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From

# Hope to Fear

An Afghan Perspective on

Operations of Pro-Government Forces in Afghanistan

DECEMBER 2008

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Operations of Pro-Government Forces in Afghanistan

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# From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan

## I. EXECUTIVE SUMMARY

This report represents the Afghan perspective on the operations of Pro-Government Forces (PGF). The incidents documented in this report have resulted primarily from operations by International Military Forces (IMF), Afghan National Security Forces (ANSF), or joint operations involving airstrikes and nighttime searches of civilian houses (“night raids”). Separate and concurrent to this report, AIHRC has published a report documenting insurgent abuses. Insurgent tactics demonstrate a deliberate pattern of abuse and intimidation of the population. AIHRC found no systematic attempts by PGF to violate their international obligation of care to civilians. Nonetheless, some PGF practices raise serious concerns. Regardless of whether PGF committed violations per se, a more important question is whether PGF could have done more to prevent harm to civilians.

While AIHRC regularly monitors a range of PGF activities, this report focuses on airstrikes and night raids because they represent two of the main sources of resentment and anger among the local population. According to the United Nations Assistance Mission in Afghanistan (UNAMA), airstrikes were responsible for 25% of all civilian casualties in 2008, and 63% of PGF-caused civilian casualties.<sup>1</sup> Large airstrikes resulting in tens of civilian casualties were a national focal point of anger toward PGF. While nighttime house searches resulted in fewer deaths, night raids frequently involved abusive behavior and violent breaking and entry at night, which stoke almost as much anger toward PGF as the more lethal airstrikes. In areas where night raids are prevalent, they were a significant cause of fear, intimidation, and resentment toward PGF.

In general AIHRC questions PGFs’ heavy reliance on airstrikes, which on several occasions have resulted in high numbers of civilian casualties that may have been symptomatic of excessive use of force. AIHRC also questions whether the amount of violence used in some house raids and the procedures or processes through which they are authorized comply with IHL and IHRL. There should be greater and more transparent investigation into these night raids, in particular into any instances resulting in arbitrary shootings, detention, or other physical abuse.

AIHRC is concerned that lack of coordination among PGF and also between PGF and local government authorities may lead them to act on unreliable sources or faulty intelligence, increasing the risk of civilian casualties. In cases of night raids and other

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<sup>1</sup> United Nations Assistance Mission in Afghanistan, Human Rights Unit, Monthly tracking information, update from 06 October 2008.

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ground operations, international military forces' lack of expertise and familiarity with Afghan culture and local tradition have often led them to unnecessarily offend and traumatize local communities.

Local resentment over high civilian casualties and perceived insensitivity are exacerbated by a lack of public accountability. This is due in part to divided and frequently non-transparent chains of command, slow investigation and response times, not making public any findings, and absence of timely acknowledgement of any misconduct or civilian losses. AIHRC documented a common pattern among the testimony of civilians: Afghan families experienced their family members killed or injured, their houses or other property destroyed, or homes invaded at night without any perceived justification or legal authorization. They often did not know who perpetrated the acts against the family or why. Many were afraid to raise the issue with local civilian or military authorities, and where they did they were often cursorily turned away without an explanation, apology, or compensation. To their knowledge and perception those who perpetrated the acts were never punished, nor prevented from repeating them.

This report concludes with specific recommendations for all parties on how to address these concerns better in the future. These recommendations include:

### Recommendations for Pro-Government Forces

- PGF should exercise a higher degree of caution in conducting all military operations in order to minimize collateral damage to civilian lives and properties.
- PGF should improve coordination among PGF forces in planning and conduct of operations in order to potentially reduce errors due to faulty or misunderstood situational intelligence.
- PGF should review and clarify chains of command and any controlling guidelines on night raids so as to provide greater accountability. Night raids as a military or security tactic should be avoided wherever possible in favor of regular law enforcement-led search and arrest procedures.
- PGF should initiate prompt and thorough investigations in any incident of alleged civilian casualties and publicly release details of their findings and evidence.
- The Afghan government and governments of the troop-contributing countries must make a more concerted effort to render justice for victims. Those found responsible for any violations of IHL must be held fully accountable for their actions.

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### Recommendations for International Military Forces

- All IMF should revise standard operating procedures so that airstrikes may only be deployed when other means and methods that might carry a lower risk to civilians have been exhausted.
- IMF should ensure that the findings or relevant investigations and any corresponding disciplinary measures should be made public in Afghanistan to the largest extent possible. If not the entire report, the summary of any findings should be translated in to Dari and Pashtu for wider circulation.
- IMF should work with ANSF and local community leaders in developing guidance for conduct of operations that demonstrates greater respect for traditional religious and cultural values.

### Recommendations for the Islamic Republic of Afghanistan, and relevant international partners:

- The Afghan government, in cooperation with the military and civilian representatives of PGF, and in consultation with international and national civil society representatives, should develop a unified and adequate compensation mechanism for victims of all PGF operations.
- The Afghan government should facilitate mechanisms for greater investigation and accountability over the conduct of ANSF.
- The Afghan government should make more constructive efforts to work with IMF to maximize civilian protection in combat operations.

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## II. INTRODUCTION

As insurgent activities have strengthened in the last two years, the number of PGF operations, and the risk to civilians, has also increased. The United Nations Assistance Mission to Afghanistan (UNAMA) reported that more civilian casualties were reported in August 2008 (330 deaths) than any month since the end of major hostilities between the United States and the Taliban in early 2002. In the first ten months of 2008, the number of civilian casualties recorded by UNAMA (1798) was 41% higher than the corresponding period in 2007 (1275). The increase in the number of casualties was largely due to more aggressive and indiscriminate insurgent activities. The percentage of deaths caused by insurgent actions increased from 47% to 56% from January 2008 through the end of August 2008. Nonetheless, the overall number of deaths due to PGF operations is also on the rise (UNAMA reported 695 PGF-caused civilian deaths between January and October 2008, compared to 556 in the same period in 2007), and many of the tactics of PGF have alarmed and angered the Afghan population.

This report represents the Afghan perspective on PGF operations. The civilian losses documented in this report have resulted primarily from joint IMF-ANSF operations involving airstrikes and night raids, which are nighttime searches of civilian houses by unidentified military or paramilitary units of PGF. The rationale for focusing on airstrikes and night raids, as opposed to a broader survey of all PGF activities, is that they represent two of the main sources of resentment and anger among the local population.

Airstrikes were responsible for 25% of all civilian casualties in 2008, and 63% of PGF-caused civilian casualties.<sup>2</sup> Large airstrike operations can cause tens of civilian casualties in a single incident. Because of the high numbers, these incidents tend to gather more media and public attention, causing much more focused national anger.

While nighttime house searches receive scant attention in the media, they are not uncommon in the south, southeast and east of Afghanistan. Afghans in these regions generally know stories of friends or family members who have been awakened in the middle of the night to be tied up, and often abused by a group of armed men. Whether individual stories are true or are hearsay is difficult to verify. Nonetheless the prevalence of the stories, and the instances AIHRC has investigated, suggest these night raids do occur and with some regularity. The combination of abusive behavior and

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<sup>2</sup> United Nations Assistance Mission in Afghanistan, Human Rights Unit, Monthly tracking information, update from 12 November 2008.

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violent breaking and entry into civilians' homes in the middle of the night stokes almost as much anger and resentment toward PGF forces as the more lethal airstrikes.

This report will focus on several well documented case studies that illustrate some of the broader concerns and patterns with PGF airstrikes and night raids. These case studies and the subsequent analysis will be used not only to evaluate compliance with IHL and IHRL, but also to illuminate the impact of such practices on the ordinary Afghan citizens and on their impressions of PGF and the Afghan government. A full discussion on ANSF conduct is beyond the scope of this report; however, one section will briefly examine those claims and concerns that AIHRC and other independent monitors have investigated already. Further investigation and analysis is merited. The report will conclude with recommendations for PGF forces, the Afghan government, and the governments of ISAF troop-contributing countries.

AIHRC is concerned that lack of coordination between PGF and also between PGF and local government authorities leads them to act on unreliable sources or faulty intelligence, increasing the risk of civilian casualties. In cases of night raids and other ground operations, international military forces' lack of expertise and familiarity with Afghan culture and local tradition may unnecessarily offend and traumatize local communities. Local resentment over high civilian casualties and perceived insensitivity are exacerbated by a lack of public accountability and responsibility for incidents, due in part to the divided and sometimes non-transparent chain of command, slow investigation and response times, and absence of timely acknowledgement of any negligence or "tactical mistakes".

### *METHODOLOGY*

The Afghanistan Independent Human Rights Commission (AIHRC) has the mandate to investigate potential violations of International Human Rights Law (IHRL) and International Humanitarian Law (IHL). AIHRC regularly monitors the operations and actions of both Pro-Government Forces (PGF) and Anti-Government Elements (AGE), and has previously issued public reports where violations of on several incidents as well as tactics of concern.

This report examines potential legal and policy issues with PGF conduct between mid-2006 and the end of 2008. Concurrent with this report, AIHRC has published a report evaluating the conduct of AGE over roughly the same time period. Pro-Government Forces (PGF) refers to international military, para-military or other counter-terrorism forces under the International Security Assistance Force (ISAF) or the Operation Enduring Freedom (OEF) mandate, as well as the Afghan National Security Forces

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(ANSF), which includes Afghan National Army (ANA), Afghan National Police, and other Afghan security forces. Anti-Government Elements (AGE) refers to Taliban forces, as well as other anti-government groups. The term AGE may be used interchangeably with “insurgents” in this report.

In addition to analyzing information from its regular reporting and incident monitoring, AIHRC conducted a three-week special field investigation for this report, gathering 74 testimonies from witnesses, military personnel, local authorities and government officials. Some missions were conducted in conjunction with UNAMA investigators. In some cases our research has been supplemented by other publicly available information, including media reports or investigations by other organizations.

The investigation team traveled to the area, and to the site itself where relevant, for all 8 of the incidents described in greater detail, in order to examine available physical evidence, including photographs and video footage, documentation of the persons involved, and hospitals or grave sites. AIHRC primarily used public transportation, sometimes supplemented by UN transport. To investigate the Chora incident, the joint AIHRC-UNAMA mission used ISAF flights.

The primary sources for this report are witness testimonies. AIHRC ensures that the names and identities of all witnesses are kept confidential. Despite this, some of those affected refused to talk out of fear of retaliation. Notably, this issue was not raised as often as it was in investigating AGE abuses. Local officials also refused to speak on the record about nighttime search operations carried out by unidentified military and paramilitary forces, making it difficult to confirm or gather more information on certain instances.

### *LEGAL STANDARDS*

The focus of this report is to reflect the perspective of Afghan communities toward the conduct of PGF. Nonetheless, in some sections of this report the international legal obligations of PGF may also be referenced in order to evaluate PGF behavior against a more objective standard. PGF are bound by both international humanitarian law (IHL) and international human rights law (IHRL) throughout their operations. Particularly in those cases where PGF are engaged in activities that more closely resemble law enforcement and stabilization, rather than combat activities, it is arguable that IHRL predominates.

The ongoing conflict in Afghanistan is defined as a non-international armed conflict because it is between state parties (the Afghan government, NATO member states and



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their partners) and non-state groups. As such, it is governed by Common Article III of the Geneva Conventions,<sup>3</sup> and for those NATO member states who have ratified it (not including the United States or the Government of Afghanistan), the Second Protocol of 1977 (Protocol II) to the Geneva Conventions.<sup>4</sup> Any general principles of international humanitarian law that have risen to the level of customary international law are also applicable. Many of these customary rules derive from the First Additional Protocol of 1977 (Protocol I) to the Geneva Conventions.<sup>5</sup> Where the subsequent analysis references Protocol I it is referring to those portions of customary international law that reflect the principles codified in Protocol I.

The analysis below will take into consideration not only these legal obligations but also broader policy concerns implicit in the mission of PGF in Afghanistan.

### III. PRO-GOVERNMENT FORCES OPERATIONS

#### *AIRSTRIKES*

A large percentage of civilian casualties caused by PGF have been due to airstrikes. The United Nations Assistance Mission in Afghanistan (UNAMA) recorded 1798 civilian casualties between January and the end of October 2008, 695 of which were attributable to PGF.<sup>6</sup> 455 reported deaths, or 65% of PGF-caused civilian casualties were due to airstrikes. Airstrikes also have been blamed for widespread damage to individual and community property.

In its September 2008 report, Human Rights Watch suggested the number of civilian casualties due to airstrikes in 2008 was lower in part because of ISAF and OEF changes to operational regulations that were designed to decrease civilian casualties.<sup>7</sup> With the

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<sup>3</sup> Common Article 3 is so-called because it is common to all four Geneva Conventions. See, e.g., Geneva Convention Relative to the Treatment of Prisoners of War, art. 3, 6 U.S.T. 3316, 75 U.N.T.S. 135, entered into force August 12, 1949.

<sup>4</sup> Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices (Protocol II), 1342 U.N.T.S. 168, 19 I.L.M. 1529, entered into force Dec. 2, 1983; as amended May 3, 1996, 35 I.L.M. 1206.

<sup>5</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978. See Jean-Marie Henckaerts and Eric Mongelard, Customary International Law, Vol. I International Committee for the Red Cross, 2005.

<sup>6</sup> United Nations Assistance Mission in Afghanistan Human Rights Unit monthly tracking information, update from 12 November 2008.

<sup>7</sup> Human Rights Watch, Troops in Contact, September 2008, at 14-15.

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high number of civilian casualties from airstrikes so far in 2008, however, and no signs that they will abate, these operational changes may not have been effective.

