



LOSING THE PEOPLE

The Costs and Consequences of
Civilian Suffering in Afghanistan

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MAP OF AFGHANISTAN





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Glossary of Acronyms

ACAP	Afghan Civilian Assistance Program
ACBAR	Agency Coordinating Body For Afghan Relief
AGE	Anti-Government Elements
AIHRC	Afghanistan Independent Human Rights Commission
ANA	Afghan National Army
ANDS	Afghan National Development Strategy
ANSO	Afghanistan NGO Security Office
ANP	Afghan National Police
AOG	Afghan opposition groups
ARC	American Red Cross
CCF	Commander's Contingency Fund
CERP	Commanders Emergency Response Program
CIDA	Canadian International Development Agency
CIMIC Team	Civil-Military Co-operation Team
CIVIC	Campaign For Innocent Victims In Conflict
CJTF	Combined Joint Task Force
COM ISAF	Commander of International Security Assistance Force
DFID	Department For International Development
DOD	Department of Defense
DORR	Department of Refugees and Repatriation
ERW	Explosive Remnants of War
FAO	Food and Agriculture Organization
FOB	Forward Operating Base
HRW	Human Rights Watch
ICRC	International Committee of the Red Cross
IDP	Internally Displaced People
IED	Improvised Explosive Devices
IMF	International Military Forces
IO	International Organization
IOM	International Organization for Migration
ISAF	International Security Assistance Force
KAF	Kandahar Airfield
MoD	British Ministry of Defence
MoLSAMD	Ministry of Labor, Social Affairs, Martyrs and Disabled (Afghan)
NATO	North Atlantic Treaty Organization
NDSA	National Disability Survey in Afghanistan
NGO	Non-Governmental Organization
NRC	Norwegian Refugee Council
OEF	Operation Enduring Freedom
PGF	Pro-Government Forces
POHRF	Post-Operations Humanitarian Relief Fund
PRT	Provincial Reconstruction Teams
QIP	Quick Impact Project

Glossary of Acronyms (cont)

RCs	Regional Commands
RC West	Regional Command West
UN	United Nations
UNAIDS	United Nations Joint Programme on HIV/AIDS
UNAMA	United Nations Assistance Mission in Afghanistan
UNDP	United Nations Development Programme
UNDSS	United Nations Department of Safety and Security
UNHCR	United Nations High Commission for Refugees
UNMACA	United Nations Mine Action Center for Afghanistan
USAID	United States Agency for International Development
UXO	Unexploded Ordnance
WADAN	Welfare Association for the Development of Afghanistan
WFP	World Food Program
WHO	World Health Organization

EXECUTIVE SUMMARY

That morning he went to consular of Pakistan to get a visa... and on the way back, he was faced with an ISAF convoy. He wasn't aware and they ended up shooting. ... His brother called him and asked him what's taking you so long. And one of the doctors from the hospital replied and said you should come and collect the body. The first few weeks, we were frustrated that he got killed, but after a few months we received assistance, then we thought 'This shows that they care – that they didn't do intentionally.' Now we don't hold anything personal against the international community or international forces.

Man with family member killed by Canadian forces in Kandahar in February 2007 helped by a USAID program designed specifically for Afghan war victims.

The international coalition in Afghanistan is losing public support, one fallen civilian at a time. Twenty billion US dollars in military expenditures each month and billions more in support operations and humanitarian aid still leaves the many civilians harmed by international troops with nothing. Since the initial US invasion in 2001, the lack of a clear, coordinated strategy to address civilian losses has been a leading source of anger and resentment toward military forces. A new BBC/ABC poll shows a 12 percentage point drop in Afghan support for the international presence since 2007 and a drop of 15 points from 2006.¹ A once welcoming picture of the population has turned into scenes of frequent, widespread and sometimes violent protests over civilian deaths and a perceived lack of concern by international forces.

Avoiding harm to civilians altogether is the goal. When harm nonetheless occurs, the imperative must be easing civilian suffering and making amends for losses. Many are finally understanding this need, from US Secretary of Defense Robert Gates to Afghan President Hamid Karzai to the UN Special Rapporteur on Extrajudicial Killings Philip Alston. But few if any have looked closely at the existing compensation and victim assistance mechanisms to see what works and what does not. This report does just that. The Campaign for Innocent Victims of Conflict (CIVIC) interviewed 143 victims of conflict in Afghanistan

¹ According to an BBC/ABC poll published February 9, 2009, "Afghan people 'losing confidence', the Afghan population polled in 2008 showed 63% support the presence of US forces, down from 71% in 2007 and 78% in 2006, http://news.bbc.co.uk/1/hi/world/south_asia/7872353.stm.

to document the harm they experienced and find out which, if any, of the existing compensation and victim assistance mechanisms met their needs and expectations.

Above all, CIVIC's research shows that compensation and victim assistance is both possible and practical, despite statements from government and military officials to the contrary. In fact, several mechanisms for addressing civilian losses are now working on the ground. In addition to formal claims systems, most countries providing troops to the NATO-led International Security Assistance Force (ISAF) have funds for *ex gratia* (meaning "out of kindness") payments to civilians suffering loss of life, limb or property.² The United States Agency for International Development (USAID) funds an individually tailored livelihood assistance program for survivors of international troop activities. The Afghan Government gives both immediate monetary condolences and longer term stipends to victims of the conflict.

These mechanisms have enormous potential to meet civilian needs following harm, but civilians CIVIC interviewed said they received no help or that the help was too little, too late. The gaps that allow civilians to be overlooked must be closed now, lest Afghans become increasingly angry, resentful and left to mourn tragic losses without the dignity of recognition. Our interviews suggest there is often a regrettable disconnect between the focus on "hearts and minds" at a policy level and the dedication of sufficient resources and energy toward civilians whose hearts and minds are most at stake. While circumstantial issues of security and corruption often get in the way of aid to war victims, in many cases it is a lack of funding, lack of coordination between foreign and Afghan actors, a failure to make assistance more accessible or liability concerns that thwart real civilian relief.

Why a report on help to civilian war victims and why now? Providing specific relief to Afghan victims of conflict is both a strategic and a humanitarian imperative, for international forces in particular. No amount of compensation or assistance can bring back a loved one. Yet the killing of a family member can be an invitation for generational revenge, made worse by ignoring that loss. As one civilian who watched 47 of his extended relatives and community members killed in a US airstrike in July 2008 told CIVIC, "People believe ISAF just pours salt in the wound, because of how they acted. People are angry because no representative from ISAF came to see what happened, or to apologize that it was a mistake."³

Billions of dollars are spent to win, keep and rebuild Afghan communities, but it only takes seeing one family maltreated and ignored by military forces for a community to turn against the international effort. Victim assistance is equally critical on humanitarian grounds. In 2007 and 2008, an estimated 3,641 civilians were killed by parties to the conflict in Afghanistan.⁴ For every civilian killed, as many or more are injured, lose their homes or livelihoods. For countless Afghan families living on the margins, the loss of a breadwinner, high medical or funeral costs, or the financial burden of supporting disabled or dependent relatives can make even basic survival difficult. For each family struggling to recover from losses, there are multiplying ripple effects on Afghanistan's continuing development and stabilization.

