OPERATION BURNHAM
Where did Operation Burnham take place?

As released by the NZDF during its public media conference on 27 March, 2017, Operation Burnham took place in Tirgiran Village. The geographic coordinates for the village are:

35°09'47.98"N  
068°09'16.29"E

The village has been named Tirgiran since the 1960s, at the latest. That is in accordance with historical information held by the Government of Afghanistan. Other sources, including bodies such as the British Permanent Committee on Geographic Names, concur. Documents One through Three refer.

**Supporting Documents:**
1. US Joint Operations Graphic Chart 1982
3. Enhanced version of Tirgiran from previous map
US 1:250K JOG:
The authors of *Hit & Run* provided images in their book in support of locations they say the NZSAS were operating, what can be made of them?

Three photographs in the book are of Tirgiran Village (as demonstrated in Document Four).

The scale in this document indicates that the target buildings (highlighted by a blue box and a yellow box) were about 300 metres apart.

However, the authors of *Hit & Run*, place the building identified by the blue box in Naik village, and the second building identified by the yellow box as being in Khak Khuday Dad village. They describe the distance between the two villages as being about one kilometre.

**Supporting Documents:**
4. Afghanistan: Geolocated Photographs from *Hit & Run*
5. Afghanistan: Operation Burnham Location Hit and Run Book Location
Comment: Analysis of images from the book *Hit & Run* against satellite imagery indicates the buildings photographed were incorrectly identified as being located in Khak Khuday Dad and Naik Villages. The probable location of the buildings is approx. 2 km southeast, in Tirginan Village.

Identified in *Hit & Run* (p. 50) as Naik Village

Identified in *Hit & Run* (p. 39) as the outskirts of Naik Village

Building constructed after image capture

Identified in *Hit & Run* (p. 53) as Khak Khuday Dad Village

Includes data sourced from ESRI, Earthstar Geographics, CNES/Airbus DS. Photographs by Jan Stephenson.
Operation Burnham Location
Hit and Run Book Location

Ng 66-67 Hit and Run

Ng 64-65 Hit and Run

Tirgan

Operation Burnham Location

Operation Burnham Location

Helicopter Landing Zone

None of the houses identified in pages 64-65 were destroyed by NZDF or coalition members. The helicopters did not land at points identified in pages 64-65. No sniper was located at point identified on page 67. Only one party identified armed insurgents were targeted. No personnel were targeted at any locations identified in pages 64-65.

Weapons and ammunition found at A1:
A1 caught fire as weapons were being destroyed.
A3 caught fire due to unattended cooking fire.

No NZDF or coalition members conducted operations at the points on the map identified on pages 64-67.
What are the events of Operation Burnham?

The NZDF has publicly released a detailed account of Operation Burnham.

At 0030 on 22 August 2010, two helicopters carrying NZSAS personnel and members of the Afghan Crisis Response Unit landed on the outskirts of Tirgiran. It should be noted that the authors of *Hit & Run* claimed that the two helicopters landed separately at the different villages of Naik and Khak Khuday Dad.

Afghan and New Zealand personnel dismounted from the helicopters with covering support provided by Coalition aircraft.

The supporting aircraft soon identified and reported numbers of insurgents with weapons taking up positions on high ground, and within Tirgiran, that the Ground Force Commander deemed to be a threat to the helicopters and the Coalition forces on the ground.

At 0054, after the targets were positively identified as direct participants in hostilities and that collateral damage would be avoided, coalition aircraft were given permission to engage the insurgent groups. Those engagements took place in an area to the southwest of the landing zone.

During this time, Coalition aircraft observed that rounds from a Coalition helicopter had fallen short of its target. According to the report of a later joint ISAF/Afghanistan Government investigation, civilian casualties may have occurred as a result of these rounds falling short and striking two buildings. Please see Document Six, a PowerPoint slide from the presentation of 27 March 2017, with the buildings circled.

**Supporting Documents:**

6. Slide nine from PowerPoint presentation of 27 March 2017

What were the ground forces doing?

The Coalition force made a “callout” – an announcement by an interpreter - to the villagers, of the presence of the ground force and its general intention.

