



OP WAATEA 03130/LEGAL

9 Dec 09

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**ROERREQ 002/2009: SEARCH, SEIZURE AND QUESTIONING**

**References:**

- A. PSR(S)1
- B. NZDF 03130/DSC/2 CDF Operational Directive 21/2009 dated 24 August 2009
- C. PSR(S)1
- D. OP WAATEA 03130/LEGAL Biometric Data Collection dated 10 October 2009

**BACKGROUND**

1. Further examination of NZ ROE with particular reference to the specific missions required to be undertaken by TF81 has raised the requirement for further amendment and/or amplification and guidance in respect of NZ ROE. This ROERREQ submission focuses on search and seizure, and questioning ROE.

**SEARCH AND SEIZURE**

2. NZ search and seizure ROE specifically relates to search of detained persons as well as seizure of items from detained persons as follows:

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Search of any person who is **detained** is permitted if no member of the **CRU** or **ANSF** is present to conduct the search.

**Note:** Any **search** conducted by the TF 81 under this ROE is to be conducted in accordance with the NZFOR ISAF Individual Guidance for the Detention of Non-ISAF Personnel, which is issued separately (see Appendix one).

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Seizure of any property in the possession of a person who is **detained** is permitted if no member of the **CRU** or **ANSF** is present to effect the seizure.

3. It is apparent, however, that given the nature of TF81 missions, search and seizure requirements need to be relatively broad, particularly in relation to force security. Some recent examples include the requirement to search empty suspicious vehicles, as well as seizure of items, such as munitions or narcotics, which do not necessarily involve the detention of anyone or, more importantly, may not necessarily involve the CRU or wider ANSF.
4. Items seized often have significant intelligence value. Accordingly, it is important that appropriate exploitation is able to be undertaken. Although search and seizure can be an implied part of TF81 mission, to enable TF81 to use reasonable force to search and, where applicable, seize items, it is recommended that the ROE is amended or

5. amplification added to ensure that TF81 tasks have sufficient, robust ROE to undertake all tasks as required.
6. It is noted that amending or amplifying the search and seizure ROE would be consistent PSR(S)1

[my emphasis]

Although I am comfortable that NZ has sufficient ROE for the purposes of entry and search pursuant to ROE C it may be helpful to have a specific ROE in this regard, noting that the majority of the missions will involve searching and prosecution of targets in compound environments. Accordingly it may be beneficial to tailor the ROE to be more mission specific and commensurately be more consistent with ISAF ROE.

8. ISAF ROE regarding search and seizure is not completely developed. No consideration has been made for search and seizure of 'found' or abandoned items without reference to an individual. PSR(S)1 however, includes provision for exploitation of abandoned items as follows:

PSR(S)1

[my emphasis]

9. To support the TF81 mission and to ensure that the troops on the ground have clear and consistent guidance it is recommended amending the search ROE to incorporate the following factors:
  - a. Search prior to, or in the absence of, detention of an individual;
  - b. Entry to compounds and search and seizure thereafter; and
  - c. Search and seizure of abandoned property.

#### QUESTIONING

10. In relation to questioning of detained persons, NZ ROE provides:

T Questioning of any person who is detained is permitted if no member of the CRU or ANSF is present to conduct the questioning.

11. Whilst the aim is for partnership with ANSF, or ANSF led operations, there are significant limitations with respect to questioning. ANSF personnel are often not capable of carrying out questioning of suspects independently as currently they have not been appropriately trained, nor do they have the requisite experience regarding tactical questioning or evidence collection. One must also recognise the dual requirement for questioning is not only to obtain evidence for a conviction, but also to gain vital intelligence information regarding the insurgency. Accordingly, it is recommended that ROE T is amended to provide for the situation where ANSF is not capable of independently carrying out questioning. All questioning undertaken by the ANSF is conducted in accordance with Ref C and does not mean that the detainees become TF81 responsibility. Ref C also requires that for any detainee to be questioned command clearance and permission from the local Afghan authorities must be obtained.
12. Another important facet of questioning is the fact that Biometric data collection, which is the subject of a separate legal opinion (at Ref D), involves questioning and obtaining information from detainees. Accordingly, assuming a resolution on biometric data collection is obtained, the ROE needs to take this into account.

## RECOMMENDATIONS

13. It is recommended that you request CDF through COMJFNZ to approve amendment, amplification and guidance in respect of the ROE as follows:
- a. **Add** specific ROE to allow for search of property, vehicles and vessels, and abandoned property in order to accomplish the mission;
  - b. **Add** ROE to allow for seizure of property resulting from a search of property, vehicles and vessels (including abandoned property) where such seizure is required to accomplish the mission;
  - c. **Amend** ROE T to provide for situations where ANSF are present but not capable of conducting the questioning, noting that any questioning of detainees will require an appropriately qualified individual to conduct the questioning as per NZDF policy and Ref C.
  - d. **Add** amplification to ROE T on questioning to state: AMPN/1/This ROE does not prohibit NZDF personnel observing and, where required, assisting the ANSF question detainees; and
  - e. **Add** amplification to ROE T on questioning to state: AMPN/2/Nothing in this ROE prohibits gathering of information from detainees by members of TF81 for the purposes of biometric data collection.

# PSR(IC)3

TF81 LSO