The effects of airstrikes go far beyond the immediate loss of lives and properties. These incidents have larger psychological impacts on affected communities including high levels of trauma and fear. Airstrikes are often followed by the displacement of the civilian population in the area.<sup>8</sup> Away from their homes and livelihoods, displaced persons often depend on the charity of relatives, international organizations, or the communities they flee to, some for months at a time.<sup>9</sup> This, in turn, has a far-reaching impact on neighboring communities and provinces.



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<sup>8</sup> Interview with Head of Kapisa Provincial Council, 25 Aug 2008; International Displacement Monitoring Center, Afghanistan: Increasing hardship and limited support for growing displaced population, 28 October 2008, at 4.

<sup>9</sup> International Displacement Monitoring Center, Afghanistan: Increasing hardship and limited support for growing displaced population, 28 October 2008, at 6 - 7.

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Air strikes also stoke local anger and resentment against PGF. Afghans have a saying that IMF airstrikes have the capability to be so precise that they could hit a target within 4 inches.<sup>10</sup> With this assumption in mind, airstrikes resulting in high civilian death tolls, particularly high numbers of women and children killed, make the affected communities and the Afghan public at large question whether IMF care about avoiding civilian deaths. This combined with public denials of civilian casualties, or of civilian casualty estimates in proportion to those claimed by the community or international monitors, inflames public resentment against IMF and the Afghan government. A general lack of apology and compensation or other ex gratia payments to the communities, particularly with regard to large airstrikes, only exacerbates public anger.

AIHRC conducted a full investigation into several incidents in which OEF or ISAF airstrikes resulted in high numbers of civilian casualties. Three of these incidents will be explored in greater detail below:

- A four-day battle including heavy airstrikes and artillery shelling in Chora district, Uruzgan province, on 16 June 2007;
- An airstrike in the Haskamina district, Nangarhar province, on 6 July 2008 resulted in 47 civilian deaths (“Wedding party incident”);
- An airstrike in Zerkoh village, Shindand district, Herat province, on 17 July 2008.
- An airstrike in Azizabad village, Shindand district, Herat province, on 22 August 2008.

### **Chora, Uruzgan, 16 June 2007 – 20 June 2007**

*This incident has been documented in greater detail in the joint AIHRC-UNAMA report “AIHRC and UNAMA joint investigation into the civilian deaths caused by the ISAF operation in response to a Taliban attack in Chora district, Uruzgan on 16<sup>th</sup> June 2007.” However, this incident is worth summarizing and repeating here for the purposes of discussion and analysis below.*

On 16 June 2007, hundreds of Taliban fighters advanced on the Chora district of Uruzgan, taking control of several police posts and other tactical positions. ISAF troops, led by the Dutch, counterattacked with heavy artillery shelling and airstrikes. A joint AIHRC-UNAMA investigation found that in the ensuing four-day battle, at least 50 and

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<sup>10</sup> Interview with survivor of wedding party incident, 22 July 2008.; Martin Patience, Concern over Afghan Civilian Death Toll, BBC News Service, 11 July 2008.

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as many as 88 were killed, and another 80 to 100 injured.<sup>11</sup> Many civilians took up arms against the Taliban, and may have been combatants at the time.

The Afghan government reportedly paid compensation to the injured and those families whose relatives were killed by ISAF.<sup>12</sup> Dutch officials in Uruzgan province also said they have a fund for “ex gratia” payment; that 250,000 euros of this payment was made available for families in the aftermath of the Chora incident documented above; and that a portion of it was distributed.<sup>13</sup>

Despite the high civilian casualties, at least 75% of them due to IMF operations,<sup>14</sup> the UNAMA-AIHCRC investigation did not find the attack to be a disproportionate, or excessive, use of force because it was prompted by AGE forces’ attempt to takeover a significant military objective and because there were credible reports that they were attacking civilians in the process. Based largely on accounts by villagers and community elders that the Taliban fighters were killing (and sometimes torturing) civilians, and firing from inside civilian houses, the investigation found that Taliban fighters had violated Geneva Conventions Common Article 3. While finding no per se violations of international humanitarian law by PGF, the AIHCRC-UNAMA investigation questioned whether there were less damaging ways that ISAF troops could have responded given the high death toll for the community.

Regardless of their legal justification, the high casualties may have created community backlash. One resident of Qala-e-Ragh village said villagers in his community were fighting back against the Taliban until ISAF air and artillery strikes began. While some of these strikes hit the Taliban, they also hit those villagers fighting against the Taliban. “They could not understand why ISAF instead of attacking Taliban mortar positions had attacked villagers.”<sup>15</sup> The AIHCRC-UNAMA investigation noted that the failure of ISAF or the Afghan government to support local resistance efforts may have had strategic consequences: “In Chora, many villagers were prepared to fight against the

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<sup>11</sup> UNAMA & AIHCRC, “AIHCRC and UNAMA joint investigation into the civilian deaths caused by the ISAF operation in response to a Taliban attack in Chora district, Uruzgan on 16<sup>th</sup> June 2007” at 12. See also *Ibid.* at 1 (stating interviews with ISAF, community leaders, and eye witnesses led to civilian casualty estimates from 30 to 88 killed, and 80 to 100 injured).

<sup>12</sup> *Ibid.* at 15.

<sup>13</sup> Email from Public Information Officer, Task Force Uruzgan, to AIHCRC and CIVIC Worldwide, 1 November 2008.

<sup>14</sup> UNAMA & AIHCRC, “AIHCRC and UNAMA joint investigation into the civilian deaths caused by the ISAF operation in response to a Taliban attack in Chora district, Uruzgan on 16<sup>th</sup> June 2007”, at 12.

<sup>15</sup> *Ibid.* at 7 (Testimony #5, Interview with Neyamtuhullah, Qal-e-Ragh village, 5 July 2007).

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Taliban ...Any incidents of civilian casualties, even if not in contravention of international humanitarian law will obviously have a severe impact on this.”<sup>16</sup>

**Haskamina, Nangarhar, 6 July 2008 (“Wedding Party incident”)**

On 6, July 2008, at 6:30am, IMF forces bombarded a wedding party traveling in a remote district of Nangarhar province. Forty-seven were killed and at least 10 others were injured, primarily women and children.<sup>17</sup> Among those killed was the bride. The uncle of the bride, a 60-year-old man from the Haskamina district of Jalalabad said:

I heard noise of planes, and I saw two jet planes in the sky. Planes started bombing our caravan, and it lasted for half an hour. Besides dropping bombs, the planes fired rockets.... After half an hour planes left, when I stood up I saw heavy smoke in the air, the ground was burnt, bodies of children and women were scattered all around. I saw body parts and burnt clothes everywhere.<sup>18</sup>

Another man who was part of the wedding party but not caught in the bombardment gave a similar account:

First the planes bombed the [group of] children...[then] everyone was trying to hide him/her self. They bombed and fired rockets everywhere... After passing approximately half an hour, the planes left and we started collecting the injured and the dead bodies. I saw my four daughters’ bodies lying on the ground. One was injured.<sup>19</sup>

His four daughters who were killed ranged in age from 6 to 18 years old. The daughter who was injured was 25 years old.<sup>20</sup>

Two weeks after the incident, AIHRC sent an investigation team to the district, where it visited those who were injured in the hospital and conducted interviews with civilians, tribal elders, and local authorities. AIHRC also spoke with Afghan government representatives and international military authorities at Bagram Air Base about the incident.

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<sup>16</sup> Ibid. at 13.

<sup>17</sup> 30 women, 16 children and 1 man were killed; 8 children, and 2 men were injured. Interview with Nangarhar government official (name withheld), 21 July 2008.

<sup>18</sup> Interview with 60-year-old man, 22 July 2008.

<sup>19</sup> Interview with 45-year-old man, 22 July 2008.

<sup>20</sup> Ibid.

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A Coalition press release issued from Bagram Air Field on 6 July 2008 claimed there were no civilian casualties, and that it had taken out a “large group of militants” with precision airstrikes.<sup>21</sup> As of the date of this report, no other alternate explanation has been offered.

One witness and the District Commissioner thought the strike might have been a response to a suicide bomb attack on a police checkpoint a few days before.<sup>22</sup> Locals and local officials told AIHRC that the strike was the result of bad intelligence and that if international forces had coordinated their activities or checked in with local officials about their intelligence sources, the incident would never have happened.<sup>23</sup> The local District Commissioner, said he was not consulted prior to the airstrikes:

There were some reports saying that insurgents had entered this area. We had planned to hold meetings with elders and villagers in order to inform them about such activities of insurgents in the area, but before that US Forces launched the attack, unfortunately killing and injuring civilians. There was no coordination or awareness regarding the operation.<sup>24</sup>

Many Afghans believe that IMF air forces can see and hit a target within four inches, coloring their understanding of how the air forces could not tell the difference between a wedding party of women and children and armed insurgents. As one man said,

I am suspicious of the way they conduct operations, if they really want to smash the Taliban and Al-Qaeda, they can, otherwise distinguishing between women, children and armed people is easy, while Americans say “they do not miss a target of four inches.”<sup>25</sup>

Some local officials and the family members of those killed asked for accountability and justice.<sup>26</sup> One father whose 23-year-old daughter was killed said, “We strongly ask the Afghan government and IMF to be careful while conducting operations, and that

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<sup>21</sup> Press Release from Combined Joint Task Force-101 (hereinafter “CJTF-101”) Several militants killed with precision airstrikes Nangarhar province, 6 July 2008.

<sup>22</sup> Interview with 45-year-old man, 22 July, 2008; Interview with District Commissioner, 22 July 2008.

<sup>23</sup> Interview with 28-year-old man, 22 July 2008; Interview with Nangarhar Police Chief, 23 July 2008; Interview with Provincial Executive Director of Nangarhar, 23 July 2008; Interview with Deputy Head of the Police Commission, 21 July 2008; Interview with District Commissioner, 22 July 2008.

<sup>24</sup> Interview with District Commissioner, 22 July 2008.

<sup>25</sup> Interview with 45-year-old man, 22 July 2008.

<sup>26</sup> Interview with 45-year-old man, 22 July 2008; Interview with 60-year-old man, 22 July 2008; Interview with local teacher (age unknown), 22 July 2008.

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perpetrators of such incidents should be held accountable and brought to justice.”<sup>27</sup> The Afghan government gave money to the families of those killed and to those injured. Afghan President Hamid Karzai met with victims’ families to offer condolences. Those affected by the incident noted that as of the publication of this report, OEF military authorities had not distributed any ex gratia or compensatory payments. It is possible that IMF were trying to avoid a situation of double compensation. However, this was perceived by some community representatives as a failure on the part of IMF to take due responsibility for the losses.

Without information from the relevant military authorities about the source of the intelligence that led to this strike, it is difficult to judge the credibility of the source and whether adequate efforts were made to verify that the targets were not civilian, as required under international humanitarian law.<sup>28</sup> Accidents do happen in the fog of war; nonetheless, in this instance coordination with local officials, or at least verifying intelligence with some trusted local officials might have prevented significant loss of life. Further, failure to promptly acknowledge the losses offended traditional principles of respect for the dead and created significant community backlash that may be harmful to the overall mission of international military forces in Afghanistan.

### **Zerkoh (Shindand), Herat, 17 July 2008**

On 17 July 2008 a joint IMF-ANA military operation was deployed to the village of Zerkoh in the Shindand district of Herat province. AIHRC conducted a four-day investigation to the area one week after the incident, interviewing 17 witnesses, affected persons, doctors, and local officials. AIHRC found that US Special Forces and ANA ground troops, with air support from armed helicopters, killed 49 individuals, including anti-government elements and civilians. AIHRC interviews suggest 15 – 20 civilians were injured due to airstrikes and ground fire.<sup>29</sup>

The Afghan Ministry of Defense and ISAF officials said the operation successfully carried out its mission of striking two high profile Taliban leaders, and that there were no civilian casualties.<sup>30</sup> According to an ANA commander involved, the purpose of the operation was to eliminate AGE led by a man named Nangialay, the son of the late, commander of the area.<sup>31</sup> At 1:30am, ANA troops and US Special Forces with helicopter

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<sup>27</sup> Interview with 45-year-old man, 22 July 2008.

<sup>28</sup> Protocol I, art. 57.

<sup>29</sup> Interview with hospital doctor (name withheld), 23 July 2008; Interview with woman (age not disclosed), 23 July 2008.

<sup>30</sup> Carlotta Gall, Strike Kills 2 Afghan Tribal Leaders, NATO Says, New York Times, 18 July 2008, at A10.

<sup>31</sup> Interview with military official [name and rank withheld] Afghan National Army, 24 July 2008.

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air support entered the area and surrounded the two main houses occupied by Nangialay's forces and other AGE. The helicopters fired rocket shots on the two houses, some of which missed the target and instead struck villagers' farms. After 5-6 minutes ground troops entered the houses and shot and killed those remaining in the two houses. Sixteen persons who were being held captive in the home were taken into custody; later four of the 16 were arrested for their association with criminal and anti-government elements and the others were released.

It was difficult to verify how many of the 49 killed were combatants or civilians. Because of the number of civilians injured and because many civilian houses were located near to the main road where the operation began and where the bombs fell, it is likely that there were some civilian deaths among the 49. Some civilians who tried to escape to a safer place were shot by US Special forces and ANA in the main road.

