The hearing that the Inquiry proposes to hold in October to enable core participants to comment on its provisional factual and other findings will go some way to meeting natural justice concerns. However, as is implicit in what is said above, the Inquiry will also attempt to address natural justice issues as its work progresses.

[37] One way that the Inquiry considers it can do this is by conveying to core participants, on a basis of strict confidentiality, provisional factual findings that it feels able to make as the Inquiry progresses, principally provisional findings based on objective evidence. So, for example, if the Inquiry were able to reach the preliminary view that civilians were killed during Operation Burnham or that insurgents were present in the locality at the time, it would advise core participants accordingly, on the basis of confidentiality undertakings. This would enable core participants to respond to the provisional findings at the time and may assist in providing greater focus to other matters, such as the examination of the legal issues. Key to this proposal, however, is core participants' acceptance of the need to preserve confidentiality in respect of any such provisional findings.

Our proposed course of action

[38] Counsel for the Afghan villagers submit that the Inquiry should take evidence from the villagers before taking evidence from NZDF and other government agency personnel. While the Inquiry does wish to have a clear understanding of the villagers' version of events, it is neither practical nor necessary that the Inquiry take evidence from the villagers at the outset as suggested. The Inquiry intends to hear from the authors prior to undertaking evidential interviews of defence personnel about what occurred during the operations at issue. For the reasons already given, it considers that the authors will be able to provide it with the necessary information (which may well supplement what is in the book). Any natural justice issues that may arise as a result of the order in which the Inquiry receives evidence can and will be dealt with through its processes.

[39] The Inquiry will begin taking evidence from witnesses in earnest in May 2019. It will begin by hearing from the two authors individually – from Mr Stephenson at the beginning of May and from Mr Hager later in May (although the latter has not yet been confirmed).²⁸ The Inquiry will not begin to take evidence from NZDF and other government agency personnel until late May,²⁹ and will be taking evidence at regular intervals thereafter. By the time the process is complete (in late August/early September), Counsel Assisting will have interviewed virtually all NZDF and other government or government-related personnel involved in Operations Burnham and Nova, and the Inquiry will have taken evidence from all important witnesses.

[40] Given the considerations discussed above, the Inquiry does not think that it is practicable or necessary to take full evidence from all of the Afghan villagers, as contemplated by their counsel. The Inquiry considers that the financial and timing constraints under which the Inquiry is operating do not permit that; nor does it think that is justified when the risks and costs involved are balanced against what additional information might be obtained or other interests served. Moreover, it should not be forgotten in this context that the Inquiry has a limited remit. It is not permitted “to make determinations about the actions of forces or officials other than NZDF forces or New Zealand officials”.³⁰

[41] The Inquiry has a legal obligation to take evidence from the three core participants, AV1, AV2 and AV3, but that right is subject to any directions of the Inquiry as to the manner in which the evidence is to be given.³¹ The Inquiry considers that the account in the book, together with the transcripts, accounts and other similar material prepared by Mr Stephenson, are likely to provide the essential content of their narratives. The extent to which the Inquiry needs to go beyond that will depend on the way in which the evidence emerges. But given the practical difficulties and the extensive information concerning the villagers’ accounts already

²⁸ The Inquiry notes that it may wish to take evidence from one or both of Mr Stephenson and Mr Hager again later during its oral evidence-gathering process.

²⁹ As previously advised, the Inquiry took evidence of a background nature from two NZDF personnel in March.

³⁰ Terms of Reference, cl 9.

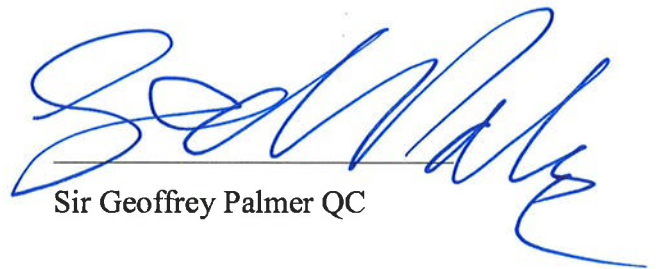
³¹ Inquiries Act, s 17(3).

available to it, the Inquiry does not see that a full-blown evidence-gathering process involving the Afghan villagers is safe, necessary or feasible. Any further evidence sought from the Afghan villagers is likely to be addressed to particular points on which the Inquiry seeks clarification.

[42] As we have said, we invite written submissions on the approach set out above. They should be filed by Friday 10 May 2019.



Sir Terence Arnold QC



Sir Geoffrey Palmer QC

Parties:
Mr McLeod for the Afghan Villagers
Mr Radich QC for New Zealand Defence Force
Mr Hager
Mr Salmon for Mr Stephenson