The first residence (marked as A1 in Document Seven, a PowerPoint slide from the presentation of 27 March 2017) was entered at 0053.

**Supporting Document:**

7. Slide seven from PowerPoint presentation of 27 March 2017 with buildings that caught fire marked
0030 – Surveillance aircraft and support helicopters positively identify armed insurgents
22 August 0030 – 2 Helicopters Land at Landing Zone

Helicopter Landing Zone

Tirgiran Village

A1

A2

A3

Observation Position

DECLASSIFIED
What did the ground forces find in Tirgiran village?

The insurgent targeted for capture was not present.

However, what was captured instead was a quantity of weapons and ammunition:
- one Rocket Propelled Grenade launcher with seven grenades;
- a bipod (a two-legged rifle rest);
- five Rocket Propelled Grenade rocket motors;
- a full 7.62mm magazine;
- a drum magazine;
- five tins of loose 7.62mm ammunition;
- one tin of 14.55mm Armour Piercing Incendiary ammunition;
- two non-disintegrating belts of 7.62mm ammunition;
- a quantity of 9mm rounds;
- a leather pistol holster; and
- an AK47 rifle.

All imagery of the arms cache, and imagery data, is provided in Document Eight.

Supporting Document:
8. Imagery captured by the NZDF during Operation Burnham

Did the NZDF ground forces shoot any people during Operation Burnham?

As previously confirmed by the NZDF at its 27 March, 2017, media conference, at approximately 0128, an insurgent who was approaching one of the ground force positions was identified as presenting a threat and was shot and killed by the NZSAS ground force.

Two shots were fired.

Those two shots were the only shots fired by NZDF personnel during the entire operation.

Were the NZSAS patrol able to identify the insurgent they had killed?

Yes, his identity as an insurgent was confirmed. Security conditions on the ground precluded the collection of the deceased or biometric data from the deceased which may have led to a conclusive personal identification during the operation.
Imagery captured by NZDF during Operation Burnham

IMG0026 = Sunday, 22 August 2010, 9:21:00 AM NZST (AFG LOCAL TIME = 01:51:00AM)
IMG0029 = Sunday, 22 August 2010, 9:23:00 AM NZST (AFG LOCAL TIME = 01:53:00AM)
Did the NZSAS blow a building up?
Residence A1 was not “blown up” as claimed in *Hit & Run*. Explosive entry was used. The NZSAS ground force did not deliberately set fire to any houses or personal possessions.

Nor did they call in coalition aircraft to deliberately destroy houses.

How did the operation conclude?
The interpreter addressed the village by loud-hailer as the ground forces withdrew. An ISAF information pamphlet on the operation was distributed and the ground forces were airlifted out by 0345.
Were any members of the NZSAS injured during the operation in Tirgiran village?

One NZSAS member was injured after entering the residence (A1 - see Document Seven), when a wall and part of the roof collapsed upon him.

The injury was not the result of the wall of a house falling after being damaged by Coalition helicopter fire, as described in *Hit & Run*. Coalition aircraft did not deliberately fire on any buildings during the course of the operation.

At approximately 0245, the NZSAS casualty was evacuated from Tirgiran.

Notwithstanding the injury to the member of the NZSAS, on-ground search operations continued.

Summaries of the citations for the awarding of the New Zealand Gallantry Medal are provided in Documents Nine and Ten.

**Supporting Documents:**
9. Summary of citation for Serviceman F
10. Summary of citation for Serviceman A

It has been suggested that buildings were deliberately set alight by coalition forces?

After the NZSAS casualty was evacuated from Tirgiran, at approximately 0245, other members of the ground force proceeded south to another residence (marked as A3 in Document Seven).

An interpreter made another “callout” before the location was cleared and searched.

The building marked as A3 was a residence that later caught fire due to what has been attributed to a cooking fire that had been left unattended.

On return to the first residence (A1), the insurgent arms cache in the village was destroyed outside the building.

As the NZDF has previously confirmed, this residence caught fire when debris from the destruction of the insurgent weapons and ammunition fell on the roof setting the highly combustible roofing material alight.