One fifteen-year-old boy remembers being shot in the incident:

We were asleep when the explosion happened. We woke up in fear and I didn't know what and why it was happening to me and my family ... We came out from the house to go to a safer place... The Americans fired at us and shot me several times on my left hand. My little sister, 5 years old, who was sitting behind my father on a motorbike, also got injured. ... I don't know why they were shooting on us. We were not Talib or their enemy.<sup>32</sup>

A mother of five whose leg was later amputated due to injuries said she was angry that the forces were shooting at anyone, even women and children. "When the planes came to the area and started shooting I woke up and tried to go outside to see what is happening. When I got out of the house I got shot and I fell down.... I was a woman. Why did they shoot me?"<sup>33</sup>

Although it is impossible to verify how many of those killed were civilian, accounts by women and children that they were fired upon raise questions of whether the troops involved failed to adequately distinguish between civilians and combatants as required by international law. Civilian casualties were already a sensitive issue in the area -- approximately a year prior to this incident, on 27 and 29 April 2007 a joint OEF-ANA operation in the same village of Zerkoh resulted in a significant number of civilian

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<sup>32</sup> Interview with 15- year-old boy, 23 July 2008.

<sup>33</sup> Interview with woman (age not disclosed), 23 July 2008.



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deaths and, according to UN assessments, the displacement of 1600 civilians.<sup>34</sup> Firing on women and children, and the bombing of civilian houses certainly caused significant community outrage. The absence of any efforts to investigate or acknowledge claims of potential civilian casualties exacerbated this resentment.

### **Azizabad (Shindand), Herat, 22 August, 2008**

At approximately 2:00 am on 22 August 2008, IMF and ANA forces struck the village of Azizabad in the Shindand district of Herat in a combined air and ground offensive. AIHRC investigations documented 78 civilian casualties, primarily as a result of airstrikes. Multiple accounts confirmed that ground forces first engaged for approximately 20-30 minutes and then called in air support. Airstrikes continued until 8:00 am.<sup>35</sup> A local worker for a mine clearance company gave this account of the incident:

I heard the noise of helicopters and stepped out to the courtyard. Then I got injured in my head and left arm. I ran into a drain and stayed there up to 8:00 in the morning. When I came back to my house, I saw my wife, my two daughters, and my son had all died. Beside them, my brother, his wife, his two sons and two daughters had also died. My house and my two brothers' houses were destroyed as well.<sup>36</sup>

AIHRC deployed a team to the site on 24 August 2008. The team spent three days investigating: they conducted 17 interviews with witnesses, family members, government officials, members of the ANA commando unit, doctors and hospital representatives; collected available physical evidence, pictures, video, and written documents; and examined fresh graves in nine locations in and around Azizabad village. AIHRC found that 91 people were killed. Seventy-eight of those killed were positively identified as civilians, comprising 59 children, 16 women, and three elderly men. The thirteen others found dead were armed men. While the link between the insurgents and the 13 armed men remained unclear as of the date of this report, witness testimonies and a press statement by CJTF-101 suggested that the 13 armed men were

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<sup>34</sup> IRIN, UN Office for the Coordination of Humanitarian Affairs, AFGHANISTAN: Some 1,600 displaced after US air raids, 3 May 2007.

<sup>35</sup> See, e.g., Interview with District Commissioner, Shindand district, 25 August 2008 (“[...] after the U.S. Special Forces besieged Nawabad village in Azizabad a ground battle took place, which lasted for 20-30 minutes, and then Coalition Forces called for air support.”); Interview with 75-year-old man, 24 August 2008 (“It was about 2: 00 am. We were asleep when a heavy explosion woke me up. Following that I heard noise of helicopters, started firing rockets, shelling and bombings, and lasted for 6 hours [from 2: 00 am to 8:00am [...]]”).

<sup>36</sup> Interview with 52-year-old man, 24 August 2008.

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engaged in combat with the forces when they entered the village.<sup>37</sup> As a result of the airstrike 13 houses were also destroyed.



In response to initial UN estimates of “at least” 90 civilians killed, Pentagon officials claimed the attack was a “legitimate strike on a Taliban target.”<sup>38</sup> Preliminary investigations by military officials at Bagram Air Base confirmed only 5 to 7 civilian deaths.<sup>39</sup> Following intense public criticism, the military engaged in more extensive investigations, finally adjusting its total estimate to 33 Afghan civilian deaths.<sup>40</sup> A US military spokesperson said the “the use of force was in self-defense, necessary and

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<sup>37</sup> Press release from CJTF-101: Coalition forces complete Shindand investigation, 2 September 2008.

<sup>38</sup> Candace Rondeaux and Karen DeYoung, U.N. Finds Airstrike Killed 90 Afghans; Most of Fatalities In U.S.-Led Attack Said to Be Children, *Washington Post*, 27 August 2008, at A01.

<sup>39</sup> Press release from CJTF-101: Coalition forces complete Shindand investigation, 2 September 2008.

<sup>40</sup> Karen de Young, Military Justifies Attack That Killed at Least 33 Afghan Civilians, *Washington Post*, October 9, 2008, at A15; Laura King, Afghans say 17 civilians killed in NATO airstrike; Western officials say they are investigating but have not yet found any evidence to back up the allegation, *Los Angeles Times* 18 October 2008, at A5 (noting anger of humanitarian groups at the low estimates and that U.S. authorities reopened their investigation after cellphone video surfaced).

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proportional based on the information the On-Scene-Commander had at the time."<sup>41</sup> During his September 2008 visit to Afghanistan, US Secretary of Defense Robert Gates expressed his regret over the loss of civilian lives in incidents like the Azizabad strike. "On those rare occasions when we do make mistakes, when there is an error, we need to apologise quickly, to compensate civilians quickly, and then carry out an investigation," he said.<sup>42</sup>

Some media investigations and AIHRC interviews with those in the local community suggested that the strike might have been the result of a deliberately misleading tip by a deceased local clan leader's rival.<sup>43</sup>

The Afghan government paid a sum to the family of those killed and to those injured; however, the US military did not offer any monetary "condolences" to civilians and indicated no future plans to do so in a press conference.<sup>44</sup> Again, this may have been an attempt to avoid double compensation; however, it was perceived by the Afghan community that IMF were not taking full responsibility for their actions by not providing any direct compensation or condolence payments. Two ANA commanders involved in the operation were reportedly dismissed and under investigation for their involvement.<sup>45</sup>

The follow-up investigation by IMF said the operation successfully prevented insurgents from carryout a planned attack on a nearby base.<sup>46</sup> AIHRC investigations reveal at least some armed opposition from the village, supporting the claim made by international military authorities that airstrikes were called in to support ground troops under attack. Only 13 fighters were found dead at the scene; nonetheless, other combatants may have fled by the time investigators arrived. While it is difficult to judge

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<sup>41</sup> Laura King, Afghans say 17 civilians killed in NATO airstrike; Western officials say they are investigating but have not yet found any evidence to back up the allegation, Los Angeles Times 18 October 2008, at A5.

<sup>42</sup> Jim Mannion, Gates regret over Afghan civilians killed in air strike, Agence-France Presse, 17 September 2008.

<sup>43</sup> Associated Press, Another twist in Afghan raid, 29 August 2008; Candace Rondeaux and Karen DeYoung, U.N. Finds Airstrike Killed 90 Afghans; Most of Fatalities In U.S.-Led Attack Said to Be Children, Washington Post, at A01; Interview with Lal Mohammad, District Commissioner, Shindand district, 25 August 2008. See infra, "Lack of Coordination & Intelligence Missteps," at 38.

<sup>44</sup> Karen de Young, Military Justifies Attack That Killed at Least 33 Afghan Civilians, Washington Post, 9 October 2008, at A15.

<sup>45</sup> Amir Shah, Two army officers sacked as 89 civilians die in 'irresponsible' raid, The Independent (London), 25 August 2008, at 16.

<sup>46</sup> Press release from CJTF-101: Coalition forces complete Shindand investigation, 2 September 2008.

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tactical military decisions in hindsight, the AIHRC questions whether alternative tactics that would have resulted in fewer casualties might have been used. The suggestions by witnesses and by the media that this operation may have been based on deliberately misleading information is troubling given the extreme loss of life in this incident. While preventing an attack on a base is certainly a significant military objective, AIHRC questions whether other means might have prevented the attack on the base without creating such significant losses to Afghan civilians.



Finally, AIHRC questions the way that international military authorities handled the aftermath of the incident – first denying any civilian casualties by forces involved, then admitting only 5 to 7 casualties, and then only 33 without releasing any further details of the investigation, despite repeated reports of as many as 90 casualties by various independent monitors and public bodies. This type of public foot-dragging in accepting responsibility increases the anger and resentment that Afghan communities feel. The failure to compensate or apologize to those civilians whose deaths were recognized only angers the community more.

### *NIGHT RAIDS*

The AIHRC has documented many cases of house raids that seem to have involved unidentified military and paramilitary PGF. Most of these house raids have occurred in provinces with high suspected insurgent activity. Most house raids are conducted in the nighttime. Witnesses usually report that they are carried out by a mixed group of Afghan and foreign armed men, and last a couple to a few hours. Some families appear to have been specifically targeted, while in other cases the target appeared to be several households within a community. A common pattern reported to AIHRC was for the armed men to separate the men from the women in the household, tie up the men, and often take one or more of the men with them when they left. There have been incidents where men were not taken but simply shot on site. While night searches may in several cases provide significant military intelligence and/or result in the capture of legitimate

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targets, there are also several cases in which there is significant evidence suggesting that the targeted individuals were not in any way linked to insurgent activities.

The effect of these night raids is often to paralyze the lives of those directly affected by them. Those whose households were searched reported living in fear that the forces would return and harm their family. In at least one case, documented below, the family fled to Pakistan to avoid potential future raids. The effects can be even more severe in cases where members of the family are arrested or killed during the house search. One man from Kandahar province, where there are more frequent night raids than in most other areas of Afghanistan, told AIHRC, "Most of the time these night raids ends up killing civilians in their houses. People are afraid to complain. They say if we make a complaint they will come again and maybe this time they will kill us. That's why people don't complain about the nights raids much."<sup>47</sup>

It is nighttime house raids that generally raise the most serious concerns over accountability. AIHRC approached OEF and ISAF officials in the four house raid cases documented below to find out the role their forces might or might not have played. Those AIHRC approached stated that their forces were not involved in any of the incidents. Philip Alston, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, also noted the lack of accountability, in particular in night raid cases, as a serious point of concern. Despite the special access he was granted to high level political and military officials in Afghanistan, he was in several cases unable to identify the armed groups carrying out the raid within any established chain of command.<sup>48</sup> Those families who have been targeted in raids are inevitably even more helpless in identifying their attackers, or in getting an explanation for why they were targeted.

Absent a clear chain of command, it is not clear how any misconduct occurring during raids would ever be monitored or that the perpetrators of any abuses or violations would be subject to either internal or public disciplinary action. The lack of accountability makes it difficult for families who are targeted to protest their treatment. AIHRC has not yet heard of an incident in which the families being searched were given a reason for the house search or for detaining or arresting members of the family.

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<sup>47</sup> Interview with 57-year-old man, 20 July 2008.

<sup>48</sup> IMF do sometimes acknowledge and take responsibility for civilian casualties during night raids. In December 2003, U.S. authorities acknowledged the killing of 6 children in a night raid near Gardez city in Paktia province. Paul Watson, U.S. Troops Step Up Hunt for Insurgents in Afghanistan; Meanwhile, the military says six children died in a raid, the second such mistake in a week, Los Angeles Times, 10 December 2003, at A3.

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It is difficult for families to protest their innocence when they do not even know the charges against them.

Based on the reports of witnesses, AIHRC is concerned about what seems to be a pattern of unnecessary violence and abusive behavior used during some house searches. Particularly once the search forces realized that the families in question were not resisting or threatening them, actions like verbally or physically abusing household members, blowing up or breaking down house doors or other possessions appear entirely unnecessary. In three of the cases AIHRC investigated in depth, significant property allegedly went missing, including large sums of cash and jewelry. For the many Afghans who are struggling to make ends meet, the loss of such property in addition to the larger property damage perpetrated in the raid, is not insignificant.

In general, the personnel involved often neglected cultural sensitivity towards those present and particularly women, children, and aged. The fact that the search operations involved invading homes at night, and that in no case AIHRC documented did they include female troops to deal with the women of the family offended Afghan cultural and religious values.

Although at this point the number of raids and the conduct of armed forces during the raids do not suggest any systematic patterns of intimidation in a population, such house search operations can spread fear and trauma among the general population. The fact that they are often perceived as targeting innocent civilians can undermine trust and goodwill toward international forces in areas where night raids are taking place.

The AIHRC has fully documented four cases, which will be described in further detail below:

- A house raid on 1 April 2007 in Loy Wiala in Kandahar city, Kandahar province;
- Three house raids between 13 September 2007 – 16 January 2008 in Kandahar City, Kandahar province.
- A house raid on 7 April 2008 in the village of Arghandi in Kabul province;
- A house raid on 27 April 2008 in Ghani Khil district in Nangarhar province;

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**Loy Wiala, Kandahar, 1 April 2007**

*This incident has been documented in greater detail in the AIHRC report “Violations of International Humanitarian Law in Afghanistan Practices of Concern and Example Cases.” However, it is worth summarizing for the purposes of discussion and analysis below.<sup>49</sup>*

At approximately 8:00 pm on 4 January 2007, international and Afghan armed personnel conducted a raid on the compound of a staff member of the AIHRC and his brother, a staff member of the UN. Without informing the inhabitants that it was an official raid, identifying themselves, or offering any explanation, the front gate was blown open and 30 to 40 armed Afghan men together with two armed US personnel entered.

According to the AIHRC report:

The occupants were now told that Americans were here and that they should sit down and keep quiet. Despite identifying themselves and their employers repeatedly in English and Pashto the complainant and his brother were hooded and had their hands bound behind their back with plastic ties. One of the brothers was then “booby-trapped” by having the ties on his hands connected to an explosive charge used for blowing open doors.<sup>50</sup>

The women of the household were separated and put in a separate room from the men. No women were part of the armed force, so all women of the family were dealt with by men.