Summary of Findings

This report does not attempt to offer any one solution or perfect approach to addressing the needs of conflict-affected civilians. There are however several stand-out conclusions that should guide any debate on compensating and addressing civilian casualties:⁵

2 Detailed information on each of these programs can be found in Annex II.

3 Ali, Interview #40a, July 20, 2008, Kabul city, Kabul province.

4 In 2007 and 2008, an estimated 3,641 civilians were killed by parties to the conflict in Afghanistan. United Nations Assistance Mission in Afghanistan, *Protection of Civilians*, United Nations, January 2009, 1.

5 Other needs-based assistance that does not have a criterion of aiding victims of conflict specifically is not

1. Victim compensation and support is possible, and is expected by the Afghan population.
2. Mechanisms to address civilian losses created by the US Congress, ISAF member states and the Afghan Government must be more proactive, fully funded, and better coordinated if they intend – as they should – to reach out to all civilians directly harmed or affected by the conflict.
3. A significant number of civilian survivors of combat operations receive no help from international forces, and those that do often find it is too little, too late.
4. Every family with losses not recognized and addressed is another obstacle to Afghanistan’s stabilization and development.
5. Anger and resentment over civilian casualties and property loss dominate Afghan views of international forces; the anger is especially strong when no help is provided following harm.

A focused, high-level dialogue on what further steps should be taken to succeed in these initiatives is critical and urgent. There are concrete, immediate measures that will improve the situation, including identifying victim’s families and responding to them proactively, tracking affected families and any aid they receive, and improving coordination among international troops. The report to follow contributes to the emerging debate by offering a roadmap to existing mechanisms for compensation and victim assistance, how they work, how civilians feel about them, and when appropriate what “fixes” could improve compensation and victim assistance.

Civilians harmed by international forces generally want timely and adequate help with necessary medical treatment, economic assistance for immediate rebuilding and long-term recovery, and to be given a sense that their losses have been recognized and redressed. The more that any mechanism or program is able to provide this help, particularly help perceived to be coming from those they blame for their losses, the more families are able to recover physically, economically and financially.

No mechanism or program will satisfy all civilian needs and expectations all the time, particularly not given the operating conditions of Afghanistan. For this reason, it may be that a network of overlapping, but different approaches is the best way to reach as many conflict-affected civilians as possible. The following programs and initiatives by foreign militaries, foreign governments and the Afghan government are already being tried on the ground with varying results.

Assistance from Foreign Militaries

Civilian survivors of the conflict rarely receive formal compensation payments, which imply an assumption of liability, from ISAF countries. However, most ISAF member countries have some way of providing *ex gratia* (meaning “out of kindness”) payments to civilians suffering losses due to their troops’ activities. While not technically compensation, these *ex gratia* payments are perceived as such by Afghan civilians and can go a long way toward providing physical help and emotional redress. In fact, where civilians blamed international military forces (IMF) for their losses, there was no substitute

discussed in this report. While this broader network of emergency relief, humanitarian aid or larger development support is important in helping communities and individuals recover from conflict, the aim of this report is to assess the effectiveness of this narrow category of programming and assistance.

for a direct apology and a gesture (often monetary) of condolence from those forces. The benefits of these payments are unfortunately stymied by a complete lack of coordination between IMF and the unreasonable expectation that eligible Afghan civilians can and will seek out relevant troops to make a proper “claim.” There are signs that IMF are trying to make condolences more accessible, but the vast majority of those CIVIC interviewed had received nothing from IMF.

More controversially, many IMF also provide medical support and broader community relief – seen by some aid agencies as an infringement on humanitarian space. Civilians were most positive about medical assistance, both because treatment is highly valued and because this assistance appeared to be more accessible than, for example, compensation. Community assistance funds, including the ISAF Post-Operations Humanitarian Relief Fund and “quick impact” funds provided through Provincial Reconstruction Teams, were not noted by *any* civilians with whom CIVIC spoke. This does not mean assistance provided through these funds is not important or appreciated; it does suggest civilians do not recognize the assistance as a specific response to their combat losses.

Assistance from Foreign Governments

CIVIC identified only one foreign government-funded program specifically addressing conflict-affected civilians: the Afghan Civilian Assistance Program (ACAP). Funded by USAID, ACAP provides tailored livelihood support and other in-kind assistance to civilians harmed by IMF as far back as 2001. Interviews with civilians suggest that ACAP is in large part succeeding, albeit slowly. Beneficiaries said ACAP helped them where other government, military or non-governmental entities did not respond, or failed to deliver promised help. The one drawback was the timeliness of assistance: with limited staff resources and significant security issues, ACAP assistance took months, sometimes years, to reach civilians (although recent staff additions suggest they will be faster in the future). For security reasons, civilians often do not know who funds the assistance, and thus do not tend to see it as a gesture of amends or redress from the US. Nonetheless, assistance significantly improved beneficiaries quality of life, and so lessened some resentment toward the international community.

Assistance from the Afghan Government

Similar to ex gratia payments, Afghan President Karzai’s Office provides 100,000 afghanis (approximately \$2,000) to families who lost a loved one and 50,000 afghanis to individuals injured (approximately \$1,000) in the conflict. An Afghan ministry also oversees a social support pension providing monthly payments to those injured and for the survivors of those killed in the conflict. Afghan officials reported that more than 270 million afghanis (approximately \$5 million) were distributed to victims of conflict from Karzai’s office in 2007, far more than the reported ex gratia payments of all IMF combined. While both programs were more accessible to civilians, they were plagued by corruption and administered inconsistently. They also largely failed to provide redress to civilians because the payments were not seen to come from those causing harm.

Recommendations

There are concrete, immediate measures that can and should be taken to fix any of the problematic issues detailed in the analysis that follows, particularly those that deny civilians appropriate amends for harm. The below recommendations are not all easy. They do, however, match the gravity and urgency of civilian suffering in this conflict.

CIVIC first and foremost urges *all* parties to the conflict in Afghanistan to take all possible steps to

avoid civilian deaths, injuries and property damage. In the event that civilians are directly harmed or otherwise affected by the conflict, CIVIC urges:

All actors involved in implementing compensation and victim support programs, to:

- Work jointly to improve identification of civilians, whether through sharing databases, establishing mechanisms for civilian referral and identification or other measures that respect confidentiality concerns of both the actor and the civilian;
- Coordinate efforts to ensure civilians receive any and all aid measures available, preferably in a way that maximizes the benefit;
- Share best practices with other compensation and victim assistance programs.

