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NEW ZEALAND DEFENCE FORCE
COVER SHEET

To accompany documents to the
Minister of Defence

Subject:	NZSAS (TF954) Operation in Parwan Province 30 January 2011		
NZDF File No. 3130/DSO/4	NZDF Tracking # (For OCDF Use Only)	25 / 2011	Minister's Tracking#: (For Minister's office)
Priority:	ROUTINE / URGENT	Request Ministerial response by:	
Contacts:	1. Col PSR(R)3 2. Brig Riordan	Tel:	A/H:
		Tel:	A/H:

Sheet not to exceed one page. Please complete shaded areas.

Purpose:	To inform the Minister of a detention operation carried out by TF954
Recommendations:	<p>It is recommended that the Minister:</p> <ul style="list-style-type: none">a. Note that the operation was time sensitive, involved an imminent threat to the ISAF Base at BAF and was approved by PSR(R)1 BAF.b. Note that MUSA KHAN is a mid level insurgent leader with a history of attacking ISAF and ANSF forces.c. Note that MUSA KHAN was detained by TF954 and, on my authority, was handed over to US Military Forces at BAF.d. Note the legal advice contained at Annex A.e. Refer this note to the Prime Minister and Minister of Foreign Affairs.
MOD/NZDF Consultation	Required/ Not required (provide reasons):
Minister's comments:	
Minister's Action:	Signed / Noted / Agreed / Approved / Declined
	Referred to:
Signature: _____ Date: _____	

R. R. JONES
Lieutenant General
Chief of Defence Force

Date 31 Jan 11

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NEW ZEALAND DEFENCE FORCE

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3130/DSO/4

31 January 2011

Minister of Defence

NZSAS (TF954) OPERATIONS IN PARWAN PROVINCE 30 JANUARY 2011

Purpose

1. The purpose of this note is to update the Minister on the detention operation conducted by the NZSAS Task Force in Parwan Province, Afghanistan on 30 January 2011.

Background

2. On 30 January 2011, the NZSAS Task Force (TF) 954 (formerly 81) was tracking by technical means a known Insurgent leader identified as MUSA KAHN (JPEL RTAF 2250). KHAN has a history of targeting ISAF and Afghan National Security Forces in the Kapisa province, including the ambush of French Soldiers. He was detected operating in the Parwan province where he was planning to target Bagram Air Field (BAF), which is a large ISAF base. The nature of the intelligence provided a very brief window for his apprehension.

3. TF954 activated and informed ~~PSR(R)1~~ headquartered in BAF of the imminent threat to their base. The US TF approved the Deliberate Detention operation by TF954 and provided Intelligence Surveillance and Reconnaissance assets, two Blackhawk helicopters and offensive air support for the duration of the operation. TF954 advised CRU of the impending operation, but CRU could not get the approvals required in the time frame to support the mission. Due to the time sensitive nature of the target and threat, TF954 launched the operation with only ISAF support, at approximately 1500 hours local.

4. MUSA KHAN was detained by the NZSAS TF954 in a large open field. He was with two other male locals who were questioned by the TF, but were not detained. MUSA KHAN was escorted back to Camp Warehouse by helicopter where he was searched, biometrically enrolled and received a medical check by TF medical staff. KHAN had two cell phones in his possession and some codes contained within his clothing.

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5. The Senior National Officer (SNO) ^{PSR(IC)3} advised ^{PSR(IC)3} the Director of Special Operations at 2330 hours on 30 January 2011, seeking authority to transfer KHAN across to US coalition forces at the Parwan Detention Facility at BAF. This facility is a joint US military - Afghan Ministry of Interior run detention centre. DSO informed me and I sought legal advice from Brig Riordan, the Director General Defence Legal Staff (DGDLS). DGDLS then spoke to the Legal Staff Officer in theatre assigned to the NZSAS TF to clarify details about the operation. Upon receiving DGDLS advice, I authorised the transfer of MUSA KHAN to US military forces in BAF. The SNO was informed and the transfer took place on the evening of 30 January 2011.

6. MUSA KAHN was subsequently identified by sources working for the US Office of Special Investigations, which has been investigating insurgent attacks carried out by MUSA KAHN.

7. Attached as Annex A is DGDLS legal advice, which is subject to legal professional privilege.

Recommendations

8. It is recommended that the Minister:

- a. **Note** that the operation was time sensitive; and involved an imminent threat to the ISAF base at Bagram. The operation was approved by the US HQ located BAF.
- b. **Note** that MUSA KHAN is a mid-level Insurgent leader with a history of attacking ISAF and ANSF forces in the neighbouring Kapisa province.
- c. **Note** that MUSA KHAN was detained by NZSAS TF954 and on my authority, was handed over to US military forces in Bagram.
- d. **Note** the legal advice contained in Annex A.
- e. **Refer** this note to the Prime Minister and Minister of Foreign Affairs.



R.R. JONES
Lieutenant General
Chief of Defence Force

Annex:

A. DGDLS – Detention of Persons in Afghanistan 31 JAN 2011

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Annex A
To 3130/DSO/4
DATED 31 JAN 11

3304/DLS/INTREL/AFGH

DOT-POINT BRIEF FOR CDF

DETENTION OF PERSONS IN AFGHANISTAN - 31 JAN 2011

This advice is subject to legal professional privilege.

- In the course of an operation conducted on 30 Jan 11, members of TG 954 have detained one individual suspected of committing or preparing to commit serious offences against Afghan law. The following points check-off the legal obligations that now arise
 - **Detention effected humanely**. The LSO in-theatre reports that according to the information at his disposal detention was conducted professionally and humanely. There is no indication that NZ forces breached their ROE or LOAC obligations.
 - **Medical needs (if any) attended to**. The individual was returned to the TG 954 compound in order to be medically examined. If necessary he will be treated for any injury or illness.
 - **Identity recorded and retained**. The individual will be identified and his biometric material entered into the ISAF system. The identity of the individual will be recorded and retained by the TG and will be transmitted to ^{PSR(R)1} ISAF **PSR(R)1** and NZDF as soon as possible. HQ NZDF will retain an enduring record of this information.
- NZ Forces are not able to conduct continued detention of the individual and he is therefore to be transferred to a joint US Military Police / Afghan Ministry of Interior detention facility.
- NZDF detainee-holding policy requires that personnel detained by NZFOR ISAF personnel are not to be transferred or handed over to ANSF [Afghan National Security Forces] or other ISAF coalition forces without the prior approval of COMJFNZ [Commander Joint Forces New Zealand] or CDF.
- Detainees may not be transferred where there is a real risk that they will be tortured or subjected to other serious breaches of international human rights law or LOAC. Reporting from theatre is that:
 - Available information indicates that the facility is properly run and is able to afford the appropriate rights under international law; and
 - There is no information suggesting that there is a real risk that the rights of the individual will be breached.

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- The facility is not run by the NDS and is not one that was subject to a recent English High Court ruling identifying unsafe facilities.
- New Zealand's obligation to monitor the well-being of the individual now springs into effect. We are currently discussing with MFAT how this will be practically achieved.
- The International Committee of the Red Cross and Afghan Independent Human Rights Committee will be informed of the fact of detention and transfer as soon as it is appropriate to do so.

K.J. RIORDAN
BRIG
DGDLS

DTelN Phone: ~~PSR(IC)3~~

31 Jan 11

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