The men searched the house, in the process causing severe property damage. When the men found the two brothers’ work IDs and documents, identifying them as AIHRC and UN personnel, the armed men aborted their mission, and freed the brothers.

Upon filing a complaint with the nearby international military base, the brothers received only \$100 in compensation despite that there was extensive property loss; among the general damage, a computer was destroyed and almost \$600 in cash went missing. According to the AIHRC investigation, “When [the brothers] rejected this as insufficient the American official present left the room and the remaining Afghan forces

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<sup>49</sup> Afghanistan Independent Human Rights Commission, *Violations of International Humanitarian Law in Afghanistan; Practices of Concern and Example Cases*, 4 January 2007, at 5 - 6.

<sup>50</sup> *Ibid.*

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threatened the victim that if he proceeded with this complaint he would be “beaten and thrown into Guantanamo.”<sup>51</sup>

Despite repeated requests for information from the US Embassy in Kabul, Bagram Air Field, Kandahar Air Field, and other military authorities, to determine whose command these men fell under, the only information ever given to AIHRC was that they were “led by American paramilitary operators who do not fall under the command of NATO/ ISAF or even the American armed forces.”<sup>52</sup> Repeated promises of investigation by US military and civilian officials never resulted in any explanation, investigation, apology, or realistic compensation.

This case raises serious concerns about the accountability of unidentified military and paramilitary forces operating in Afghanistan. The two brothers were treated abusively. Their property was damaged arbitrarily. The way in which their family members were treated, particularly the women, was disrespectful to their religious and cultural values. They were not fairly compensated even just for the property that went missing, much less for wider property damage or ill treatment. Rather than having their claims and concerns heard, the brothers were treated cavalierly and were threatened against pursuing any just resolution of the case. Although the two men and their families were acknowledged to be innocent, even high level US Embassy and international military officials could not identify and hold responsible those involved, despite repeated requests from AIHRC.

### **Kandahar City, Kandahar, 13 September 2007 – 16 January 2008**

Between September 2007 and January 2008, international and Afghan armed personnel reportedly conducted “night raids” or searches on the home of two brothers on three separate occasions. Following the first two night raids, the men were detained briefly at the US base in Kandahar City, known as “Camp Gecko” before being handed over to the National Security Directorate (NDS). On the evening of the third night raid, the two men were shot in their homes. The remaining brother of the family, a shopkeeper at the Kandahar Air Field named Ahmed Mahmoud,<sup>53</sup> describes what happened to the two brothers. On 13 September 2007, a mix of national and international armed men came to his two brothers’ house at 1:30 – 2:00 am in the middle of the night and arrested them, Ahmed Mahmoud said.

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<sup>51</sup> Ibid. at 6; Interview with 31-year-old man, 15 January 2007.

<sup>52</sup> Ibid.

<sup>53</sup> All names of witnesses have been changed or withheld.



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When I heard that it was internationals [among the forces] I figured out that they were individuals from Camp Gecko [the American base in Kandahar city] because they are the only ones who are conducting these house raids.<sup>54</sup>

Ahmed Mahmoud said his brothers were kept overnight at Camp Gecko, before being transferred to the Kandahar National Directorate of Security (NDS). After 11 days, the NDS released both men without charge. No weapons or suspicious materials or documents were found in their houses.

Approximately one month later, the same forces returned to conduct a second night search at approximately 11:00 pm or 12:00 pm at night. Only one of the two brothers was at home at that time, according to Ahmed Mahmoud. His brother was taken to Camp Gecko again and then handed over to the NDS, this time for 32 days. He was freed based on the statement of a tribal elder vouching for his credibility.<sup>55</sup>

On 16 January 2008, a third raid was conducted, Ahmed Mahmoud said, this time with fatal results. He got a call from his brother-in-law at approximately 2:30am telling him to go immediately to his brother's house:

When I entered the house I heard shouting and screaming from my brothers' family members. I thought my brothers had once again been captured by the international forces, but their family members told me that both my brothers had been shot dead by US Special Forces.<sup>56</sup> On the door and inside the house I saw lots of bullet holes and many bullet casings on the floor. These casings were totally different from the bullet case of AK47 weapon, which is normally being used by Afghan national forces.<sup>57</sup>

Ahmed Mahmoud and his family have since fled to Pakistan out of fear for their life. AIHRC was not able to confirm Mahmoud's testimony because local officials refused to speak on the record regarding this case. However, the UN Special Rapporteur on

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<sup>54</sup> Interview with 47-year-old man, 20 February 2008.

<sup>55</sup> Ibid.

<sup>56</sup> Afghan witnesses tend to describe irregular international forces they encounter during combat activities as "US Special Forces." Matters are further complicated by Afghan armed personnel also frequently wearing international uniforms. AIHRC makes no judgment as to the exact nature of the forces involved in this incident.

<sup>57</sup> Ibid.

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extrajudicial, summary or arbitrary executions, Philip Alston also investigated this case in his visit to Afghanistan in May 2008.

In January 2008, two brothers were killed in a raid in Kandahar City which was led by international personnel. The victims are widely acknowledged, even by well-informed Government officials, to have had no connection to the Taliban, and the circumstances of their deaths are suspicious. However, not only was I unable to get any international military commander to provide their version of what took place, but I was unable to get any international military commander to even admit that their soldiers were involved.<sup>58</sup>

The lack of corroborating testimony or comments by any military authorities makes it difficult to assess whether and what potential IHL or IHRL violations were perpetrated. No explanation was ever given to their brothers or their families as to why they were targeted. As Alston pointed out, the fact that “well-informed Government officials” acknowledged that the brothers were not connected to the Taliban makes their death suspicious. It raises a question as to whether this is another incident where innocent civilians were killed due to false information. At a minimum, as Alston points out, this incident raises serious questions of accountability. If accurate, the arbitrary shooting of these two men in front of their family was not only a potential IHL or IHRL violation; it demonstrated extreme insensitivity to the concerns of the family and the community at large.

### **Arghandi, Kabul, 7 April 2008**

On 8 January 2008, between approximately 1:10am and 1:40am a group of armed men identified by one witness as a mix of national and international “soldiers... speaking English, Persian, and Pashto” searched approximately 10-11 houses in the village of Arghandi in Kabul province.<sup>59</sup> AIHRC regional office was informed about the incident at the time by the local officials but was not able to get any further comment from local officials either confirming or denying the incident. Five days after the incident happened AIHRC interviewed five witnesses in Arghandi.

We were asleep and an explosion ...woke us up,” one 24-year-old man remembered. “Our main door was blown up by explosives. We were so afraid that I [didn’t want to] go out of the room to check what was

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<sup>58</sup> Press Statement of Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions, Kabul, Afghanistan, 15 May 2008, at 2.

<sup>59</sup> Interview with 24-year-old man, 13 January 2008.

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happening. Then suddenly they broke [open] the door to my room... They tied my hands behind my back and took me outside in the yard. They were also abusing me verbally.<sup>60</sup>

Another man interviewed, a 45-year-old father, had a similar experience:

They entered my room, tied my hands at my back, and started beating and abusing (saying bad words) to me. While beating me they broke my nose. The one who was beating me was an [Afghan] national soldier who was speaking Persian. My nose started bleeding. Then they took me and my brother [--] who is a 25-year-old young man outside in the yard under the wall.<sup>61</sup>

Two witnesses identified the armed men as a mix of American and Afghan national forces wearing camouflage and night goggles.<sup>62</sup> Another said they were all American forces with Afghan interpreters.<sup>63</sup>

After approximately two hours, the armed men finished searching the houses. They took with them one man who sold watches and mobile phones, according to the community. AIHRC was not able to verify whether and when he was returned. Another woman was injured when one of the doors was blown open. In the search process, they caused property damage, including destroying any locks on luggage bags or doors. Following the search, several mobile phones, some jewelry, and at least 5000 afghanis were missing from the homes searched.<sup>64</sup>

One of the men who was bound by the armed men said that when he was brought outside he became very afraid that other soldiers would abuse the females inside the house because there were no female soldiers to deal with the women.<sup>65</sup>

One man said he was concerned that the incident would have a permanent impact on his children and other children that witnessed the incident. "The kids are so afraid that from that night on they cannot sleep well. When they are asleep they scream and if a

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<sup>60</sup> Interview with 24-year-old man, 13 January 2008.

<sup>61</sup> Interview with 45-year-old man, 13 January 2008.

<sup>62</sup> Interview with 24-year-old man, 13 January 2008; Interview with 45-year-old man, 13 January 2008.

<sup>63</sup> Interview with elderly man [age unknown], 13 January 2008. See also *infra* footnote 56.

<sup>64</sup> *Ibid.*

<sup>65</sup> Interview with 24-year-old man, 13 January 2008.

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little noise happens outside they think that [the soldiers] are back and they want to harm them.”<sup>66</sup>

The residents wanted to protest publicly but according to one witness, the District Commissioner told them not to because it would not do any good.<sup>67</sup> To AIHRC’s knowledge, no explanation, apology, or compensation was ever given by any military or civilian authorities.

As with other night raid cases, AIHRC was not able to confirm the community’s testimony with either national or international military and civilian authorities. Without any statement by the military or paramilitary authorities involved, it is impossible to determine the motivation for the search and whether its military value justified the actions described above. Based on the accounts above, however, there did not seem to have been any obvious provocation or threat to the invading soldiers. There was no account of return fire or struggle by the civilians involved. If true, this would at a minimum suggest that the actions described by the witnesses present a case of unnecessary verbal and physical abuse, and property destruction. In addition to any potential IHL or IHRL violations, the actions described appear to have offended and terrorized the Afghan community involved without redress afterwards.

### **Ghani Khil, Nangarhar, 27 April 2008**

According to local witnesses, five persons were killed in two house raid operations on 27 April 2008 and 10 May 2008, in the Ghani Khil District of Nangarhar province.<sup>68</sup> AIHRC visited the district approximately two months after the last incident and interviewed five witnesses as well as the District Commissioner, who confirmed the incident. AIHRC did not receive any comment from international military authorities.<sup>69</sup>

One 53-year-old driver lost both his son and his elderly father in the two raids, and was himself detained and beaten by the invading forces. On 27 April 2008, he remembers being awakened in the middle of the night, approximately 3:00 am, by noises and firing in the village.<sup>70</sup> Neighbors told him that foreigners had come to the village and were searching houses. “These foreigners were Americans. There were about 30-40 [of them]

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<sup>66</sup> Interview with 45-year-old man, 13 January 2008.

<sup>67</sup> Interview with elderly man [age unknown], 13 January 2008.

<sup>68</sup> Interview with 53-year-old man, 23 July 2008; Interview with 30-year-old man, 14 April 2008; Interview with Ghani Khil District Commissioner, 14 April 2008.

<sup>69</sup> Interview with Ghani Khil District Commissioner, 14 April 2008.

<sup>70</sup> Interview with 53-year-old man, 23 July 2008.

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and they were speaking English. They dressed in gray spotted uniforms [camouflage] and had bulbs on their heads [night vision goggles],” he said.<sup>71</sup>

His 19-year-old son went out to see what was going on, and was arrested by the “foreigners”, he said. No shots were fired on the armed men, the driver said, but shortly after that, planes bombarded the village, one bomb dropping in front of his home and burning his family’s harvest of wheat. He said the son who had been arrested by the foreigners was injured in the bombing – he could hear his groaning – and when the armed men left, they took his injured son with them. His son later died in the hospital due to his injuries.<sup>72</sup>

After the armed men left, the villagers surveyed the damage. Four men had been killed in the raid: an 18-year-old student shot dead in his room, a 20-year-old student shot dead in his room, a 30-year-old farmer shot dead 300 meters away from his house, and the 19-year-old son of the driver who was injured during bombing and later died of his wounds in the hospital.<sup>73</sup>

The villagers were planning to protest, but the District Commissioner persuaded them against it. Instead, through the Nangarhar Governor’s facilitation, US forces went to the village, apologized and promised that it would not happen again, according to interviews with one witness and the District Commissioner.<sup>74</sup>

Despite their promises on 10 May 2008, armed men raided the village for a second time. The driver identified them as the same men he had seen before, approximately 50 men speaking English with a Pashto translator. He identified the soldiers as wearing camouflage and night vision goggles. “They went directly to the mosque. My father was in the mosque and they killed [him] while he was praying. Five bullets were fired into his head and chest,” the driver said.<sup>75</sup>

The armed men then went to at least one house and the translator shouted in Pashto for everyone to come outside.<sup>76</sup> When they came to the driver’s house, the armed men

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<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> Ibid; Interview with 30-year-old man, 14 April 2008; Interview with Ghani Khil District Commissioner, 14 April 2008.

<sup>74</sup> Interview with 53-year-old man, 23 July 2008. Interview with Ghani Khil District Commissioner, 14 April 2008.

<sup>75</sup> Interview with 53-year-old man, 23 July 2008.

<sup>76</sup> Information on the number of houses raided was not available.

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bound their hands and beat them while the women of the family were screaming and crying. He said the men demanded their guns and asked who fired on their forces during the first raid.<sup>77</sup>

The driver was brought with two of his brothers and one of his sons to Jalalabad, where he was interrogated overnight at the PRT in Jalalabad.<sup>78</sup> He was freed the next day along with his two brothers, with no explanation given for their arrest or for their release. The community protested the acts of the armed men but this time received no acknowledgement, explanation, apology, or other amends.