Militaries comprising the International Security Assistance Force and NATO, to:

- Adopt a coordinated if not collective response to providing compensation and ex gratia payments across all ISAF participants, whether they have combat troops or not;
- Make standard procedure the tracking of any ISAF efforts at compensation, follow-up or other amends alongside the new ISAF Civilian Casualty Tracking Cell created in 2008;⁶
- Ensure that any coordinated policy includes mechanisms for referring cases of civilian casualties that may be eligible for compensation or ex gratia funds to the appropriate troops;
- Develop practices and procedures that enable troops to be more pro-active in providing compensation and ex gratia payments where harm occurs;
- Be as transparent as possible in investigations of civilian casualties and, where necessary, admit responsibility (though not necessarily legal fault) quickly and publicly;
- Share best practices among ISAF countries on how to appropriately interact with civilians when offering compensation and recognition;
- Make an attempt to provide civilians with a sense of redress and closure through public apologies and recognition;
- Ensure designated funding streams to address civilian harm resulting from combat operations.

Member countries of the International Security Assistance Force, to:

- Adequately fund the programs currently in place, which currently means increasing donations;
- Develop mechanisms for providing compensation or ex gratia payments that provide immediate relief and recognition in ways consistent with ISAF countries' national policies;
- Work jointly with other member countries to develop common policies on compensation and ex gratia payments to ensure Afghans are treated fairly no matter where they are or by who they were harmed.

The United States Government and/or Military, to:

- Create a position at the Pentagon to strategically address potential and actual civilian casualties;
- Assess compensation, ex gratia and ACAP support to ensure they are providing a level of assistance that matches civilian losses and the stated strategic interest of the United States to “win hearts and minds”⁷;
- Better coordinate with the Afghan Government and other IMF, where applicable, to ensure that

6 James Brown, Humanitarian Affairs officer UNAMA, “Briefing for the Kabul Civil-Military Working Group,” presentation, January 29, 2009.

7 See, e.g., Robert M. Gates, Testimony before the Senate Armed Services Committee, January 27, 2009; United States Army, *Counterinsurgency*, United States Army, December 2006, 191

efforts to avoid double compensation do not result in civilians feeling ignored or unrecognized by US troops.

The Afghanistan Government, to:

- Develop alternate mechanisms for identifying and verifying those eligible for the Martyrs and Disabled funds that minimize corruption and maximize speed and accuracy;
- Share casualty information across all three existing programs;
- Ensure all Afghans are aware of their rights to register a complaint or concern about *any* warring party;
- Ensure Code 99 payments are provided to victims of Afghan National Security Force actions, even where these forces are acting independently of IMF;
- Ensure Code 99 and Martyrs and Disabled payments are provided equally to victim of insurgent attacks, unless doing so would put the recipients at risk of reprisals;
- Coordinate the distribution of Code 99 funds with IMF (where the incident involved IMF) to jointly plan the best available means of aid and redress for affected civilians.

The United Nations Assistance Mission to Afghanistan, to:

- Undertake a complete analysis of civilian-assistance programs currently in place so that aid efforts are streamlined and, to the greatest extent possible, avoid duplicating aid to some civilians while entirely overlooking others;
- Track whether and when specific relief for conflict-affected civilians is provided by the military or other actors concurrently with tracking civilian casualties;
- Coordinate information gathering across all groups to facilitate the proper and prompt identification of civilians in need.

ABOUT CIVIC

Campaign for Innocent Victims In Conflict (CIVIC) is a Washington-based organization founded by the late Marla Ruzicka, a passionate humanitarian killed by a suicide bomb in Baghdad while advocating for war victims in Iraq. CIVIC believes that civilians injured and the families of those killed should be recognized and aided by the warring parties involved, and is working toward smart, compassionate policies for civilians caught in the crossfire of conflict.

INTRODUCTION

From 2007 to 2008, the number of civilians killed in Afghanistan's ongoing conflict rose 40 percent, according to UN figures.¹ While shocking, the headlines offer only a glimpse of the immediate and long-term suffering of civilians caught in conflict. For every civilian killed, as many or more are injured, or lose their homes or livelihoods. Affected families struggle to rebuild their lives for years and sometimes generations after an incident. After 30 years of conflict and under-development, much of Afghanistan's population lacks regular access to sufficient food supplies and clean water, much less to additional resources to manage setbacks due to conflict.² For families living on the margin, the loss of a breadwinner or home, high medical or funeral costs, or the financial burden of supporting disabled or dependent relatives can make basic survival difficult.³

This report assesses how existing compensation and victim assistance mechanisms developed by warring parties in Afghanistan address, or fail to address, civilian losses in the conflict. Survivors are often in desperate need of basic medical or economic assistance to recover, but often also seek some form of recognition, apology or other emotional "redress," as this report will refer to it, from those responsible for their loss. Compensation and victim assistance mechanisms have the potential to address both categories of need, though their ability to do so is frustrated by ongoing security and development issues in Afghanistan as well as deficient planning, coordination and implementation.

Campaign for Innocent Victims in Conflict has long been active in advocating that all warring parties in Afghanistan provide fair and adequate compensation, recognition, and any other appropriate assistance to civilians harmed by the conflict. It also calls upon the governments of those warring parties to fully support with funding the assistance civilians need to begin recovery.

1 CBC News, "Afghan civilian deaths increased by 40% in 2008: UN," February 3, 2009, <http://www.cbc.ca/world/story/2009/02/03/afghanistan-un.html?ref=rss>.

2 Afghanistan is ranked 174 out of 178 countries on the Global Human Development Index. Center for Policy and Human Development Kabul University, *Afghanistan Human Development Report 2007: Bridging Modernity and Tradition: Rule of Law and Search for Justice*, (Islamabad: Army Press, 2007), 3. Poverty levels remain high with 30 percent of the population below the "minimum level of dietary energy consumption" and 68 percent lacking "sustainable access to clean water." Ibid., 19-20 and 23.

3 The Afghanistan National Development Strategy placed "war survivors" as one of two priority groups in terms of improved social protection. Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy, Social Protection Sector Strategy*, (Kabul: Government of the Islamic Republic of Afghanistan, 2008), 55.

The question of whether such mechanisms are practical and beneficial is important not only from the perspective of civilians but from the strategic perspective of the warring parties. Civilian casualties have turned the Afghan public away from welcoming the international presence. One man whose village was targeted in a nighttime search by US Special Forces in January 2009 told the Associated Press: “If these operations are again conducted in our area, all of our people are ready to carry out jihad. We cannot tolerate seeing the dead bodies of our children and women anymore.”⁴

As Afghan anger toward the international troop presence has increased,⁵ and more areas have fallen under insurgent control,⁶ winning civilian “hearts and minds” through development, aid and other tactics has become an oft repeated mantra of US and international officials.⁷ Yet in a culture where the killing of a family member may incite generational revenge, no amount of money will persuade communities to support “outsiders” who fail to make even basic gestures of respect and support to families mourning loved ones in the conflict.

