

UNDER

THE INQUIRIES ACT 2013

IN THE MATTER OF

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

Date of Minute: 17 May 2019

MINUTE No 15 OF INQUIRY

[1] In Minute No 14, the Inquiry set out the approach which it was considering in relation to evidence from the Afghan villagers and sought submissions on it. Submissions have been received from counsel for the Afghan villagers, counsel for Mr Stephenson, counsel for the Crown agencies (including the New Zealand Defence Force) and from Mr Hager. In the light of those submissions, the Inquiry is giving further consideration to the issue and is assessing a possible means of taking evidence from the villagers in Afghanistan in a way that is consistent with the principles it has articulated elsewhere.

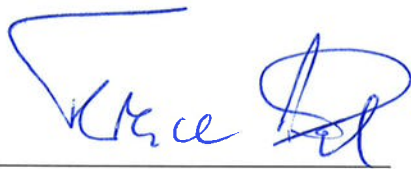
[2] Before it is able to consider that in any detail, however, the Inquiry needs answers to several questions which it has put to counsel for the Afghan villagers but for which it has not yet received answers. Specifically:

- (a) In Minute No 6 dated 29 November 2019, the Inquiry ordered Mr McLeod under s 20 of the Inquiries Act 2013 to provide “the names, gender, Afghan identity numbers, direct contact details and connection to the events at issue of the Afghan nationals represented by his firm”. In Minute No 10 dated 20 March 2019, the Inquiry noted that it had a number of queries about the information supplied and asked for clarification. That clarification has not yet been provided, although we were advised

by email dated 23 April 2019 that counsel were in the process of responding.

- (b) As noted in Minute No 14, counsel for the Afghan villagers have said that their clients are located in different towns and regions of Afghanistan and that this poses particular logistical and security problems for contacting them, taking instructions and so on. Given its obvious relevance to the question of taking evidence, the Inquiry asked counsel on 2 May and again on 9 May 2019 to advise of their clients' locations. To date, no response to this request has been received.
- (c) The Inquiry understands that three of the Afghan villagers, AV1, AV2 and AV3, filed affidavits in the judicial review proceedings that led to the establishment of this Inquiry. On 2 May and on 9 May 2019, the Inquiry asked counsel to provide copies of these affidavits to the Inquiry. To date, counsel has not responded.

[3] The Inquiry considers that the information and material referred to above is relevant to its further consideration of the question of taking evidence from the Afghan villagers. To facilitate its consideration, the Inquiry asks that counsel for the Afghan villagers provide the information and material on or before 5 pm on Friday 24 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