Although there is no available corroborating testimony from any military authorities, the fact that the District Commissioner was willing to speak on the record is strong evidence in this case. In most nighttime search operations, neither the witnesses nor local officials are willing to comment out of fear of retaliation. If the testimonies of the witnesses are correct, and no one from the village fired on the armed men or threatened them, then the rough treatment they received and the use of airstrikes may have been excessive. The fact that the armed men returned and demanded who fired on them puts this assumption in question. However, even if some from the village had fired back against armed men who were attacking their village, depending on the level or duration of fire, responding by bombing a largely civilian village and returning to attack and detain some of the men of the village may have been disproportionate to the potential threat posed. If the driver's story is true, the detention of him and his brothers with no explanation given or apparent evidence to justify their targeting may have represented an example of arbitrary arrest, in violation of human rights law.

The response to the first raid was a positive example of one way to make amends to the community in the aftermath of an incident. The fact that local authorities were able to identify those who were involved in the first raid, and that these men were willing to address the community directly and acknowledge any responsibility, is rare among reported incidents of nighttime searches. While such actions may not have fully redressed the five families who lost a family member, the fact that the locals were appeased enough to call off protests suggest it had some impact on the public anger at the incident. The response to the second raid follows the more typical pattern of how those involved tend to respond to night raids: they did nothing. The fact that those involved promised not to search the village again, and then a second raid occurred may

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<sup>77</sup> Interview with 53-year-old man, 23 July 2008.

<sup>78</sup> Ibid.

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have made locals even angrier than if those involved had not attempted to apologize in the first place.

### **IV. AFGHAN NATIONAL SECURITY FORCE OPERATIONS**

Incidents involving IMF tend to get more media attention and public scrutiny locally and internationally than incidents involving only ANSF. Nonetheless, there is increasing anecdotal evidence among communities that raise serious concerns about the behavior of ANSF, both independently and within joint operations. Given their unique role within Afghan communities and toward the continuing stabilization of Afghanistan, these complaints merit separate consideration and further investigation.

As demonstrated by the examples given above, many airstrikes, nighttime house searches, and other operations are joint operations between IMF and ANSF. Airstrikes involving joint ANSF-IMF ground and air operations certainly involved some level of consent from the ANSF, although Afghan or ANSF officials may not have control over additional responsive airstrikes called in to protect a joint ground operation once it has been deployed. Most witnesses of night raids described Afghan and international armed men participating in the raids. Thus, much of the critiques related to the planning, execution, and aftermath of airstrikes and night raids could be said to apply to ANSF as well.

In addition, though, AIHRC has received increasing complaints from civilians about independent misconduct by ANSF. Many of these abuses seem to occur as a part of actions falling outside the scope of their duties, and sometimes in direct contradiction to their law enforcement duties.

Statistics on how many civilian casualties are caused by ANSF are unavailable. Most kinetic operations that ANSF are involved in are joint missions with international military partners, and civilian casualty estimates do not distinguish between ANSF and IMF casualties when they are engaged in a joint operation. Security or military operations involving only ANSF forces do not receive the same media attention and public scrutiny. Individuals or families of individuals who suffer losses as a result of these incidents often find that their complaints are not heard. A 70-year-old man from the Zurmat District of Paktia, whose brother was killed by Police, told AIHRC:

My brother was farming in late October when a roadside bomb blast hit a nearby US supply convoy that was being escorted by police. After the explosion, police wearing their uniforms got out of their pickup trucks and started firing indiscriminately. Two police came and fired at my

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brother but missed him. They were three to four meters away from him. My brother stood and raised his hands, yelling at them, "I am innocent. I did not exploded the bomb. I am a professional military officer working for the government. How is it possible for me to do such an action?" Despite all of this, during this argument one of police shot him, putting three bullets in his chest, and killed him.<sup>79</sup>

The brother said a community elder phoned the District Commissioner on his behalf, but the District Commissioner refused to take legal action against the police officers involved. There was no investigation into the ANP response to the incident. No apologies were made and no compensation was paid.

Many more of the incidents documented by regional AIHRC offices stem from ANSF activities not related to security or military operations, often from actions taken by ANSF forces completely beyond the scope of their duty. Individuals or families of individuals who are killed, injured, harassed or otherwise suffer abuse by local ANSF forces in these cases are often reluctant to report violations for fear of future incidents. Even when they do, there is often no response.

Two witnesses from the Kerhala village in Kunar province described a situation of persistent intimidation and harassment by forces of a local ANA battalion. The actions of the ANA involved not only appear to have no feasible military or law enforcement rationale, but suggest improper to criminal behavior on the part of the ANA.

According to one 24-year-old and one 38-year-old farmer, in the early summer of 2006, after the harvest, local ANA soldiers installed a checkpoint in the middle of their tribe's land.<sup>80</sup> The ANA used the checkpoint to bribe the local farmers: "I was trying to grow something in my land but I was repeatedly prevented by the battalion soldiers unless I gave them money," the 38-year-old farmer said.<sup>81</sup>

The members of that tribe eventually filed a formal, written complaint with the Ministry of Defense in 2006.<sup>82</sup> The Ministry of Defense found that it had no legal ownership rights to the land, and instructed the ranking

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<sup>79</sup> Interview with 70-year-old man, 26 February 2008.

<sup>80</sup> Interview with 24-year-old man, 23 July 2008; Interview with 38-year-old man, 23 July 2008.

<sup>81</sup> Interview with 38-year-old man, 23 July 2008.

<sup>82</sup> Interview with 24-year-old man, 23 July 2008.



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ANA commander in Jalalabad to resolve the situation. Following a jirga of all involved parties, the Kunar battalion was instructed to remove the checkpoint and leave the locals to their land.<sup>83</sup>

One year later, however, the local ANA battalion re-installed the checkpoint and resumed its pattern of harassment. On 19 June 2007 nine ANA officers went to one of the members of the tribe, who was a wood seller by trade, demanding that he give them some wood for free. The wood seller refused to offer the bribe and heated words were exchanged. The soldiers began firing. Four unarmed locals were injured and one was killed. "He was shot dead with 2 bullets in his head," his father said.<sup>84</sup>

The families of those injured and killed demanded a trial through the formal justice system. The ANA Commander in Jalalabad offered to convene a jirga over the issue, but because the promises of the last meeting on the issue were broken the locals refused. As a result, the families received no compensation or apology, and were forced to pay their own medical and funeral expenses.<sup>85</sup>

The man whose son was shot was told that the ANA soldier who killed his son was arrested, temporarily detained by the Kunar police, and then imprisoned in Kabul following an investigation of the incident. According to the same source, however, the ANA soldier was released after approximately 2-3 months through the efforts of a high ranking relative of his.<sup>86</sup>

The AIHRC regional office in Jalalabad reported this incident at the time. After the initial report, AIHRC received no further comments from local officials.

These two cases are but two examples of the type of claims that are received by the AIHRC regional offices on a weekly basis. AIHRC is not alone in noting this negative trend. Following his brief investigatory visit to Afghanistan, the UN Special Rapporteur

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<sup>83</sup> Ibid.

<sup>84</sup> Interview with 38-year-old man, 23 July 2008.

<sup>85</sup> Interview with 24-year-old man, 23 July 2008.

<sup>86</sup> Interview with 38-year-old man, 23 July 2008.

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on extrajudicial, summary or arbitrary executions, Philip Alston, had harsh critiques for ANSF:

When I spoke with elders from conflict-affected areas, I was repeatedly told that abuses by the police were tempting people to support the Taliban. A senior Government official listed the security threats in his province as coming both from the Taliban and from criminal elements among the Government security forces.<sup>87</sup>

The problem of killings by the police and other armed personnel acting under the authority of Government officials has been largely overlooked. This should end. While there are no reliable figures on the number of such unlawful killings, there are enough particular cases that it is certain that the overall number is high. ... The killing of nine and the wounding of 42 unarmed protesters in Sheberghan on 28 May 2007 provides a classic example.<sup>88</sup> Local and national political interests conspired to ensure that no effective investigation was undertaken. ...The technique is to let time pass until the evidence has faded and other political concerns have claimed the limelight. The matter can then be quietly filed away. The interests and claims of the wounded and of the families of those killed are simply ignored.<sup>89</sup>

The problems that Alston highlights reflect the issues that local communities have repeatedly stressed to the AIHRC. Local communities do not trust the ANSF, and in many areas there are no other independent authorities to whom they can report incidents or abuses involving ANSF. As in the two cases above, individuals harmed by ANSF or in incidents involving ANSF find that their claims are only superficially investigated, or completely ignored.

AIHRC has also noticed that increased distrust of ANSF – for many people the most constant and visible representation of the Afghan national government – may be fueling

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<sup>87</sup> Press Statement of Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions, Kabul, Afghanistan, 15 May 2008, at 2.

<sup>88</sup> AIHRC published a report on its comprehensive investigation into this incident. See Afghanistan Independent Human Rights Commission, “AIHRC investigation into the shooting of demonstrators in Sheberghan on 28 May 2007.”

<sup>89</sup> Press Statement of Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions, Kabul, Afghanistan, 15 May 2008, at 5.

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anti-government sentiment. Alston also noted that abuses by ANSF may be encouraging certain communities to support insurgents, or actively join them.<sup>90</sup>

A full discussion of the potential IHL and IHRL violations committed by ANSF forces is beyond the scope of this report. Even this cursory examination suggests that abuses by ANSF are serious and widespread. This issue merits further investigation and follow-up by AIHRC, by the Afghan government, and by other international monitors.

### **V. CONDUCT OF OPERATIONS: PROBLEMS AND POLICY ISSUES**

The above case studies and other incidents documented by AIHRC raise a number of legal and policy concerns. PGF operations have on several occasions resulted in high civilian casualties and may in some cases have violated international humanitarian prohibitions against indiscriminate or disproportionate attacks. Repeated reports that these high civilian casualties were due to faulty intelligence or lack of coordination cast doubt on whether PGF are taking sufficient precautions to spare civilians. Beyond the number of civilian deaths, the way PGF treat civilians, particularly during night raids, has offended many communities. Afghan communities that repeatedly see examples of civilian losses and perceived disrespectful treatment with no apparent accountability or concern on the part of PGF, grow increasingly disenchanted with the presence of international forces and with the current Afghan government.

#### **International Obligations for Civilian Care**

AIHRC found no systematic attempts by PGF to violate their international obligations toward civilians. Nonetheless, some PGF practices raise serious concerns. Beyond the question of whether PGF committed any per se violations, a more important question for any given incident is whether PGF could have done more to prevent civilian harm. A large part of the mission of PGF is to support the Afghan government, and improve the stability and security of the Afghan population. While not a legal obligation, this mission implies a higher bar in terms of protection of civilians.

Under customary international law, parties to a non-international conflict are obligated to distinguish between combatants and civilians, and to take constant care to spare the civilian population and any civilian objects.<sup>91</sup> Parties must take all feasible precautions to avoid civilian collateral damage, including, where applicable, warning the civilian population, verifying that the intended target(s) are not civilian in nature, and choosing

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<sup>90</sup> Ibid. at 4.

<sup>91</sup> Protocol I, arts. 48 & 57. As noted above, where the subsequent analysis references Protocol I it is referring to those portions of customary international law that reflect the principles codified in Protocol I.

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means or methods of warfare that minimize the risk to civilians.<sup>92</sup> Before launching any attack, parties should assess whether the reasonably foreseeable amount of civilian loss is proportionate to the military advantage sought by the operation.<sup>93</sup> Any excessive use of force resulting in civilian casualties disproportionate to the military gain is a violation of international humanitarian law.

In many instances airstrikes killed high numbers of civilians, often far more than the number of combatants or combatant objects successfully targeted. Other factors influence the lawfulness of any given airstrike, including the threat facing the forces or civilians involved, the value of the military target, and any precautionary measures taken to warn the population or otherwise avoid civilian harm. For example, in the Chora incident documented above, at least 50 and as many as 88 civilians were killed, at least 75% of them due to IMF operations.<sup>94</sup> Nonetheless the UNAMA-AIHRC investigation did not find the attack to be a disproportionate use of force because it was prompted by AGE forces' attempts to take over a significant military objective. There were credible reports that they were attacking civilians in the process, and IMF did make efforts to warn the civilian population.

In contrast, IMF airstrikes in the Azizabad incident, resulting in an estimated 78 civilian deaths, were more symptomatic of a situation of possibly disproportionate or excessive force.<sup>95</sup> The strike was not called in to protect civilians, and military authorities have not released information suggesting they made efforts to warn the population. The follow-up investigation by the responsible military authorities suggests that the operation was planned in order to prevent an attack on a nearby base and that they were successful in doing so.<sup>96</sup> While this may have presented a significant military objective, it seems possible that other means, less harmful to the Afghan public might have prevented the attack on the base. One public rationale offered by military authorities for the airstrikes, which seem to have resulted in most of the civilian casualties, was self-defense.<sup>97</sup> There are indications that the IMF ground forces were fired on from the village; however it is

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<sup>92</sup> Ibid., art. 51.

<sup>93</sup> Ibid., art. 51(5)(b).

<sup>94</sup> See *infra*, "Chora, Uruzgan, 16 June 2007 – 20 June 2007," at 10.

<sup>95</sup> See *infra*, "Azizabad (Shindand), Herat, 22 August, 2008," at 16.

<sup>96</sup> Press release from Combined Joint Task Force 101: Coalition forces complete Shindand investigation, 2 September 2008.

<sup>97</sup> Laura King, Afghans say 17 civilians killed in NATO airstrike; Western officials say they are investigating but have not yet found any evidence to back up the allegation, *Los Angeles Times* 18 October 2008, at A5 ("[T]he use of force was in self-defense, necessary and proportional based on the information the On-Scene-Commander had at the time.").