The following analysis of mechanisms that assist this specific population is based on 143 interviews CIVIC conducted with conflict-affected civilians from across Afghanistan and off-the-record background interviews with US and International Security Assistance Force (ISAF) officials. Emphasis is placed on the accounts and perceptions of the civilians to ensure their voices are heard.

From immediate compensation by foreign militaries to livelihood assistance for long-term recovery, the programs discussed in detail below were created with the express aim of assisting conflict-affected civilians. Other needs-based assistance – provided by United Nations organizations, international organizations or non-governmental organizations – that does not specifically aid civilians affected by conflict is not discussed. This broader network of emergency relief, humanitarian aid and development is important in helping communities and individuals recover from conflict and merits further research and analysis. The aim of this report, however, is to assess the effectiveness of a narrow category of programming and assistance.

Chapter One provides a brief outline of the particular conflict patterns leading to rising numbers of civilian deaths and injuries in Afghanistan. Chapter Two describes, through first-hand accounts, the ways in which the conflict is placing significant economic strain on civilians. Chapters Three, Four and Five provide basic program information, and civilian reflections and critiques on the various compensation

4 Jason Straziuso, “Afghans Threaten US Troops Over Civilian Deaths,” *Associated Press*, January 31, 2009, <http://www.iht.com/articles/ap/2009/01/31/asia/AS-Afghan-Civilian-Deaths.php> .

5 The year 2008 brought a significant dip in the popularity of the international forces, particularly following several high-profile air-strikes that killed dozens of individuals in the second half of 2008. See, e.g., Afghanistan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces*, (Kabul: Afghan Independent Human Rights Commission, December 2008), 51; Liane Hansen, “2008 A Deadly Year for Afghan Civilians,” National Public Radio, Weekend Edition, January 4, 2009, <http://www.npr.org/templates/story/story.php?storyId=98964989&ft=1&f=1021&sc=emaf>. Following the August 22, 2008 air-strike by IMF, President Karzai’s government issued a statement calling for the end of air-strikes on civilian targets: “The government of Afghanistan has repeatedly discussed the issue of civilian casualties with the international forces and asked for all air raids on civilian targets, especially in Afghan villages, to be stopped.” Times of India, “Afghanistan demands review of foreign troops,” *Times of India*, August 26, 2008, http://timesofindia.indiatimes.com/World/Rest_of_World/Afghanistan_demands_review_of_foreign_troops/rssarticleshow/3406313.cms.

6 International Council for Security and Development, *Struggle for Kabul: The Taliban Advance*, (London: International Council for Security and Development, December 2008), 5.

7 International Council for Security and Development, *Taliban Politics and Afghan Legitimate Grievances*, (London: International Council for Security and Development, June 2007), 9.

and victim assistance mechanisms. These are categorized according to the actor providing this assistance: International Military Forces (IMF) (Chapter 3); civilian agencies of foreign governments (Chapter 4); and the Afghan Government (Chapter 5). In addition, each chapter considers the extent to which the assistance is capable of generating a sense of redress among civilians.

This report does not offer concrete conclusions about the “correct” approach to make amends to civilians suffering losses, but rather aims to establish credible qualitative evidence that compensation, aid and recognition efforts are both necessary and possible in the context of conflict and particularly in Afghanistan. Given the challenges of identifying civilians and getting aid to them successfully in Afghanistan, it may be that a network of overlapping but different approaches is the best way to reach as many conflict-affected civilians as possible – the ultimate goal.

The most important issues related to civilian assistance programs are included in this report, yet we believe this should be used only as a starting place for further investigation and analysis on the part of international forces, international and national Non-governmental Organizations (NGOs) and the Afghan Government – all stakeholders in the well-being of Afghan civilians. The provision of aid is a complex and challenging task. Success will only ever be achieved through careful preparation, thoughtful implementation and follow-on analysis of results. War’s civilian victims deserve no less than all three.

Methodology

This report should not be read as an endorsement of any one program or approach, but rather as a presentation of findings CIVIC gathered in the course of its research in Afghanistan. In the past, CIVIC has made public statements that do endorse or advocate on behalf of specific victim relief programs discussed in this report, such as the Afghan Civilian Assistance Program (ACAP) and ISAF’s Post-Operations Humanitarian Relief Fund (POHRF). The research included here was undertaken to better inform CIVIC’s advocacy position with regard to these and other such efforts. It is hoped that sharing this information will help other groups interested in aiding victims of conflict to do the same.

From February to November 2008, CIVIC interviewed a total of 143 civilians harmed by the post-2001 conflict in Afghanistan. All attempts were made to interview civilians harmed at varying points across the conflict’s seven year timeline and to include a cross-range of different “groups” or “categories” of conflict-affected civilians, including those harmed by aerial bombings, suicide explosions, escalation of force incidents, night raids, explosive remnants of war and other tactics of warfare, as well as widows, refugees, IDPs, the disabled and children. The goal of such variation was to assess gaps in coverage for certain types of conflict-affected civilians and the extent to which opinions varied depending on the region, the length of time it took for aid to be given, and the types of losses sustained.

A standard list of questions was used for all interviewees. We asked all civilians to describe the ways their lives were affected by the conflict, the types of assistance they had received if such assistance was offered, how hospital bills and property reconstruction were managed, the types of assistance they most required, and what impressions were formed of the actors providing aid and of those responsible for their losses.

In addition to the 143 civilian interviews, CIVIC interviewed more than 80 officials working in Afghanistan. We attempted to contact as many military or civilian representatives of ISAF member countries as possible to get a better sense of whether they had any victims assistance mechanisms and,

if so, what policies governed them. CIVIC also interviewed a wide range of journalists, aid workers and other organizations with knowledge of civilian casualties in Afghanistan about their perceptions of the importance and challenges of assistance programs for civilians following harm. Official reports, news articles, academic papers and organizational mandates were also consulted for this report.

PROVINCE	INTERVIEWS
Helmand	6
Wardak	2
Herat	17
Kandahar	20
Nangarhar	43
Baghdis	3
Parwan	9
Kunduz	16
Paktia	10
Paghman	12
Kabul	1
Ghazni	4
TOTAL	143

Despite this extensive research, this report is not intended as a statistically sound sample of Afghans harmed in the current conflict. Thus, the information should not be used to extrapolate overall harm to civilians nor overall assistance received. Research evolved such that certain questions were not asked to civilians interviewed in the first two months of research which later seemed pertinent. In addition, limited resources and security restrictions meant that CIVIC was not always able to get as broad a sample of certain groups of conflict-affected civilians as would be preferred. Finally, CIVIC works actively with several of the programs discussed in this report to improve support and assistance for victims of conflict, in particular the Afghan Civilian Assistance Program. While CIVIC made efforts to provide an objective point of view, the close relationship between CIVIC and these programs and similar goals is here fully disclosed and should be taken into consideration.