At no point during the operation were NZDF personnel aware of damage to buildings as a result of rounds falling short from a Coalition helicopter or from fire.
Serviceman F served in Afghanistan between March and August 2010 as part of the New Zealand Special Air Service (NZSAS) Task Force operating with and training the Afghani Police Crisis Response Unit. He developed a number of new tactics for use in close quarter fighting. On 20 August 2010, he took part in a night mission in northern Afghanistan to arrest two known insurgents responsible for numerous attacks and killings, including the death of Lieutenant O'Donnell. He and his team were dropped off by helicopter in the isolated and mountainous target area. As they made their way towards a compound, they passed a number of insurgents moving through a line of trees. As it was not possible to identify what weapons were being carried, the NZSAS group withheld their fire, at some personal risk, in order to avoid civilian casualties. On arrival at the compound, Serviceman F was tasked to gain entry. At the same time, the first insurgent group had got themselves in to a position from where they could fight and other insurgents were attempting to flank the NZSAS patrol. As he prepared to gain entry to a building, close air support was engaging the insurgents about 150 metres away. With no time to lose, he and another NZSAS soldier entered the building. As he did so, a wall and the roof of the building collapsed, dropping several hundred kilograms from a height on to him. He now found himself trapped under the debris, having sustained severe injuries. As a qualified NZSAS medic, he intuitively knew the severity and consequences of his wounds. He also knew time was of the essence and every moment of delay spelt danger for his colleagues. In spite of his injuries and while still trapped in the rubble, he provided a running commentary on the tactical situation. This timely and accurate information ensured the plan was able to be quickly reoriented and the assault was able to succeed.

Such was Serviceman F’s focus on the mission, despite being in severe pain and while trapped under rubble, and the accuracy of the communications that he provided, that the troop commander was completely unaware of his situation and of the injuries he had sustained. His leadership skills were such that in spite of his incapacitation, his group were able to continue and bring the assault to a successful conclusion.
THE NEW ZEALAND DISTINGUISHED SERVICE DECORATION

TE TOHU RATONGA RONGONUI O AOTEAROA

SERVICEMAN A
THE NEW ZEALAND SPECIAL AIR SERVICE

Citation

Serviceman A served in Afghanistan between March and October 2010 as part of the New Zealand Special Air Service (NZSAS) Task Force operating with and training the Afghan Police Crisis Response Unit. His role was that of a Joint Tactical Air Controller. On 20 August 2010, he took part in a night mission in northern Afghanistan to arrest two known insurgents responsible for numerous attacks and killings, including the death of Lieutenant O’Donnell. He was a member of the group, whose personnel were to have been pre-positioned by helicopter on high ground to the west of the target area, so that they were in an over watch position. Due however to the extremely rugged nature of the terrain, this was not possible. Instead the personnel were dropped off over two kilometres south west of the planned location. After disembarkation, it quickly became clear from aerial reporting that the situation was urgent. Insurgents had been observed gathering weapons, ammunition and rockets to prepare for attack. They had attempted contact with NZSAS personnel in the base of the valley, coming within forty metres of them, but darkness had thwarted engagement. They had then started making for higher ground. It was essential that Serviceman A and other members of the group quickly gain an over watch position. They began a rapid and sustained traverse over rocky terrain in complete darkness. Throughout, he maintained constant communications with the aerial support, while keeping pace with his colleagues and maintaining vigilance for insurgent ambush. The reports he provided brought effective aerial fire to bear on the enemy, during which a number were killed, negating their ability to engage the main body of NZSAS personnel. As compounds were searched, the insurgents massed for two further attacks. At one stage a member of the Squadron sustained serious injuries. Serviceman A then had the dual task of continuing to direct combat aircraft, while controlling the air evacuation of the casualty.
Were the NZSAS aware during Operation Burnham that civilian injuries or deaths may have occurred?

No. The NZSAS participants in this operation were not aware of any civilian injuries or deaths at any point during the operation, nor were they aware of any rounds striking a building.