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not clear whether the threat was sufficient to justify the amount of civilian harm and indeed a number of military participants in the operation expressed doubt about whether airstrikes were necessary and justified.<sup>98</sup>

In the Afghan context, the more important question may not be whether a violation *per se* occurred in cases like Azizabad, but whether the use of force was perceived to be excessive and whether that community felt that not enough was done to protect them. In a conflict like Afghanistan, where half of the battle is to ensure that the population does not begin supporting the insurgent forces, or at least does not stop supporting the government forces, public perceptions of supposed violations and misconduct matter. The Afghan public might judge the PGF more harshly than a military lawyer would in the Azizabad case. Seventy-eight civilians (with some reports citing 92 civilians) is a significant loss of life. Seeing the number killed and -- to the Afghan public's knowledge -- no military threat to justify those deaths, the public perception was that this was an excessive use of force. Accounts from some members of the community suggesting that PGF acted on misleading intelligence from a rival of the clan that predominated in Azizabad may have only aggravated the local perception that the PGF involved did not make sufficient efforts to avoid civilian casualties.

Regardless of whether the airstrikes were triggered by AGE actions and tactics or not, each airstrike resulting in civilian casualties only reinforces the Afghan perception that PGF do not care if civilians are incidentally harmed during their operations. While international monitors might object to the use of airstrikes in certain situations because they can be indiscriminate, Afghan civilians tend to assume that IMF (whom they generally blame for all airstrikes regardless of who authorized or requested them) can hit a target "within 4 inches".<sup>99</sup> Because they think that PGF have precision control over airstrikes in any situation, they tend not to believe justifications for killing women and children, or others who are not clearly combatants. Many Afghans have no explanation for situations like the Haskamina airstrike documented above, in which the majority of the 47 killed were women and children, other than that PGF involved did not care to or did not choose to limit the impact on civilians.<sup>100</sup> For Afghan communities, the increased use of airpower in the last two years<sup>101</sup> is concerning not because they might

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<sup>98</sup> See, e.g., AIHRC interview with military commander [name and position withheld], 27 August 2008.

<sup>99</sup> Interview with survivor of wedding party incident, 22 July 2008; Martin Patience, Concern over Afghan Civilian Death Toll, BBC News Service, 11 July 2008.

<sup>100</sup> Interview with 45-year-old man, 22 July 2008. See *infra*, "Haskamina, Nangarhar, 6 July 2008 ("Wedding Party incident")," at 12.

<sup>101</sup> Human Rights Watch, *Troops in Contact*, September 2008 (documenting increased use of air power by PGF forces in 2007 and 2008).

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increase the risk of indiscriminate civilian casualties, but because the casualties resulting from the increased use of airstrikes to them often would appear to be due to indifference to civilian losses. They are taken as evidence that PGF do not take seriously their duty to distinguish between civilians and combatants.

These public concerns were raised in regard to all operations, not just airstrikes. In the Zerkoh incident documented above, 49 individuals were killed, including anti-government elements and civilians.<sup>102</sup> Although it is impossible to verify how many of those killed were civilian, it appears that there were combatants among those killed. A formal legal analysis might find no IHL violation given these factors. Nonetheless, what civilians from that community emphasized was that ground forces fired repeatedly on women and children as they were exiting their houses in an attempt to flee the battle.<sup>103</sup> Similarly, while the practice of night raids overall may provide significant military intelligence or result in the capture of legitimate targets, what Afghan communities focus on is that there are many instances where innocent families are treated to abusive and disrespectful behavior, sometimes resulting in death, injury, arbitrary detention, or serious property loss.

In both cases, Afghan communities perceive a failure to distinguish civilians from combatants in situations where, by their account, those involved should have known or determined that they were dealing with civilians. From a legal standpoint even if there were no IHL violations per se in the overall operation, to the Afghan community the troops involved engaged in serious misconduct.

Finally, in addition to duties of care during combat, it is important to note that in general PGF are also subject to wider IHRL and Afghan Constitutional obligations.<sup>104</sup> Especially actions by members of ANSF that more closely resemble law enforcement duties might be most appropriately measured by IHRL standards. These IHRL obligations would include, notably, the rights to life, liberty and the security of person, which protect citizens against arbitrary arrest and detention, and provide that upon any

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<sup>102</sup> See *infra*, “Zerkoh (Shindand), Herat, 17 July 2008,” at 14.

<sup>103</sup> Interview with 15-year-old boy, 23 July 2008 (“The Americans fired at us and shot me several times on my left hand. My little sister, 5-years-old, who was sitting behind my father on a motorbike also got injured. ... I don’t know why they were shooting on us we were not Talib or their enemy.”); Interview with woman (age not disclosed), 23 July 2008 (“I woke up and tried to go outside to see what is happening. When I got out of the house I got shot and I fell down.... I was a woman. Why did they shoot me?”).

<sup>104</sup> Mark Freeman, “International Law and Internal Armed Conflicts: Clarifying the Interplay between Human Rights and Humanitarian Protection”, *The Journal of Humanitarian Assistance*, 24 July 2007.

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arrest, the detainee is informed of the reason for the arrest and entitled to a trial within a reasonable amount of time.<sup>105</sup> This would also include the international law prohibition against cruel, degrading, and inhumane treatment.<sup>106</sup> Reports of arbitrary shooting and detention by the ANSF, as discussed briefly above, would violate these principles. The case cited by Alston and previously documented by AIHRC in which police fired on unarmed protestors demonstrates a clear example of this.<sup>107</sup> Just as with duty of care issues related to the conduct of military operations, the overall impression of Afghan communities that ANSF are acting above the law may matter more than the technical legal conclusion itself.

### **Lack of Coordination & Intelligence Missteps**

One repeated concern in the case studies documented above is that PGF, and IMF in particular, allegedly relied on faulty or misleading intelligence in planning or executing operations. Certainly verifying intelligence in Afghanistan is difficult given the asymmetric nature of the conflict, and the way that tribal rivalries and alliances are constantly shifting. Nonetheless, many local officials complain that verifying intelligence with local officials or police and better coordination among PGF might have prevented civilian casualties.

While some incidents involving PGF appear to be situations in which operations in self defense were responsible for the high civilian casualty numbers, there are many other examples where the cause of civilian deaths appears to be no more than intelligence errors. As documented above in the Wedding Party incident, in July 2008, IMF air attack killed 47 members of a wedding party, mostly women and children.<sup>108</sup> There was no ostensible military target or objective apparent at the time and, following public disclosure of the number of civilian deaths, IMF representatives have not provided one. Local leaders and those in the community assumed that IMF was acting on bad intelligence.<sup>109</sup>

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<sup>105</sup> International Covenant on Civil and Political Rights [hereinafter ICCPR], G.A. Res. 2200A (XXI), 21 GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), U.N.T.S. 171, entered into force Mar. 23, 1976, arts. 6 & 9; Universal Declaration of Human Rights [hereinafter UDHR], G.A. Res. 217A (III), entered into force Dec. 10, 1948, art. 3. Afghanistan ratified the ICCPR in April 1983.

<sup>106</sup> ICCPR, art. 7.

<sup>107</sup> See *infra*, at 31.

<sup>108</sup> See *infra* "Haskamina, Nangarhar, 6 July 2008 ("Wedding Party incident")," at 12.

<sup>109</sup> Interview with Haskamina District Commissioner, 22 July 2008; Interview with Gardewal Provincial Chief of Staff of Nangarhar, 23 July 2008; Interview with Nangarhar Deputy Head of the Police Commission, 21 July 2008; Interview with 28-year-old man, 22 July 2008.

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All of the night raid cases documented in this report raise the question of intelligence failures to some degree because the information that AIHRC has gathered about the incidents suggest the victims in question were innocent. The credibility of the sources and the level of due diligence in verifying the information are difficult to gauge without any explanation by those involved. However, some of the cases raise doubts as to whether even cursory checks were made. In the Loy Wiala case documented above the houses of an AIHRC and a UN employee were broken into and searched.<sup>110</sup> Given their position with two organizations who are ostensibly partners of the Afghan government and that the two were likely prominent in the community because of their affiliation with internationals, it seems likely that a cursory check with local officials or leaders might have revealed their identity prior to a search.

Collecting and verifying accurate intelligence and distinguishing between civilians and combatants is always challenging, but perhaps even more so in Afghanistan. After 30 years of war, many civilians are armed and will fight back if anyone is perceived to attack their village or family. In some areas of the country, civilians may go back and forth between fighting with the Taliban or other insurgents in some periods and then going back to leading a normal civilian life at others. Some armed groups may oppose the local government representative but they may not necessarily be in partnership or supporting the Taliban. Frequently civilians will be forced to maintain relations with both the Taliban and the local government in order to ensure their safety.

Gathering accurate intelligence may be particularly difficult in Afghanistan because of the interference and predominance of tribes in civil-military relations. Tribal relations are stronger than any other social interactions in Afghanistan. The tribes in most parts of the country have been unable to maintain peaceful relations for most of the last several decades. Without accurate intelligence, it is easy for IMF in particular to be caught up in tribal rivalries through false intelligence. Greater cooperation with ANSF and maintaining good relations with multiple community leaders can help mitigate these risks, although they will likely not entirely eliminate them.

One example of how tribal or local disputes might be a cause of large civilian casualty deaths was the OEF airstrike on the village of Azizabad in Herat province on 22 August 2008.<sup>111</sup> The Associated Press cited Afghan officials who said the US commanders were misled into striking Azizabad by the rival of deceased clan leader Timor Shah.<sup>112</sup>

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<sup>110</sup> See *infra*, "Loy Wiala, Kandahar, 1 April 2007," at 22.

<sup>111</sup> See *infra*, "Azizabad (Shindand), Herat, 22 August, 2008," at 16.

<sup>112</sup> Associated Press, Another twist in Afghan raid, 29 August 2008.



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AIHRC's investigators collected some testimonies claiming that the late Timor's previous business partner Nadir, passed false information to the Coalition Forces that there had been a big gathering of Taliban fighters in Azizabad in an attempt to get Timor's family members killed. A local government official in Shindand told AIHRC: "I am sure that a guy ... passed wrong information to Americans, as he has a personal enmity with Timor's family. He has a criminal record, controls illegal armed groups, and has been involved in kidnapping and robberies in the region."<sup>113</sup>

In response to the Azizabad incident, the *Washington Post* cited an anonymous US official in Washington as saying the Taliban used false intelligence to lead the US military to strike civilians.<sup>114</sup> "The fact is that the Taliban now has pretty good insight into where we're picking up information and how we're developing it into actionable intelligence," the official said. "They've figured out a way to misguide us."<sup>115</sup>

Many local officials told AIHRC that PGF could address the intelligence issue by improving coordination between ANSF and IMF and by consulting with local officials who know the situation in the community before any operation.<sup>116</sup> Local officials particularly complain that operations such as night raids should be coordinated with the local police. A Government official of Kunar province told AIHRC:

There have been a series of military operations and night raids in Kunar by International military forces without consulting us that caused killing of non combatants...We stress again the need for coordination in carrying out operations by international military forces with our police and other security institutions. [...].<sup>117</sup>

In the Ghani Khil case documented above, the local official involved in smoothing community tensions after a joint IMF-ANSF raid left five dead, said lack of coordination

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<sup>113</sup> Interview with Lal Mohammad, District Commissioner, Shindand district, 25 August 2008.

<sup>114</sup> Candace Rondeaux and Karen DeYoung, U.N. Finds Airstrike Killed 90 Afghans; Most of Fatalities In U.S.-Led Attack Said to Be Children, *Washington Post*, at A01.

<sup>115</sup> *Ibid.*

<sup>116</sup> Interview with Gerdiwal Provincial Executive Director, 23 July 2008; Interview with, Deputy Head of the Police Commission, Nangarhar, 21 July 2008; Interview with District Commissioner, Shindand district, 25 August 2008; Interview with Head of Herat Provincial Council, 26 Aug 2008; Interview with Head of Kapisa Provincial Council, 25 Aug 2008; Interview with Police Chief of Nangarhar, 23 July 2008; Interview with Ghani Khil District Commissioner, 23 July 2008.

<sup>117</sup> AIHRC interview with a government official [name and position withheld], Kunar province, 25 August 2008.

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between international and national forces led to insecurity and to incidents like the Ghani Khil raids.<sup>118</sup>

IMF and ANSF obviously do have some level of cooperation in joint operations. Nonetheless, senior ANA officials told AIHRC that even in joint operations, they are often simply told where to go without any input in the planning or tactics to be used in a given community. In September 2008, Australian troops in Uruzgan province unintentionally killed a local community leader who was helping them fight insurgent forces. A joint Afghan-ISAF inquiry into the incident afterward found that lack of coordination between ISAF and local Afghan forces, who were knowledgeable of certain community tensions and the situation in the area, led to the man's death.<sup>119</sup>

A senior ANA commander whose troops were involved in the Azizabad incident suggested that lack of coordination with the ANA might have contributed to the intelligence issues that led to the disproportionate civilian deaths. "On 22 August 2008, US Special Forces asked our Commando Brigade to prepare 45 soldiers for an unknown operation in unknown place, within an hour. ... This kind of procedure cannot be called coordination."<sup>120</sup> The ANA commander suggested that had he been consulted with on the operation, he would not have considered the airstrikes that led to so many deaths necessary.<sup>121</sup>

AIHRC is not the only independent monitor to note the correlation between incidents involving high civilian casualties and the apparent poor intelligence upon which they were based. In a June 2007 public statement, the Agency Coordinating Body for Afghan Relief noted 10 military operations that resulted in high civilian casualties and said its sources indicated that "many of these incidents have occurred due to the provision of inaccurate or false information regarding insurgents to international forces."<sup>122</sup>

AIHRC interviewed various PGF intelligence officials to better analyze how these intelligence failures happen. Ministry of Defense officials say that they maintain special intelligence units throughout the country that operate with ANA senior command.