CIVIC relied on different translators in each province, and sometimes even different translators within a province. Although all translators were given interview questions in advance, the point of asking such questions, and ways to ask them without biasing the response (particularly where perceptual questions about programs, the military, the Afghan Government or the international community were involved), translators may have unintentionally inserted biases. Where these errors were apparent in later translations of recorded interviews, CIVIC struck the relevant portions or the entire interview.

A full glossary of acronyms used in this report is included above. A few commonly used acronyms merit brief explanation here. International Military Forces (IMF) refers generically to all foreign troops in Afghanistan acting under either the International Security Assistance Force (ISAF) mandate or the Operation Enduring Freedom (OEF) mandate. Anti-Government Elements (AGE) includes both Taliban forces and other anti-government groups, and is used interchangeably with “insurgents.”

For the security and privacy of civilian interviewees, all names have been changed except where indicated. Given the sensitivity of compensation issues, many officials or implementing actors did not wish to disclose their identity. Where possible the position or role of these individuals is offered instead. Interviews have been numbered for internal audit purposes. These numbers are referenced in each footnote.

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8 The Henigson Human Rights Fellowships are for Harvard Law School students and recent graduates with a demonstrated commitment to international human rights and an interest in working in the field. They are intended to enable students to make a valuable contribution to human rights during the year of the fellowship and to help students to build human rights work into their careers. The Henigson Fellowships were made possible by a generous gift to Harvard's Human Rights Program from Robert ('55) and Phyllis Henigson.

CHAPTER 1:

Background on Civilian Casualties in Afghanistan

We don't know how the situation can be made better. This is two years we are seeing this. The government and the American forces ... they are all killing the civilian people. And also the opposition forces ... they are fighting and civilians are killed. We don't know where to go. We don't know how to ask them to stop these things, how to stop bombarding. Please don't shoot these people. Please don't bombard. We are not Taliban, we are not opposition. We are not ANA. We don't know how to say we can come to a normal situation.

Ahmad, Interview #42c, July 29, 2008, Herat city, Herat province.

Afghanistan has known conflict more than peace in the last thirty years. The security and stability promised by the international community following the initial US-led invasion in 2001 have failed to materialize. In the past two years, security has deteriorated and civilians have borne the brunt of increased violence. They are not only unintentionally caught between insurgent forces and international and Afghan forces, but in some cases appear to be deliberately targeted or put at greater risk by certain parties. In 2007 and 2008, an estimated 3,641 civilians were killed by parties to the conflict in Afghanistan.¹ The insecurity and increased fighting barred serious progress on humanitarian and development efforts that might have otherwise addressed the concerns of conflict-affected civilians.²

This chapter provides the broader context of how the ongoing conflict impacts civilians, including an overview of the parties to the conflict, the increased hostilities in the last two years and the specific patterns of warfare affecting civilians.

Forces Operating in Afghanistan

On October 7, 2001, the United States launched Operation Enduring Freedom following the Taliban's refusal to hand over Osama bin Laden in the wake of the September 11 attacks. In January 2002, foreign peace-keeping troops arrived in Afghanistan under the UN-mandated International Security Assistance

1 In 2007 and 2008, an estimated 3,641 civilians were killed by parties to the conflict in Afghanistan. United Nations Assistance Mission in Afghanistan, *Civilian Casualty Estimates Update, January – December 2008*, United Nations, 1.

2 United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties, Afghanistan Trends and Developments 01 January – 31 August 2008*, United Nations, 3.

Force.³ ISAF was placed under North Atlantic Treaty Organization (NATO) control in August 2003.⁴ US troops take part in the ISAF mission; however, 23,000 forces, including many paramilitary and intelligence, still operate independently under the OEF counter-terrorism and counter-insurgency mandate.⁵ OEF is currently focusing its operations in the eastern and southern parts of Afghanistan, along the border with Pakistan.⁶

By January 2009, ISAF included 55,100 troops from 41 countries, the majority of which are provided by NATO members.⁷ ISAF's mission is to support the Afghan government, to create a secure environment and support the reconstruction of Afghanistan.⁸ ISAF expanded its presence from Kabul with the establishment of Regional Commands (RCs) to the north (2004), the west (2005) and to the south and east (2006).⁹ ISAF troops carry out their stabilization and support mandate, together with civilian officials, through Provincial Reconstruction Teams (PRTs) located across the country. Each PRT is under the command of an ISAF member country. As of the publication of this report, the United States had responsibility for 12 PRTs; other ISAF members controlled 14 PRTs.¹⁰

Many ISAF and OEF operations are carried out jointly or in consultation with Afghan National Army (ANA), Afghan National Police (ANP) or other Afghan National Security Forces.

International Military Forces (IMF) in Afghanistan will refer to both/either ISAF and OEF troops in this report. IMF are fighting Anti-Government Elements (AGE) that include the Taliban, al-Qaeda and Hezb-e-Islami Gulbuddin, often referred to simply as “insurgents.”

Escalation of the Conflict

Since 2006, instability has grown in Afghanistan with rising AGE insurgent activity. Above all, Afghan civilians have suffered. The year 2008 proved to be one of the deadliest years for civilians since the conflict began in 2001. The UN recorded 2,118 civilian casualties in 2008 alone, an increase of 72 percent from the 1,523 recorded in 2007.¹¹ No accurate estimates of civilian casualties since 2001 exist, although the number is likely well over 8,000 based on available data.¹²

3 International Security Assistance Force, *ISAF History*, North Atlantic Treaty Organization, 2008, <http://www.nato.int/isaf/topics/history/index.html>.

4 Ibid.

5 International Security Assistance Force, *ISAF Troop Placemat*, January 12, 2009, http://www.nato.int/isaf/docu/epub/pdf/isaf_placemat_090112.pdf.

6 Jonathan S. Landay and Nancy A. Youssef, “Obama may not ask allies for more combat troops in Afghanistan,” *McLatchy Newspapers*, January 28, 2009, <http://www.miamiherald.com/news/politics/AP/story/877101.html> (estimating current OEF levels at 30,000 troops).

7 International Security Assistance Force, *ISAF Troop Placement*; International Security Assistance Force, *ISAF History*.

8 International Security Assistance Force, *ISAF Mandate*, North Atlantic Treaty Organization, 2008, <http://www.nato.int/ISAF/topics/mandate/index.html>.