Were there in fact any civilian casualties?

A joint ISAF and Afghanistan Government investigation concluded that civilian casualties may have occurred when a gunsight malfunction on one of the helicopters engaging insurgents on a nearby hillside, caused rounds to fall short of the intended target and strike two buildings.

Coalition aircraft had been given permission to engage the insurgents with weapons, as they were considered to be a threat to the ground force. As already mentioned, Coalition aircraft did not deliberately target and fire on any buildings, notwithstanding that claim in *Hit & Run*.

The NZDF is conscious of its responsibilities regarding allegations of use of force against civilians not participating in hostilities by its personnel. Document Eleven relates to the actions taken by the Defence Force following the allegations of offending.

**Supporting Documents:**
11. Defence Force Inquiries into Allegations of Offending

If ISAF had said civilian casualties may have occurred, why did the NZDF maintain that reports of civilian casualties were “unfounded”?

There has been some confusion regarding statements made in the ISAF press release of 29 August 2010 and subsequent NZDF press releases stating that allegations of civilian casualties were unfounded.

The term “unfounded” was intended to address the suggestion that the NZDF was responsible for civilian casualties.

In so far as there may have been civilian casualties caused by a malfunction on a coalition helicopter in the same operation, the NZDF acknowledges that use of the term “unfounded” may have suggested that the NZDF does not accept this possibility. This is not the case.
# NEW ZEALAND DEFENCE FORCE
## COVER SHEET
To accompany documents to the Minister of Defence

<table>
<thead>
<tr>
<th>Title:</th>
<th>DEFENCE FORCE INQUIRIES INTO ALLEGATIONS OF OFFENDING</th>
</tr>
</thead>
<tbody>
<tr>
<td>NZDF File No.</td>
<td>NZDF Tracking # 2017-098 (For OCDF Use Only)</td>
</tr>
<tr>
<td>Importance of the Issue:</td>
<td>High</td>
</tr>
<tr>
<td>Urgency for Attention/Sign-Off:</td>
<td>URGENT</td>
</tr>
<tr>
<td>Contacts:</td>
<td>1. Colonel [s. 9(2)(a)]</td>
</tr>
<tr>
<td>Purpose:</td>
<td>Allegations have been publicly made that members of the NZSAS committed offences while participating in a specific operational mission on 22 August 2010 in Afghanistan. This note provides you with the advice you sought around the legal options and obligations that the Chief of Defence Force has to investigate allegations.</td>
</tr>
<tr>
<td>Recommendations:</td>
<td>I recommend that you:</td>
</tr>
<tr>
<td></td>
<td>a. <strong>Note</strong> the legal authority and duty vested in me as the Chief of Defence Force under the Armed Forces Discipline Act 1971;</td>
</tr>
<tr>
<td></td>
<td>b. <strong>Note</strong> that, based upon the information I have considered, I do not consider that the obligation to conduct an internal Defence Force inquiry into Operation Burnham has been triggered;</td>
</tr>
<tr>
<td></td>
<td>c. <strong>Note</strong> that I have openly stated that I will welcome and consider any new credible evidence, and would re-evaluate my decision on the basis of that evidence; and</td>
</tr>
<tr>
<td></td>
<td>d. <strong>Forward</strong> a copy of this note to the Prime Minister.</td>
</tr>
<tr>
<td>MOD/NZDF Consultation</td>
<td>Not required: Defence Force matter only.</td>
</tr>
<tr>
<td>Minister's comments:</td>
<td></td>
</tr>
<tr>
<td>Minister's Action:</td>
<td>Signed / Noted / Agreed / Approved / Declined / Discussion required</td>
</tr>
<tr>
<td>Referred to:</td>
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<td>Signature:</td>
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T.J. KEATING  
Lieutenant General  
Chief of Defence Force  

Date: 2 March 2017
Minister of Defence

DEFENCE FORCE INQUIRIES INTO ALLEGATIONS OF OFFENDING

1. Information in the recently released book 'Hit and Run' can be construed as suggesting that members of the New Zealand Special Air Service may have engaged in unlawful conduct while participating in a specific operational mission on 21/22 August 2010 in Afghanistan (Operation Burnham). This note provides you with advice about the legal obligations that the Chief of Defence Force has under law, to inquire into such suggestions of unlawful conduct and the form of any subsequent legal action should that be required. The following paragraphs describe these obligations and avenues for action.