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<sup>118</sup> Interview with Ghani Khil District Commissioner, 23 July 2008. See *infra*, "Ghani Khil, Nangarhar, 27 April 2008," at 27.

<sup>119</sup> Tom Hyland, Intelligence gaps blamed for fatal Afghan gunfight, *Sunday Age* (Melbourne, Australia) October 26, 2008, at 7.

<sup>120</sup> AIHRC interview with military commander [name and position withheld], 27 August 2008.

<sup>121</sup> *Ibid.*

<sup>122</sup> Agency Coordinating Body for Afghan Relief (ACBAR), Protecting Afghan civilians: Statement on the conduct of military operations, 19 June 2007.

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They also have special civil sources of intelligence at the local level, which act as a secondary credibility check but are not relied upon solely in launching military operations. The AIHRC made several attempts to discuss intelligence sources and verification with ISAF, OEF, and the National Director of Security (NDS) but had no success. ISAF and OEF authorities approached said the issue was one of military secrecy and that the information was classified.

AIHRC recognizes the importance of protecting military secrecy both for the protection of PGF and for the success of any operation. Nonetheless under international humanitarian law, parties are required to all take all feasible precautions to ensure that the targets being attacked are not civilian in nature and that the methods and means of attack limit the risk of civilian collateral damage to the extent possible.<sup>123</sup> Verifying intelligence and coordinating operations in ways that reduce or eliminate unnecessary civilian casualties is an important part of that obligation. AIHRC believes that whenever possible consulting with trusted local officials or other community sources, via intermediaries or with whatever precautions are necessary to protect sensitive information, should be considered an important part of PGF' international obligation to take precautionary measures to avoid civilian collateral damage. Similarly intelligence gathering procedures should regularly be reviewed with the input of knowledgeable Afghan interlocutors.

### **Cultural Sensitivity**

Another common concern among Afghan communities was that PGF, particularly IMF, conduct during operations was disrespectful of Afghan religious or cultural values.<sup>124</sup> This problem was noted particularly in investigating night raids, although disrespect toward women and the elderly was sometimes also mentioned in cases where ground forces were engaged. As a traditional society, Afghan people are very sensitive about maintaining and protecting their traditional and religious values. Disrespect toward these values not only angered and offended those involved but has exacerbated mistrust and resentment toward the international military presence in particular.

According to many Afghans' religious and cultural values, a woman should not be seen by any man other than her "mahram", which can be her father, husband, brother, son, grandsons, or siblings' sons (related by blood in some way), much less handled or

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<sup>123</sup> Ibid., art. 51.

<sup>124</sup> Interview with Nangarhar Police Chief, 23 July 2008; Interview with Deputy Head of the Police Commission, Nangarhar, 21 July 2008.

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spoken to by any man not in that category.<sup>125</sup> Even for those Afghans who do not hold this strict an interpretation, it might still be sensitive for a strange man to speak or order a woman to do things without the family's permission, particularly in the home. In the night raid cases that AIHRC has documented, it has not heard of any females among those armed forces deployed in operations. As a result, the women of the household were dealt with exclusively by men. One man interviewed in the Arghandi case study above said he was particularly concerned that the armed men would do something to the women because they were kept in a separate room. "It is through this kind of actions .... Americans taking and ordering civilians like this [that] they will lose the trust of the people."<sup>126</sup>

Afghan culture also has strict principles when it comes to respect for the elderly. Among many tribes, no man is supposed to stand by when someone is disrespectful to his father or mother. Thus for men of the household to be restrained and unable to do anything when the elderly of their family were tied up and often physically or verbally abused was incredibly offensive. In the Ghani Khil case documented in this report, the armed men who perpetrated the night raid allegedly not only shot the extremely elderly father of one of the witnesses, but they reportedly did so while he was praying in a mosque.<sup>127</sup> Even if the incident did not take place exactly as reported, in the version related by the community this act was an egregious insult because the forces not only shot an elderly person but did so in a way that disrespected the man's prayer time and the local mosque itself.

In Afghan culture entering a person's home without permission would already be an insult; doing so at night would be viewed as a serious violation of privacy. Breaking in by force would likely be viewed as an act of aggression or attack. One man whose house was searched in the Arghandi raids described above told AIHRC, "I don't know why they are doing this. This is not the proper way to search someone's house. This is only to spread fear amongst the people. The only thing that they are doing is that they are scaring people and losing the trust of the people."<sup>128</sup> Entering a home without permission is taken so seriously that in many regions, even when police or other government officials have a legal authorization to search a home, they may also go to a

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<sup>125</sup> In relaying community concerns about this issue, AIHRC makes no judgment on Afghan cultural or religious interpretations of the protection and treatment of women. While other reports and investigations by the AIHRC discuss the impact of such viewpoints on women's equality, such a discussion is beyond the scope and purpose of this report.

<sup>126</sup> Interview with 24-year-old man, 13 January 2008. See *infra*, "Arghandi, Kabul, 7 April 2008," at 25.

<sup>127</sup> See *infra*, "Ghani Khil, Nangarhar, 27 April 2008," at 27.

<sup>128</sup> Interview with 45-year-old man, 13 January 2008.

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local elder to get the community's permission. In such cases, the local elder or mullah would go with those searching the house to witness the search, including each room searched.

Although those PGF authorizing and conducting night raids may believe they have a valid military or security rationale for doing so, they should more carefully weigh the community backlash that such operations create. As one man from Kandahar said, "The international forces lost the trust of the people conducting night raids. They are conducting night raids without respecting the cultural values and traditions of Afghans."<sup>129</sup> In the Ghani Khil and Arghandi cases, as well as in several other incidents, it is notable that the night raids led to major community protests.

One police official from the eastern region of Afghanistan suggested that allowing Afghan forces to conduct more of the house raids, or at least ensuring joint participation, might be a solution to these cultural issues.

IMF often violate Afghani cultural and religious values while they conduct military operations particularly during house searches ... If they share their intelligence, Afghan Forces would be able to launch military operations independently, or in case they do not satisfy with first option, there could be second option to conduct operations jointly, in order to prevent or at least to limit such complications.<sup>130</sup>

AIHRC's investigation into night raids has not shown that the actions of the armed forces conducting night raids are any more respectful or less offensive when it is a mixed group of Afghan and foreign forces than when it is solely foreigners. Nonetheless having regular Afghan forces present with international forces would likely ease the perception of cultural disrespect.

While cultural sensitivity may not be a legal obligation and may seem secondary to other military and security priorities, it is a major issue for many Afghan communities. At least at a tactical level, PGF should recognize the importance of this issue in terms of maintaining support among the Afghan population.

### **Accountability & Responsibility**

Part of the concern with many of the above cases was not just that insufficient care was taken to protect civilians or that there was a failure of intelligence, or a lack of respect or

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<sup>129</sup> Interview with 57-year-old man, 20 July 2008.

<sup>130</sup> Interview with a police officer in Nangarhar province [Name, rank, and position withheld], 23 July 2008.

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sensitivity in operations. Rather it was that any misconduct or violations would subsequently be ignored, and that those PGF responsible would not take responsibility or be held accountable for their actions. The problematic patterns in terms of lack of responsibility and accountability for civilian losses are threefold:

- 1) Failure to be accountable for wrongdoing because of inaccessibility or ambiguous lines of authority and accountability;
- 2) Failure to publicly investigate and acknowledge civilian losses;
- 3) Failure to provide follow-up apologies, compensation or other redress.

AIHRC documented a common pattern in the testimony of civilians: Many Afghan families experienced their family members killed or injured, their houses or other property destroyed, or homes invaded at night. They often did not know who perpetrated the acts against the family or why. Many were afraid to raise the issue with local civilian or military authorities, and where they did they were often cursorily turned away without an explanation, apology, or compensation. To their knowledge and perception those who perpetrated the acts were never punished, nor prevented from doing them to other civilians.

### **Ambiguous & Overlapping Lines of Authority**

The fractured command structure of PGF, particularly IMF, is a huge hurdle to more transparency in investigation and acknowledgement. Without a clear sense in many incidents of which forces were involved, it is difficult for independent monitors or the public at large to hold them accountable. For the average Afghan family, it is nearly impossible to find basic answers about what happened and why their family was targeted.

A major factor behind the perceived lack of accountability is the difficulty of identifying which forces were involved in an individual incident. ANSF operate under their own separate chains of command. The international military forces do not operate under a unified command in Afghanistan, with operations being conducted under an ISAF or an OEF mandate. In addition, operations might be carried out by any one of multiple ISAF member countries, each with their own national rules and accountability procedures. If Afghan citizens wanted to raise a complaint or concern, the most accessible representatives of these various international military actors would be at one of the 26 Provincial Reconstruction Teams (PRTs) nationwide. However combat operations in any one province are not necessarily carried out by the forces of the country commanding the PRT in that province. In cases where this is true, sorting out

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which troop-contributing country, under which mandate, was involved can be nearly impossible for the average Afghan.

Not surprisingly, most affected communities AIHRC interviewed generally had no detailed information about the forces involved in an incident or raid or the reason they were targeted. One farmer from the Haskamena community targeted in the Wedding party incident said, “We do not know why they attacked us and killed our children and women. They have to answer these questions and they should be accountable for their reckless actions.”<sup>131</sup>

The lack of transparency makes it difficult for the affected community to find answers and pursue compensation, and it fed suspicions that IMF were trying to avoid accountability in the event of wrongdoing or misconduct. UN Special Rapporteur Philip Alston documented the same problem in his evaluation of IMF accountability in Afghanistan:

In speaking with relatives or witnesses, I would ask which of the international forces carried out the killing. Even those who had tried to follow up their cases at PRTs and other military bases often did not know the answer to this question. Getting clarification from the international forces is like entering a maze. I experienced this maze myself. One ISAF commander explained that while he could confirm whether a particular operation was conducted by conventional ISAF troops and then clarify which national contingent they belonged to, he would have to pass the case up the chain of command to clarify whether it had been conducted by ISAF special forces, and that I would have to ask the commander in charge of Operation Enduring Freedom (OEF) to determine whether and which coalition forces were responsible.<sup>132</sup>

To further complicate matters, in addition to regular international and Afghan forces, there are other intelligence and security forces that do not fall clearly under any regular command structures. These forces, often described under the moniker of Other Governmental Agencies (OGA), are frequently involved in night raids. One resident whose house was raided in Kunar met with US military officers at the local US-controlled PRT, only to be told by the military officer there that while he was “very much unhappy with what happened... There are some special groups of US forces

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<sup>131</sup> Interview with 60-year-old man, 22 July 2008.

<sup>132</sup> Press Statement of Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions, Kabul, Afghanistan, 15 May 2008, at 2.

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known as OGA which do not fall under our rule, and they normally act independently.”<sup>133</sup> The man never found out why he was targeted or whether the conduct of those involved was investigated.

Alston examined this problem in his visit to Afghanistan and found that,

There have been a number of raids for which no State or military command appears ready to acknowledge responsibility. I received credible information that armed Afghan men were working with armed international personnel in certain areas, but never received a definitive answer as to how they fitted into anyone’s chain of command. At least some of these units are apparently led by personnel belonging to international intelligence services.<sup>134</sup>

Alston focused in particular on the Kandahar night raid case documented above that resulted in the death of two brothers.<sup>135</sup> Despite the fact that he enjoyed highest level access to PGF and civilian officials, both international and Afghan, he was unable to identify the affiliation of the personnel involved in this incident.<sup>136</sup>

Alston flagged concerns with the potentially deliberate “opacity” of IMF with regard to those involved in night raids. “It is absolutely unacceptable for heavily-armed internationals accompanied by heavily-armed Afghan forces to be wandering around conducting dangerous raids that too often result in killings without anyone taking responsibility for them.”<sup>137</sup>

### **Transparent Investigation & Acknowledgement of Civilian Losses**

There has been a perceived failure on the part of PGF to investigate incidents and acknowledge any civilian losses. In the Wedding party and Azizabad airstrikes documented above, independent monitors and Afghan government actors, including UNAMA and the AIHRC, investigated the incident and identified approximately 47 killed in the Wedding party incident and anywhere from 78 to 92 civilians killed in the Azizabad airstrikes.<sup>138</sup> In both cases international military authorities initially denied

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<sup>133</sup> Interview with 54-year-old man, 24 July 2008.

<sup>134</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Preliminary Note on the Mission to Afghanistan (4-15 May 2008), 29 May 2008, A/HRC/8/3/Add.6, at ¶ 5.

<sup>135</sup> See *infra*, “Kandahar City, Kandahar, 13 September 2007 – 16 January 2008,” at 23.

<sup>136</sup> Press Statement of Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions, Kabul, Afghanistan, 15 May 2008, at 2.

<sup>137</sup> *Ibid.*

<sup>138</sup> See *infra*, “Haskamina, Nangarhar, 6 July 2008 (“Wedding Party incident”),” at 12; “Azizabad (Shindand), Herat, 22 August, 2008,” at 16.



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that any civilians had been killed.<sup>139</sup> Following public pressure in both cases, international military authorities then offered to do their own investigation. In the Azizabad case the preliminary investigations by military officials at Bagram Air Base confirmed only 5 to 7 civilian deaths.<sup>140</sup> Following intense public criticism, they re-investigated and found 33 Afghan civilian deaths but did not present any of the evidence that led to these findings.<sup>141</sup> As of the date of this report, AIHRC has not yet heard any results of the US military investigation into the Wedding party incident.