9 International Security Assistance Force, *ISAF Troop Placement*.

10 Ibid.

11 United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties*, 1.

12 The United Nations estimated 3,641 civilian casualties for 2007 and 2008 together; other organizations would probably have higher estimates for these two years. UN estimates are not available for 2006, but the Afghan NGO Security Office (ANSO) – also a reliable independent monitor – estimated 1,315 civilian casualties for that year. Data on civilian casualties is sparse between 2003 and 2006; the level of conflict and corresponding level of civilian casualties was also lower in these years. Estimates for civilian casualties in 2001 and 2002 range from 1,000 to 3,767. United

As the fighting has spread, more communities are suffering and governmental and humanitarian actors are finding it increasingly difficult to address their needs due to security concerns.¹³ According to the United Nations Assistance Mission in Afghanistan (UNAMA): “Large parts of the South, Southwest, Southeast, and Central regions of Afghanistan are now classified by the UN Department of Safety and Security (UNDSS) as ‘extreme risk, hostile environment.’”¹⁴ Staff from aid organizations are increasingly subject to direct attacks and threats. UNDSS recorded 30 humanitarian workers killed and another 92 abducted between January and August 2008.¹⁵

Patterns of Warfare Affecting Civilians

Civilians frequently find themselves caught between AGE and IMF, often without warning. As one farmer from Kandahar province told CIVIC: “We are not happy with the coalition forces or the AGEs. We are stuck in the middle of them and we cannot escape.”¹⁶ Particularly deadly for civilians are cross-fire fights, suicide attacks, the use of human shields, air-strikes, shootings near military convoys and night raids. Landmines and other explosive remnants of war kill and injure civilians both during the conflict and for years after.

Suicide Attacks

AGE are responsible for a growing proportion of civilian deaths, due mainly to their increased reliance on suicide attacks and Improvised Explosive Devices (IEDs). According to UN estimates, 55 percent of civilian deaths (1,160) were caused by AGE in 2008, compared to 46 percent (700) in 2007.¹⁷ In 2008, IEDs and suicide attacks were responsible for 724 civilian deaths, 34 percent of civilian casualties.¹⁸

In 2007, Human Rights Watch (HRW) noted that although a majority of suicide attacks targeted military, they resulted in five times as many civilians killed as military personnel (181 civilians versus 37 combatants).¹⁹ In 2007 and 2008, more of these attacks were undertaken in crowded public areas with disregard to civilian life.²⁰ In February 2008, a suicide attack at a crowded dogfight in Kandahar killed 67 civilians and a high-profile bombing at the Indian Embassy in Kabul that July killed 50 civilians.²¹

Nations Assistance Mission in Afghanistan, *Protection of Civilians*, United Nations, January 2009, 1. Carl Conetta, “Strange Victory: A critical appraisal of Operation Enduring Freedom and the Afghanistan War,” Project on Defense Alternatives Research Monograph #6, January 30, 2002 (estimate of casualties as of Jan. 1, 2002; based on reports from journalists in the Associated Press, Reuters, BBC, Agence France Presse); Prof. Marc Herold of the University of New Hampshire (estimate as of Jan. 1, 2002; based on Western media reports as well as Al-Jazeera and the Afghan Islamic Press). See also BBC News, “Afghanistan’s Civilian Casualties Mount,” *BBC News*, January 3, 2002, http://news.bbc.co.uk/2/hi/south_asia/1740538.stm. Using these estimates, between 5,956 and 8,726 civilians were killed from 2001 – 2008, excluding 2003 – 2006 and other unrecorded deaths. A tabulated list of civilian casualty estimates by various groups for 2006 – 2008 is included in Annex 3.

13 International Council for Security and Development, *Struggle for Kabul: The Taliban Advance*, 5.

14 United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties*, 3-4.

15 *Ibid.*, 4.

16 Alif, Interview #92a, July 22, 2008, Kandahar city, Kandahar province.

17 United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties*, 2.

18 *Ibid.*, 3.

19 Human Rights Watch, *The Human Cost: The Consequences of Insurgent Attacks in Afghanistan*, (New York: Human Rights Watch, April 2007), 4.

20 United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties*, 3 (noting “insurgents have shown an increasing willingness to inflict harm on civilians in such attacks”).

21 *Ibid.* Higher tolls were reported in some media reports. See, e.g., BBC News, “Scores Killed in Afghan Bombing,” *BBC News*, February 17, 2008, http://news.bbc.co.uk/2/hi/south_asia/7249138.stm; BBC News, “Bomb Rocks Indian

SUICIDE ATTACK ON US BAGRAM AIR BASE

Khalil's eldest son, Azim, was working as a translator on the US military base in Bagram. Azim hoped to go to university, but the family could not afford to send him. On the morning of February 27, 2007, he borrowed his father's motorcycle and went to Bagram military base. At 9.30 a.m., a suicide bomber detonated himself during a visit by US Vice President Dick Cheney. Azim was literally blown apart. He was eighteen years old.

Azim's father described to us how his son's "head, body parts, everything was blown to pieces. They were all detached from his body."ⁱ He showed us photographs of his dead son and told us:

We hide these pictures from his mother because she cries whenever she sees them. He was always a good boy. He had good habits, good manners. Not a day of his life was he disrespectful to his mother or me. He was humble, very gentle. Everybody loved him. When he died there were hundreds of pictures of him from his friends. We were planning on his marriage.ⁱⁱ

Other families lost their sons during the same suicide attack. A mother and father told CIVIC how their son had been killed in Bagram on only the third day of his job. Their son, Abdullah, had been excited about his new job because he was desperate to learn English and chatting with foreign soldiers gave him the opportunity to practice. He was hoping ultimately to become an interpreter. He was also eighteen years old.

After his death, the father, brother and uncle went to see the body and told how "when we saw his condition, we fell to the ground. We could not even stand up at the sight of it."ⁱⁱⁱ Abdullah's mother also fought to see his body, but she was not allowed. She told CIVIC: "I pray to God that your mother never sees the sorrows that I have seen, that you are never in the condition that my son was in."^{iv}

i Khalil, Interview #19, June 29, 2008, Bagram area, Kabul province.

ii Ibid.

iii Mahmoud, Interview #15a, May 3, 2008, Bagram area, Kabul province.

iv Bibi Gul, Interview #15b, May 3, 2008, Bagram area, Kabul province.