Investigations

2. This note sets out information about the inquiries that I am obliged and empowered to direct or conduct pursuant to the Armed Forces Discipline Act 1971 within the military jurisdiction. The military jurisdiction is fundamentally concerned with Defence Force personnel, and dealing lawfully and appropriately with allegations of unlawful conduct by Defence Force personnel.

3. Any decision made by Defence Force personnel on whether or not a Defence Force investigation should be conducted does not preclude another authority exercising their lawful jurisdiction, for instance the New Zealand Police.

Defence Force Investigations

4. There are essentially three forms of inquiry available to me as Chief of Defence Force within the military jurisdiction in respect of the conduct of my personnel. These are command investigations, a court of inquiry and a disciplinary investigation.

5. The internal inquiries that have been conducted to date in respect of this matter essentially take the form of a command investigation. However, a command investigation is not suitable for formally investigating allegations of unlawful conduct, if there were an evidential basis to do so.

6. The Armed Forces Discipline Act sets out the basis on which officers of the New Zealand Defence Force, including the Chief of Defence Force, might assemble a Court of Inquiry. The purpose of a Court of Inquiry is to provide an expeditious fact finding procedure so that a matter can be promptly investigated and if necessary, prompt, remedial action can be taken. A Court of Inquiry is not considered necessary or appropriate at this time, given the unsubstantiated allegations are essentially of unlawful conduct, the environment within which the unlawful conduct occurred, and when it is alleged unlawful conduct occurred.
Disciplinary Investigation

7. The Armed Forces Discipline Act, in particular section 102, sets out the statutory basis for the conduct of a disciplinary investigation under the Armed Forces Discipline Act.

8. The Armed Forces Discipline Act vests specific duties in commanding officers, and gives them specific options to deal with allegations of unlawful conduct. Where there are grounds to do so, the matter will either be referred to the civil authorities or dealt with in accordance with the Act. The commanding officer of a person about whom an allegation of unlawful conduct is made needs to determine what action they will take based on the information available to them at the time they make their decision. The exercise of their lawful authority in making this decision should not be unlawfully fettered. As the Chief of Defence Force, authority to direct investigations also vests in me.

9. To date, no commanding officer has decided it is necessary to direct an investigation pursuant to the Armed Forces Discipline Act in respect of the conduct of Defence Force personnel during this Operation.

10. The book ‘Hit and Run’ can be construed as alleging that Defence Force personnel were involved in an operation that:

   a. Deliberately targeted civilians; and
   b. Deliberately destroyed property on an large-scale.

11. Such allegations are of serious concern to me because they strike at the heart of the professionalism and integrity I expect of Defence Force personnel. I expect my personnel, as part of a trained and disciplined force, to comply with the Law of Armed Conflict and with the rules of engagement when deployed on operations. The rules of engagement are designed, amongst other things, to ensure the protection of non-combatants as required by the Law of Armed Conflict. I further expect Defence Force personnel to, and will myself, take steps to ensure any allegations of unlawful conduct are appropriately investigated.

12. In this context, and in light of the perceived allegations, I have considered the following information, relating to the planning, execution and subsequent review of the Operation, in forming a view whether I am currently obliged to direct or conduct an investigation pursuant to the Armed Forces Discipline Act. I have also considered the material provided in the book ‘Hit and Run’ in forming my view. I have set aside any inaccuracies of location that may exist in making my decision, although I have seen highly accurate information regarding the location in which the Operation was conducted. The information I have seen included:

   a. New Zealand Defence Force and coalition intelligence and operational documentation generated prior to the Operation, during the Operation and following the Operation;
   b. The rules of engagement in place for the Operation; and
   c. The executive summary of the investigation conducted by the International Security Assistance Force, the Afghan Ministry of Interior, and the Afghan Ministry of Defence, as it was released to the New Zealand Defence Force.
13. The information I have seen clearly shows Defence Force and coalition personnel involved in the Operation taking deliberate steps to ensure the Operation was conducted in accordance with the Law of Armed Conflict and the rules of engagement. This includes ensuring the positive identification of individuals as lawful targets and taking all feasible precautions to minimise potential civilian casualties. The Operation was reviewed throughout by a New Zealand Defence Force legal officer. The Operation was based on a comprehensive intelligence picture distilled from various sources. Additionally, intelligence was gathered after the Operation to measure its outcome.