The lack of investigation and acknowledgment of any misconduct or any civilian losses was even more pronounced with night raid cases. Getting recognition that they occurred at all, much less public investigation or acknowledgment of civilian losses, is difficult. As opposed to large airstrikes with civilian casualties, these incidents are often not well documented in the media. One man from Kandahar, where many of these incidents take place, told AIHRC that most of those affected by night raids do not even attempt to complain or have their cases investigated because they do not think it will do any good, and it may put them at risk of being targeted again.<sup>142</sup> The evidence AIHRC has collected from night raids suggests such fear is not unreasonable. In the Loy Wiala case, for instance, when the brothers who were attacked demanded full recognition and compensation they were threatened.<sup>143</sup> AIHRC and other international monitors have had difficulty getting local officials or others knowledgeable about these incidents to speak on the record that they occurred out of fear of retribution.

Initial denials of any civilian harm, and either no public investigation or the type of public foot-dragging in evidence in the Wedding party and Azizabad incidents enrages Afghan communities. A local shopkeeper in Kunar province told AIHRC that the

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<sup>139</sup> Candace Rondeaux and Karen DeYoung, U.N. Finds Airstrike Killed 90 Afghans; Most of Fatalities In U.S.-Led Attack Said to Be Children, *Washington Post*, 27 August 2008, at A01; Bagram Media Center, Press Release: Several militants killed with precision airstrikes Nangarhar province, 6 July 2008.

<sup>140</sup> Press release from Combined Joint Task Force 101: Coalition forces complete Shindand investigation, 2 September 2008.

<sup>141</sup> Karen de Young, Military Justifies Attack That Killed at Least 33 Afghan Civilians, *Wash. Post*, Oct. 9, 2008, at A15; Laura King, Afghans say 17 civilians killed in NATO airstrike; Western officials say they are investigating but have not yet found any evidence to back up the allegation, *Los Angeles Times*, 18 October 2008, at A5 (noting anger of humanitarian groups at the low estimates and that U.S. authorities reopened their investigation after cell phone video surfaced).

<sup>142</sup> Interview with 57-year-old man, 20 July 2008.

<sup>143</sup> Afghanistan Independent Human Rights Commission, *Violations of International Humanitarian Law in Afghanistan; Practices of Concern and Example Cases*, 4 January 2007, at 6 (describing how Afghan guards threatened the brothers would be “beaten and thrown in jail” if they pursued their case).

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military denied killing civilians in his district in an airstrike on 3 July 2007 despite their attempts to present physical evidence.

The international military men accepted that in the air strike 27 people were killed; however, they rejected the civilian status of the victims, and claimed that they had killed insurgents. We spent three days claiming that those killed in the air strike were civilian. To prove that claim we forwarded photos of the bodies and of the scene of the incident. Finally, the IMF officials accepted that half of the victims were civilians [but still counted] the remaining as insurgents. But contrary to the IMF, the government delegate was convinced that all of the victims were civilians.<sup>144</sup>

A resident from another district of Kunar remembered an incident that took place on 18 January 2008, in which IMF shot at two adolescents and one child collecting firewood, but even when presented with the wounded and dead bodies of the three, they insisted that the victims were combatants:

My brother who was 18 had been killed. My two nephews, 12 and 15, had been injured.... Though the soldiers saw the victims, they were still insisting that they are Al-Qaeda members. ... We showed the victims to the police and an Afghan National Army soldier. The police and ANA soldiers visited the mountain and noticed the blood-stained firewood collected by the victims. Then they returned back and talked to American soldiers.... After that the US soldiers accepted the reality. However, the US soldiers without offering apology or compensation returned to their base. So far, neither the U.S forces nor the government has compensated us for the loss of our family members.<sup>145</sup>

One source of the problem may be a basic failure to fully investigate incidents. In Alston's investigations, he suggested in particular that violations by ANP were rarely investigated. "[N]o-one in the Government has any interest in investigating, much less prosecuting, those responsible. And no-one in the international community seems prepared to change that situation."<sup>146</sup>

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<sup>144</sup> Interview with 32-year-old man, 22 July 2008.

<sup>145</sup> Interview with 36-year-old man, 23 July 2008.

<sup>146</sup> Press Statement of Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions, Kabul, Afghanistan, 15 May 2008, at 4.

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In other cases, the problem may simply be that any investigation and corresponding disciplinary measures are not made public. This is a particular problem for IMF. ISAF member countries are responsible for investigating any incidents involving their own forces, and prosecuting or otherwise disciplining any abuses or misconduct through their own national mechanisms. While many countries have rigid systems of internal accountability for their forces, and likely do investigate incidents, many reports by IMF have not been made public or at least not made accessible in Afghanistan, leave alone in local languages. Affected communities and individuals have repeatedly told AIHRC researchers that they often hear nothing about any measures that may have been taken against those forces involved in a raid or operation that caused civilian death or destruction of property. Alston also flagged the lack of public information and tracking of the outcome of investigations and prosecutions as one of the problems in the accountability of PGF.<sup>147</sup>

This has contributed to the widespread Afghan perception that IMF have no willingness to prosecute those who violate international humanitarian law or engage in other misconduct, even where this is not in fact the case. As far as the public knows, no investigations have taken place and their losses have been ignored.

### **Redress & Compensation**

Families who cannot identify the perpetrators of any given incident, much less get them to investigate and acknowledge any losses, have little hope or receiving any form of redress or compensation.

Officials of many IMF say they provide some form of ex gratia payments, but AIHRC has only been able to document a few cases where families said they received any payments from IMF.<sup>148</sup> This may be due to the fact that AIHRC investigations focus on interviewing families in the immediate aftermath of the incident, and compensation or condolences might be paid months later.

AIHRC sent inquiries to several ISAF countries whose troops are stationed in conflict-prone provinces to ask whether they provide compensation or other forms of apology

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<sup>147</sup> Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, Preliminary Note on the Mission to Afghanistan (4-15 May 2008), 29 May 2008, A/HRC/8/3/Add.6, at ¶ 6.

<sup>148</sup> Interview with 65-year-old man, 13 February 2008 (stating that international military reimbursed them for some property damage in Kandahar province); Interview with man [age unknown], 21 July 2008 (stating that families in his village were given money by IMF for those killed or injured in an IMF airstrike); Interview with [age unknown], 22 July 2008 (noting that Canadian military forces had come to the village and promised to pay for the dead and injured, but had never actually paid them).

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or condolences. US officials at Bagram Air Base and at US Central Command (CENTCOM) have told AIHRC that they have two funds that provide monetary “condolences” or “solatia” to Afghan families, on condition of no liability.<sup>149</sup> Formal compensation claims implying a finding of liability will “normally not be paid” if caused by combat.<sup>150</sup> According to a US military representative, Regional Command East, in which the bulk of US troops are stationed, provided \$876,137.42 in combined solatia and condolence payments from 2006 through 7 November 2008.<sup>151</sup> AIHRC has not learned of any US solatia or condolence payments distributed to families affected by the incidents documented as case studies in this report. However, victims were compensated by the Afghan government in at least two incidents, the Azizabad and Haskamena airstrikes; it is possible that no international military payments were made so as to avoid double compensation. Dutch officials in Uruzgan province also said they have a fund for “ex gratia” payment and that 250,000 euros of this payment was made available for families in the aftermath of the Chora incident documented above.<sup>152</sup> No other international military officials responded to AIHRC requests for information on compensation as of the date of this report.

It is more common for families to say they were provided some condolences or funds from the Afghan government. The Afghan government has a fund to provide 100,000 afghanis (approximately \$2000) to the families of those killed or 50,000 afghanis (approximately \$1000) for those injured. These funds can be distributed through governors, members of Parliament, or other government officials. They were distributed promptly following the Azizabad and Haskamena airstrikes documented above. These Afghan government payments are generally distributed following an incident involving IMF; AIHRC has not as yet heard of Afghan government compensation being paid when the incident involved only ANSF.

The issues raised about a lack of transparency and responsibility must be addressed immediately by all PGF. A large part of the mission of PGF is to support the Afghan government and the stabilization of Afghanistan. Contributing to a more accountable and regular system of justice is a big part of that mission. As Alston noted, it is crucial that “the international forces in Afghanistan [...] take seriously the principles of

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<sup>149</sup> Email from Information Operations Planner, Combined Joint Task Force 101, to AIHRC, 21 October 2008 (forwarding responses from US CENTCOM JA (CCJA)).

<sup>150</sup> Ibid.

<sup>151</sup> Email from Information Operations Planner, Combined Joint Task Force 101, to AIHRC, 7 November 2008.

<sup>152</sup> Email from Public Information Officer, Task Force Uruzgan, to AIHRC and CIVIC Worldwide, 1 November 2008. See *infra*, “Chora, Uruzgan, 16 June 2007 – 20 June 2007,” at 10.

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accountability and transparency, the importance of which they so frequently proclaim in other contexts. They should have no particular reluctance to adhere to these principles.”<sup>153</sup>

Some of the examples of a lack of accountability and responsibility are problems of perception: civilians believed that no measures were being taken to hold the perpetrators responsible even if they were. Given, however, the importance of this issue to the Afghan public, and the significance of community perceptions in terms of maintaining support for the Afghan government and the international military mission in Afghanistan, perceptions matter as much as reality.

### VI. CONCLUSION & RECOMMENDATIONS

While AIHRC documented a number of potential violations by PGF and several issues of concern, it found no evidence of widespread and deliberate violations of international humanitarian and human rights law by PGF. As a general rule, AIHRC questions PGF heavy reliance on airstrikes, which have tended to result in high numbers of civilian casualties that may have been symptomatic of excessive use of force. With regard to night raids, the main concern is with the lack of accountability for those conducting them. While the pattern of behavior employed in most night raids may be legal overall, in those cases where there are instances of abuse or violations, there is no realistic way to investigate and take any appropriate response. Further, even in night raids which are not per se violations, the degree of backlash and community outrage that they provoke suggests they may often not be an advisable tactic within the Afghan context.

ANSF compliance with IHL, IHRL, and the Afghan Constitution requires further investigation and follow-up by AIHRC, by the Afghan government, and by other international monitors. As explored briefly in this report, ANSF abuses committed within and beyond the scope of duty run the risk of negatively impacting the continued stabilization and development of the rule of law in Afghanistan.

Of equal concern, PGF tactics and conduct have led to public disenchantment with PGF. Airstrikes or other operations that result in high levels of civilian losses lead the Afghan public to believe that PGF do not care about harming Afghan civilians and do not take steps to distinguish between those who are combatants and innocent civilians. Harm or disrespect to women, children, and the elderly, or other conduct that is viewed as a

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<sup>153</sup> Press Statement of Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions, Kabul, Afghanistan, 15 May 2008, at 2.

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violation of traditional cultural or religious views offends and outrages the Afghan public. The fact that these perceived abuses or offenses are typically met without recognition, apology, or compensation has led to increased anger and resentment toward PGF. Denying civilian harm and failing to investigate, or to investigate publicly, incidents has contributed to the perception that PGF have no willingness to hold themselves accountable and are not concerned about the losses of Afghan communities.

While sensitivity to these public perceptions may not be a legal obligation, it is of significant importance for many Afghan communities. At least at a tactical level, PGF should recognize that this type of conduct undermines popular support for the Afghan government and for the continued presence of international troops.

Viewed in tandem with insurgent abuses, many Afghans say that such PGF conduct makes them feel helpless and fearful. If they do not support the Taliban, they may be subject to intimidation, abuse and harassment; if they refuse to support the Taliban they are still at risk of being bombed, having their homes invaded at night, being harassed by local security forces, or suffering other abuses or disrespectful treatment at the hands of PGF.

### Recommendations for Pro-Government Forces:

- PGF should exercise a higher degree of caution in conducting all military operations in order to minimize collateral damage to civilian lives and properties.
- PGF should improve coordination among PGF forces in planning and conduct of operations in order to potentially reduce errors due to faulty or misunderstood situational intelligence.
- PGF should review and clarify chains of command and any controlling guidelines on night raids so as to provide greater accountability. Night raids as a military or security tactic should be avoided wherever possible in favor of regular law enforcement-led search and arrest procedures.
- PGF should engage local officials as much as possible to be able to better authenticate intelligence and assessments about the local situation.
- PGF should initiate prompt and thorough investigations in any incident of alleged civilian casualties and publicly release details of their findings and evidence.
- Those PGF involved in an incident involving civilian casualties should offer a public apology to the families or communities affected by PGF military operations.

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- The Afghan government and governments of the troop-contributing countries must make a more concerted effort to render justice for victims. Those found responsible for any violations of IHL must be held fully accountable for their actions.

### Recommendations for the International Military Forces:

- All IMF should revise standard operating procedures so that airstrikes may only be deployed when other means and methods that might carry a lower risk to civilians have been exhausted.
- IMF should ensure that the findings or relevant investigations and any corresponding disciplinary measures should be made public in Afghanistan to the largest extent possible. If not the entire report, the summary of any findings should be translated in to Dari and Pashtu for wider circulation.
- IMF should work with ANSF and local community leaders in developing guidance for conduct of operations that demonstrates greater respect for traditional religious and cultural values.

### Recommendations to the Islamic Republic of Afghanistan, and relevant international partners:

- The Afghan government, in cooperation with the military and civilian representatives of PGF, and in consultation with international and national civil society representatives, should develop a unified and adequate compensation mechanism for victims of all PGF operations.
- The Afghan government should facilitate mechanisms for greater investigation and accountability over the conduct of ANSF.
- The Afghan government, in cooperation with interested international partners, should work to provide extensive training programs to Afghan security forces on their legal obligations under IHL, IHRL, and the Afghan Constitution, as well as the scope of their duties and appropriate actions for persons in their position.
- The Afghan government should make more constructive efforts to work with IMF to maximize civilian protection in combat operations.