Human Shields and Terror Tactics

The Taliban and other AGE have increased civilian deaths and injuries by using them as human shields or by drawing fire from IMF without regard to civilian consequences. This is a relatively recent development, as the Taliban previously waged a war of perception with international forces; in the early days of the conflict, public statements by Taliban leadership claimed they were the ones to provide security, protection and welfare to civilians while foreigners were there only to kill and injure civilians. One security official working for UNAMA told CIVIC that, in his personal opinion, "the Taliban [in 2007] was having an internal debate on the issue of civilian casualties" and whether to operate where large

Embassy in Kabul," *BBC News*, July 7, 2008, http://news.bbc.co.uk/2/hi/south_asia/7492601.stm.

amounts of civilians could get killed or injured,²² but that by 2008, many government and international officials became “pretty sure that it’s official policy at the highest level [in the Taliban] to go ahead and kill civilians.”²³

In November 2008, villagers attending an Afghan wedding party in Kandahar province said insurgents entered the area, fired on international forces and then forcibly prevented the villagers from fleeing the area before IMF retaliated with an air-strike that left 37 members of the wedding party dead.²⁴ Other civilians from the provinces of Kandahar and Helmand said that insurgents frequently fired from their villages and then fled, their actions making innocent civilian communities a target for air-strikes and IMF reprisals.²⁵

A recent report by the Afghanistan Independent Human Rights Commission (AIHRC) documents how insurgents are “systematically terrorizing the civilian population with ‘night letters,’ kidnappings, executions (often by beheading) and other crimes.”²⁶

Air-strikes

Air-strikes are the leading cause of civilian deaths and injuries by IMF. In a September 2008 report, HRW documented a near tripling of civilian casualties caused by IMF air-strikes from 2006 to 2007 (from 116 to 321 deaths).²⁷ UNAMA reported that 552 civilians were killed in IMF air-strikes in 2008. This figure included several incidents with significant loss of life, such as the August 22 air-strike on the village of Azizabad where up to 91 civilians were allegedly killed.²⁸ IMF air-strikes in 2008 killed nearly

AIR-STRIKES IN AFGHANISTAN

“I could see all the dead and injured bodies. My son’s wife was horribly injured. And my daughter had been killed already. ... She had been baking bread inside the house when the bomb hit. Due to the blast, she was thrown into the oven. Her body was totally burned. She was taken to hospital, but she died. ... My son had injuries on his feet and the force of the blast had thrown him over the tree. Another daughter – she was blasted into so many pieces that we still have not been able to find her body. She was in too many parts. My neighbors came and helped to drag the bodies out of the house. It was terrible, terrible.” Haji Nasib, lost nine family members and suffered significant property loss due to an IMF air-strike in Wardak province.

Haji Nasib, Interview #95, August 5, 2008, Kabul city, Kabul province.

22 United Nations Department of Safety and Security, Interview #178, July 20, 2008, Kandahar city, Kandahar province.

23 Ibid.

24 M. Karim Faiez and Laura King, “U.S. acknowledges 37 Afghan civilians killed in fighting last week,” *Los Angeles Times*, November 9, 2008, <http://articles.latimes.com/2008/nov/09/world/fg-afghan9>.

25 Basir, Interview #96c, August 25, 2008, Kabul city, Kabul province.

26 Afghanistan Independent Human Rights Commission, *A Campaign of Murder and Intimidation: Insurgent Abuses against Afghan Civilians*, (Kabul: Afghan Independent Human Rights Commission, December 2008), 2.

27 Human Rights Watch, *Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan*, (New York: Human Rights Watch, September 2008), 2.

28 These figures remain disputed. The Afghan Government and UNAMA report 91 civilians killed. The US military reports a total of 55 killed, 33 civilians and 22 militants. See Carlotta Gall, “Evidence Points to Civilian Toll in Air Raid,” *The New York Times*, September 7, 2008, <http://www.nytimes.com/2008/09/08/world/asia/08afghan.html>; United Nations, “At least 90 Afghan civilians killed in recent military operations, says UN,” *UN News Centre*, August 26, 2008, <http://www.un.org/apps/news/story.asp?NewsID=27816&Cr=Afghan&Cr1>; Brig. Gen. Michael Callahan, “Executive Summary of AR 15-6 Investigation into the new information relative to civilian casualties from engagement by U.S. and Afghan Forces on 21-22 AUG 2008 in Azizabad, Shindand District, Herat Province, Afghanistan,” United States Central Command, October 1, 2008, 1.

twice the number of civilians harmed in 2007, and almost five times as many as in 2006.²⁹ As HRW reported, the air-strikes have also led to “significant destruction of civilian property and have also forced civilians to flee and vacate villages, adding to the displaced population in Afghanistan.”³⁰ High death tolls from air-strikes have incited significant anger among the Afghan civilian population.³¹

Shootings near IMF Convoys

Civilians are required to stop, or proceed slowly but maintain their distance, when approaching IMF checkpoints or when coming near foot patrols or convoys. There are illustrated signs along the roads and on the back of convoys posting these rules but civilians do not always remember to stop or do not understand the warnings. Miscommunications result in civilian deaths and injuries. According to UNAMA, 41 civilians were killed in these “escalation of force” incidents in 2008.³²

ISAF troops have recently begun to shine a laser beam on civilians to warn them to stop, but at first many civilians had no idea what this meant. One man shot by a US convoy in the eastern province of Jalalabad at the beginning of 2008 remembered: “I got a signal from ISAF, but it was a laser. It was the middle of winter and I didn’t notice it. I didn’t know what it meant. They usually give a horn honk, which is known as a signal to stop.”³³

In other cases, civilians say they stopped but due to confusion or misunderstanding were perceived as a threat and were shot.³⁴ Sometimes ISAF troops will shoot more readily if the car approaching them meets the profile of a known security threat, even if that car is not being overtly aggressive.

Night Raids

Civilians are killed and their property damaged by the IMF and other Afghan security or military forces during “night raids.” Witnesses typically report groups of armed men in military uniform, usually a mixture of Afghans and foreigners, entering houses at night and sometimes forcibly. According to investigations by the AIHRC: “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.”³⁵

Night raids have resulted in the death of family members, prolonged detention of males in the family, injuries, property destruction and other losses.³⁶ Not only do civilians protest that innocent individuals are being killed or arrested, they condemn the lack of cultural sensitivity. In a culture where women are generally hidden from public view and where the home is a fiercely private domain, such raids by foreigners have caused deep resentment. As one man from a village in Kandahar province told CIVIC: “Really, the biggest need is for the foreign troops to educate themselves more about the Afghan culture.

29 United Nations Assistance Mission in Afghanistan, *Protection of Civilians*, 3.

30 Human Rights Watch, *Troops in Contact*, 5; Internal Displacement Monitoring Center, *Afghanistan: Increasing hardship and limited support for growing displaced population*, Norwegian Refugee Council, October 28, 2008, 10.