14. I do not currently consider that the information I have in respect of the allegations requires me to direct further action pursuant to section 102 of the Armed Forces Discipline Act.

15. Where a matter has not been disposed of finally in accordance with the Armed Forces Discipline Act, further action under the Armed Forces Discipline Act might still be taken. As such, if further credible evidence were to come to light, I would reassess whether my decision should still stand.

16. The Defence Force has, and will continue to be, explicit in its request that anyone with relevant information should draw that information to the attention of the Defence Force so that any allegations might be appropriately investigated where the information warrants doing so.

Coalition Forces

17. Defence Force personnel cannot compel foreign service personnel to give evidence in any disciplinary investigation of Defence Force service members pursuant to section 102 of the Armed Forces Discipline Act, although it could make a request for foreign service personnel to do so. This is not an issue at present, given my decision that an investigation is not required. However, if I were to decide at any later point that an investigation were required, the availability of witnesses may constrain the scope of any investigation.

18. The allegations in the book could potentially be construed as suggesting that the conduct of foreign service personnel may have been unlawful. New Zealand Defence Force personnel have no statutory authority to conduct investigations into the conduct of foreign service personnel in situations such as this. However, if I were concerned with the conduct of foreign service personnel it is my duty, under the Law of Armed Conflict, to bring it to the attention of the appropriate national authorities. In reviewing the information available to me, I have not seen any information to substantiate a suggestion foreign service personnel engaged in unlawful conduct.

Disclosure of Information

19. Any requests for access to information relating to the Operation that have been made will be managed in accordance with the requirements of the Official Information Act 1982 and the Privacy Act 1993. While Defence Force personnel are no longer serving in this location, I am still obliged to ensure that release does not have an impact on future operations or foreign relations when determining what information may be released.
Conclusion

20. At the time that earlier allegations were made, the Chief of Defence Force of the day concluded that there was no basis for the conduct of an inquiry. I have studied the Defence Force’s own records, including coalition material made available to us, around the conduct of Defence Force personnel during Operation Burnham, in the context of the allegations made.

21. Having reviewed the material available to me and the information presented in the book ‘Hit and Run’, I have decided that the requirement to conduct an internal Defence Force inquiry into Operation Burnham has not been triggered at this stage.

22. As I stated at my press conference on Monday 27 March 2017, I would consider any new evidence presented by any individual. If any such evidence were to trigger my obligation under section 102 of the Armed Forces Discipline Act 1971 to initiate an appropriate inquiry, for which I have the statutory duty and authority to do, I would do so.

Recommendations

23. I recommend that you:

   a. **Note** the legal authority and duty vested in me as the Chief of Defence Force under the Armed Forces Discipline Act 1971;

   b. **Note** that, based upon the information I have considered, I do not consider that the obligation to conduct an internal Defence Force inquiry into Operation Burnham has been triggered;

   c. **Note** that I have openly stated that I will welcome and consider any new credible evidence, and would re-evaluate my decision on the basis of that evidence; and

   e. **Forward** a copy of this note to the Prime Minister.


T.J. KEATING
Lieutenant General
Chief of Defence Force
At the NZDF press conference in 2017, doesn’t CDF say that NZSAS members observed helicopter rounds falling short into village buildings?

At the 27 March, 2017, media conference, Chief of Defence Force, Lieutenant General Tim Keating was making remarks about how the insurgents live and operate among the civilian population, in effect using civilians as human shields.

