

HEADQUARTERS NEW ZEALAND DEFENCE FORCE

Directorate of Special Operations

MINUTE

1451/DSO/1
OQ 10/11 – 11

26 May 11

Mr Mike Scrivener

OIA-091-2011 s. 9(2)(a) – NZSOF RESPONSE

1. This minute responds to s. 9(2)(a) OIA request regarding detainee policy.
2. NZSOF suggests the Minister gives the following responses to s. 9(2)(a) questions:
 - a. Question 1:
 1. Q: The information on which you based your recent statement [in a Q+A interview] that claims of civilian deaths during a raid in which NZDF personnel participated had "been investigated and proven to be false".
 2. A: The source of information on which I based my statement that claims that a number of civilians were killed during a raid in which NZDF personnel participated had "been investigated and proven to be false" (Q+A 24 April 2011) was classified operations reporting provided by the NZDF.
 - b. Question 2:
 3. Q: The information on which you based your view [reported by Radio NZ on 16 August, 2010] that it was not possible to rule out that, in the past, New Zealand soldiers in Afghanistan may have been involved in securing prisoners who went to facilities where they were tortured.
 4. A: s. 9(2)(h)
 - c. Question 3:
 5. Q: The information you have obtained on a United Kingdom High Court ruling that restrictions must be placed on whether British soldiers in Afghanistan may transfer detainees to Afghan-run detention facilities – and, specifically, to the Kabul facility operated by the National Directorate of Security.
 6. A: I have received a number of reports that include reference to the British High Court decision from the NZDF. I intend to release a report on New Zealand's operations involving detention of persons by Afghan Security Forces during combined operations in Afghanistan that includes reference to the British High Court decision in the near future.

d. Question 4:

7. Q: Your view of the implications of the UK ruling for New Zealand and NZDF personnel who have been involved with Afghan personnel in situations where people have been detained and transferred to facilities operated by the National Directorate of Security.

8. A: s. 9(2)(h)

e. Question 5:

9. Q: A description of the nature of the registry referred to by the Prime Minister when he said "in terms of the Crisis Response Unit, where they have detained someone and New Zealand has worked alongside them, a full registry of all the names is kept, and that's open and given to...the likes of the Red Cross." – and, specifically, whether this registry is maintained by NZDF personnel.

10. A: s. 9(2)(h)

f. Question 6:

11. Q: The estimated number of persons killed, injured, or detained in operations where NZDF personnel have been operating alongside Afghan national security forces.

12. A: Any persons killed in Afghanistan as a result of NZDF operational activity have been those persons taking direct part in hostilities, and thereby presenting a direct threat to the lives of NZDF personnel, Coalition forces, Afghan security forces or Afghan or international citizens.

g. Question 7:

13. Q: The advice you quoted in Parliament yesterday, when you said that "we are advised that the NATO-International Security Assistance Force headquarters now regard the facility in Kabul as the detention facility of choice, and actually directs NATO-International Security Assistance Force nations to use this facility because it is in fact properly monitored."

14. A: s. 9(2)(h)

h. Question 8:

15. Q: Reports from NZDF and/or other officials on the proposal to assign a Defence legal officer to the NATO-International Security Assistance Force headquarters to improve our own detainee monitoring.

16. A: s. 9(2)(h)

i. Question 9:

17. Q: Reports received from the Defence legal officer on the effectiveness and results of NZDF detainee monitoring.

18. A: s. 9(2)(h)

j. Question 10:

19. Q: Confirmation that the NZDF detainee monitoring extends to detainees taken by Afghan National Security Forces when NZDF personnel have been present in support of their operations – and the results of such monitoring if it has occurred.

20. A: s. 9(2)(h)

3. This response has been approved by the Deputy Director Special Operations.

s. 9(2)(a)

Coordinator
Directorate of Special Operations