

## Government Inquiry into Operation Burnham Public Hearing Module 3 - Agenda

Venue: The Thorndon Hotel, 24 Hawkestone Street, Thorndon, Wellington

**Day 1 - Monday 29 July 2019**

Time	Content	Presenter	Dur
1100-1110	Opening remarks <ul style="list-style-type: none"> <li>• Objectives of Module 3</li> <li>• Key issues to be discussed and why they matter</li> </ul>	Inquiry Chair	10 mins
<b>Topic 1 – The Legal Framework</b>			
1110-1240	<b><i>Expert presentation on applicable law</i></b> <ul style="list-style-type: none"> <li>• Legal framework (application / intersection of International Humanitarian Law (IHL), International Human Rights Law, United Nations Charter, Customary International Law, domestic law)</li> <li>• Role and impact of United Nations Security Council resolutions</li> <li>• Law on detention (to extent not covered in Hearing 2) under IHL, Convention against Torture, other relevant law</li> <li>• Law of distinction</li> <li>• Law on proportionality</li> <li>• Law on precaution</li> <li>• Law on humane treatment of non-Direct Participation in Hostilities</li> </ul>	Emeritus Professor Sir Kenneth Keith ONZ, QC, former Judge of the International Court of Justice	1.5 hours
1240-1340	<b><i>Lunch adjournment</i></b>		1 hour
1340-1510	<b><i>Crown agencies joint presentation</i></b> <ul style="list-style-type: none"> <li>• Legal issues on the applicable law on points above with reference to the expert view</li> </ul>	Paul Rishworth QC	1.5 hours
1510	<b><i>Adjournment</i></b>		10 mins

1520	Non-government core participants presentation <ul style="list-style-type: none"> <li>Legal issues on the applicable law on points above with reference to the expert view</li> </ul>		1.5 hours
1520-1620	Presentation - counsel for Jon Stephenson	Sam Humphrey	1 hour
1620-1700	Presentation	Nicky Hager	40 mins
1700	Closing remarks	Inquiry Chair	5 mins

## Day 2 – Tuesday 30 July 2019

Time	Content	Presenter	Dur
1000-1005	Opening remarks	Chair	5 mins
<b>Topic 2 – Predetermined and offensive use of force</b>			
1005-1135	<p><b>Expert presentation on Joint Prioritised Effects List (JPEL)</b></p> <p>JPEL includes the deliberate use of lethal force against an individual who has been specifically identified in advance as a target to be captured or killed.</p> <ul style="list-style-type: none"> <li>What are the legal principles relevant to the way in which JPEL was compiled and used?</li> <li>Is the use of JPEL justified, in principle, in an insurgency such as existed in Afghanistan?</li> <li>What is the relevance of any involvement of the Afghanistan government in the process of compiling and using JPEL? For example, what difference would it make to the analysis if JPEL targets were the subject of arrest warrants issued by the appropriate Afghan authorities?</li> </ul>	Professor Dapo Akande, University of Oxford	1.5 hours
1135-1150	<b>Adjournment</b>		15 mins

1150-1320	<p><b><i>NZDF presentation</i></b></p> <ul style="list-style-type: none"> <li>• A general description of the process by which people were placed, and kept on, the JPEL during the NZDF deployment in Afghanistan.</li> <li>• How the policy applied in practice – how the NZDF trained and operated in relation to this issue.</li> <li>• The specific legal principles relevant to targeting and the JPEL process</li> <li>• How does the concept of “direct participation in hostilities” work?</li> <li>• What is the relevance of any involvement of the Afghanistan government in the process of compiling and using JPEL? For example, what difference would it make to the analysis if JPEL targets were the subject of arrest warrants issued by the appropriate Afghan authorities? How would this impact on the use of the JPEL targeting process?</li> <li>• A description of any checks or safeguards employed in relation to operations carried out on the basis of JPEL against specific targets.</li> </ul>	Brig. Lisa Ferris, Director Defence Legal Services	1.5 hours
1320-1420	<b><i>Lunch adjournment</i></b>		1 hour
1420-1450	<p>Non-crown core participant</p> <ul style="list-style-type: none"> <li>• With reference to the expert view</li> </ul>	Nicky Hager	30 mins
1450	Closing remarks	Inquiry Chair	5 mins