This then led LTGEN Keating to say that during the operation “it was noted by ground forces, the NZSAS forces, that some of the [Coalition helicopter] rounds were falling short and went into a building where it was believed there were civilians as well as armed insurgents”.

After the media conference, what LTGEN Keating had said about the issue was queried by at least one commentator. LTGEN Keating said that, at the media conference, he had thought that NZSAS observers on the ground observed the short rounds. That observation had instead been made onboard a Coalition helicopter.

On checking this detail, the NZSAS was able to confirm that none of its members were in a position to see the helicopter rounds fall short. The NZSAS patrol had already passed the location and were at the residence marked as A1 in Document Seven.

On further review of the Coalition helicopter video, LTGEN Keating concluded that the call stating that rounds were falling short, was from a member of the helicopter crew that fired those rounds.

Doesn’t the CDF go on to suggest that NZDF knew civilians were in the building struck by rounds from the helicopter?

During the press conference of 17 March, 2017, the Chief of Defence Force, LTGEN Tim Keating, says:

“It is noted that the building, there were armed insurgents in there. But it’s believed there may have been civilians in the building. So the weapon malfunctioned and some rounds went into that building. There is no confirmation that any casualties occurred, but there may have been.”

By way of amplification, LTGEN Keating confirms that he was referring to subsequent analysis of imagery from the period of the raid that showed that the building in question was used at various times by insurgents and civilian villagers.

There is no imagery to suggest that any casualties occurred, hence his conclusion: “There is no confirmation that any casualties occurred, but there may have been.”
What has been the outcome of an accusation that a prisoner in the care of the NZDF was abused?

The NZDF stand by all of its legal obligations, including the obligation to investigate allegations of any wrongdoing by its members.

The book *Hit & Run* alleged that a Mr Qari Miraj had been assaulted by a member of the NZDF. The allegation was investigated by the NZDF Military Police.

NZDF personnel did not detain Mr Qari Miraj, but searched him before and after he was transported to the National Directorate of Security detention facility. NZDF personnel present were interviewed by Military Police. Mr Miraj had also been photographed and then checked by a New Zealand Medical Officer.

No evidence of any ill-treatment was observed by the Medical Officer or recorded in the photographs.

The Military Police investigation concluded there was insufficient evidence to support the allegation that Mr Qari Miraj had been assaulted.

**Supporting Documents**

12. NZDF MP Final Report: Ill-treatment of a detainee
13. Preliminary Investigation into Allegation of Detainee Mistreatment
NEW ZEALAND DEFENCE FORCE
Headquarters NZDF Military Police
Serious Investigation Branch

MINUTE

20170503001
Sep 17

HQ JFNZ (Attention: SOCC)

For Information:
1 NZSAS Regt (Attention: CO)
HQNZDF (Attention: PM)

NZDF MP FINAL REPORT: ILL-TREATMENT OF A DETAINEE

References:
A. NZDF / SOC/1 of 11 Apr 17
B. NZDF MP Incident Report 20170503001 dated 4 May 17
C. AFDA s 102

1. IAW ref A, NZDF MP commenced an investigation into an allegation made in the book ‘Hit and Run: the New Zealand SAS in Afghanistan and the Meaning of Honour’ by N. Hager and J. Stephenson, specifically that an Afghan national had been assaulted by a member of the NZDF, while he was being transported to an Afghan run detention facility.

2. The NZDF MP SIB investigation has established the following:
   a. on the night of 15 Jan, Mr Qari MIRAJ was located in a residential area of Kabul;
   b. a NZDF patrol deployed and put in a cordon
   c. members of the Afghan Critical Response Unit (CRU) took Mr Qari MIRAJ into custody;
   d. the NZDF patrol did not take part in the detention;
   e. Mr Qari MIRAJ confirmed his identity to the CRU and was escorted out without resistance;
   f. members of the NZDF patrol conducted an initial search of Mr Qari MIRAJ, prior to placing him in a vehicle and transporting him to the National Directorate of Security (NDS) detention facility;

RESEARCHED
g. at the NDS detention facility, a thorough search was conducted of Mr Qari MIRAJ by members of the NZDF patrol;

h. Mr Qari MIRAJ was then photographed and given an initial medical check by a New Zealand Medical Officer (MO);

i. no evidence of any ill-treatment or assault was observed by the MO or recorded on the photographs taken of Mr Qari MIRAJ; and

j. Mr Qari MIRAJ was then handed back into the custody of the NDS.

3. NZDF MP SIB inquiries identified s. 6(a) NZDF personnel deployed on the patrol s. 6(a) have been interviewed with one witness, now a civilian, being unavailable.

4. The NZDF MP SIB investigation has concluded that there is insufficient evidence to support the allegation that a member of the NZDF assaulted Mr Qari MIRAJ. No further reports will be submitted regarding this matter, unless further information or evidence is obtained.

5. IAW ref C, the decision to proceed with any disciplinary action is for SOCC to make. It is further requested that any decision and the results of any unit action regarding this matter, including any findings and/or punishment awarded, be forwarded to s. 9(2)(a) NZDF MP, NZDF MP Criminal Intelligence ss. 6(a), 9(2)(a)

6. Any queries regarding this matter can be referred to s. 9(2)(a) s. 9(2)(a) NZDF MP, s. 9(2)(a) s. 9(2)(a)
PRELIMINARY INVESTIGATION INTO ALLEGATION OF DETAINEE MISTREATMENT

Refs:
A. Minute SOCC to CO NZDF MP dated 11 Apr 17
B. Minute CO NZDF MP to SOCC dated 6 Sep 17
C. Armed Forces Discipline Act 1971, s 102

1. At Ref A I requested a preliminary investigation be conducted by the NZDF Military Police into an allegation of detainee mistreatment made by Nicky Hager and John Stephenson in their book Hit & Run.

2. Ref B is the final report on the NZDF MP SIB investigation. s. 6(a) personnel that formed the NZDF patrol were interviewed. One witness, now a civilian, was unavailable. According to Ref B, the investigation established the following:

   a) Members of the Afghan Crisis Response Unit took Mr Qari MIRAJ into custody in Kabul on 15 Jan 2011. Members of the NZDF were not present in the building when Mr MIRAJ was taken into custody;

   b) Outside the building, an initial search of Mr MIRAJ was conducted by members of the NZDF and he was transported by vehicle to the National Directorate of Security (NDS) detention facility;

   c) At the NDS facility, members of the NZDF conducted a thorough search of Mr MIRAJ, he was photographed, and then medically checked by a New Zealand Medical Officer (MO); and

   d) No evidence of any ill-treatment was observed by the MO or recorded in the photographs taken of Mr MIRAJ.

3. Ref B concluded that there is insufficient evidence to support the allegation of detainee mistreatment.
4. In light of this conclusion, I do not consider that an obligation to conduct any further internal Defence Force inquiry into the allegation has been triggered. No further action will be taken unless additional information or evidence becomes available.

s. 9(2)(a)

COL
SOCC
After *Hit & Run* was released, did the NZDF provide a briefing to the New Zealand Government on Operation Burnham?

Yes. The former Prime Minister, Bill English, current and former Ministers of Defence, Ron Mark, Gerry Brownlee, and Mark Mitchell, and most recently the Attorney General, David Parker, have all been briefed about Operation Burnham, its objectives and its conduct.

The briefing material is based, in part, on the list of reports enclosed. These files also contain highly classified operational and intelligence information. The NZDF is unable to share the contents of those files publicly.

The information includes a more detailed account of the operation than was presented publicly at the press conference of 27 March 2017. Supporting material also included up to 15 minutes and 52 seconds of video footage from the weapons system of coalition aircraft. The footage shows the identification and engagement of insurgents.

**Supporting Documents**

14. List of reports created following Operation Burnham

Abbreviations used in report titles:

- **BDA**: Battle Damage Assessment
- **Civ**: Civilian
- **HLZ**: Helicopter Landing Zone
- **Int**: Intelligence
- **IO**: Information Operations
- **MINDEF**: Minister of Defence
- **Ops**: Operations
- **Post Op**: Post Operation
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