31 Afghanistan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces*, 10.

32 United Nations Assistance Mission in Afghanistan, *Protection of Civilians*, 3.

33 Mohddin, Interview #34, July 6, 2008, Jalalabad city, Jalalabad province.

34 Ibid.; Torjan, Interview #21, July 2, 2008, Kunduz city, Kunduz province.

35 Afghanistan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces*, 18.

36 Ibid., 3 and 22-23.

The night raids in particular are really bad. They are going into people's houses and taking people and this is not right.³⁷

Landmines and Other Explosive Remnants of War

Many civilians are injured after combat by so-called explosive remnants of war (ERW) including land mines, cluster munitions and other unexploded ordnance (UXO), all left behind over 30 years of conflict.³⁸ The 2006 National Disability Survey in Afghanistan classified 2.7 percent of the population as having a disability, including approximately 60,000 landmine survivors.³⁹ Mine clearance and community education have helped to decrease the number of casualties from mines or ERW. Two years ago the casualty rate was 150 persons killed or injured per month; now, according to the UN Mine Action Centre for Afghanistan (UNMACA), it is closer to 50 - 60 injured or killed per month.⁴⁰ In information released in February 2009, UNMACA recorded 753 civilians injured or killed by EWR in 2008; men were eight times more likely to be harmed (673 men involved in incidents versus 80 women), and children represent 57 percent of those civilian victims.⁴¹

The majority of ERW still threatening civilians in Afghanistan were left by pre-2001 conflicts.⁴² Nonetheless, the initial 2001 US air campaign against the Taliban dropped significant numbers of cluster munitions and other ERW, particularly in the Herat and Kandahar areas.⁴³ Where they do not result in

CHILDREN INJURED BY LANDMINES

On October 18, 2001, fourteen-year-old Khaled was collecting wood with his cousin when they came upon an unexploded cluster munition, a weapon used by US forces in the invasion:

My cousin found something and brought it to me. I said to him don't touch that. He thought it was good metal and when he touched it, it exploded. All I remember is a very big sound and my head felt damaged. I remember seeing [my cousin's] face. It looked burned and bloody. ... When I woke up [in the hospital], I saw people in front of me, but I didn't see my leg in front of me. I wondered what had happened.

Another young man from the same city, Farhad, was 9 years old when he was injured by a cluster munition dud in the same area. "All the meat of my legs were ripped up and now I have to walk using a stick. ... My brother was also damaged from the bomb, but he can walk. His chest, his arm and his legs have some wounds."

i Khaled, Interview #49, July 30, 2008, Herat city, Herat province.

ii Farhad, Interview #44b, July 30, 2008, Herat city, Herat province.

37 Gol, Interview #89, July 21, 2008, Kandahar city, Kandahar province.

38 International Campaign to Ban Landmines, *Landmine Monitor: Afghanistan 2008*, <http://www.icbl.org/lm/2008/countries/afghanistan.php>.

39 Ministry of Labor, Social Affairs, Martyrs and Disabled, *Afghanistan National Disability Action Plan 2008-2011*, (Kabul: Government of the Islamic Republic of Afghanistan, May 2008), 2.

40 Susan Helseth, Senior Technical Advisor, Victim Assistance & Mine Risk Education, UNMACA, Interview #121, June 10, 2008, Kabul city, Kabul province.

41 United Nations Mine Action Centre Afghanistan, "Mine and UXOs/ERW Data 2008," February 10, 2009, Copy on file with author.

42 Farhad, Interview #44b, July 30, 2008, Herat city, Herat province.

43 Jan Ejeklint, *Cluster Munitions in Afghanistan; implication for international action and regulation*, (Kabul: Swedish Committee for Afghanistan, April 2006), 27; See also Human Rights Watch, *Fatally Flawed: Cluster Bombs and*

death, incidents involving cluster submunitions and other ERW usually leave civilians injured or severely maimed. Between 2001 and 2005, the International Committee of the Red Cross (ICRC) documented 328 incidents where civilians have been affected by cluster munitions.⁴⁴ The actual figure is probably much higher; the Swedish Committee for Afghanistan notes that as many as 50 percent of incidents go unreported, particularly where the result is death rather than an injury that would be treated and documented at a medical facility.⁴⁵

IMF air-strikes and past conflicts are not the only source of mine and ERW issues. In May 2007, five children were killed by a mine that, according to Afghan police, had been recently laid by the Taliban.⁴⁶

Statistics like those included above are useful, but cannot capture the devastation for Afghan civilians who lose a loved one, are injured in a way that permanently disables them, lose their homes or livelihood, or are displaced. Moreover, estimates of civilian casualties alone do not begin to describe the struggle Afghan families face trying to recover from these losses. The following chapter will describe that struggle in greater depth, laying the groundwork for an analysis of compensation and assistance mechanisms.

their use by the United States in Afghanistan, (New York: Human Rights Watch, December 2002), 15.

44 Jan Ejeklint, *Cluster Munitions in Afghanistan; implication for international action and regulation*, 34.

45 *Ibid.*, 32-33.

46 International Campaign to Ban Landmines, *Landmine Monitor: Afghanistan 2007*, <http://www.icbl.org/lm/2007/afghanistan.html>.

CHAPTER 2:

The Human Costs of War

News reports and documentation efforts have focused primarily on counting civilian casualties. An accurate count is important to measure the reach of the problem and can pinpoint a need for improvement in estimating potential civilian losses by international forces, an obligation under international law. But numbers fail to capture the short and long term suffering families face in trying to rebuild their lives. CIVIC spoke with many civilians who years after being harmed still experienced grief and psychological trauma from the incident, preventing them from resuming a normal life.

Beyond significant emotional suffering, a single incident may have serious long-term economic and social repercussions. The Afghanistan National Development Strategy placed “war survivors” as one of two “priority groups” needing improved social protection.¹ Civilians told CIVIC how losses from conflict severely damaged or destroyed their livelihoods and economic support bases. Medical costs and

funeral expenses often forced civilians to spend their savings and/or take out loans that would take years to pay off. Communities struggled to absorb the impact when multiple families were hit, or when they lost a community leader or community infrastructure. Families and communities across Afghanistan, many already stretched thin, were forced to assume the additional burden of supporting dependents of the deceased, or relations whose homes or communities had been destroyed.



Khalil, holding a photo of his son Azim. Azim was killed on February 27, 2007 in a suicide attack on Bagram Air Base in Kabul (story on page 10 of this report). *Photo courtesy of Erica Gaston*

This chapter discusses five situations confronting civilians affected by the war: 1) the loss of a family member; 2) the injury of a family member; 3) living with an injury or disability; 4) living as an internally displaced person or refugee; and 5) wider community ramifications.

¹ Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy, Social Protection Sector Strategy*, 55.

Loss of a Family Member

Over two-thirds of the civilians interviewed by CIVIC have lost family members during the current war. The last two years saw a sharp rise in civilian casualties, leaving more families destroyed and grieving. The death of a family member puts significant financial strain on civilians in Afghanistan, including oft-overlooked expenses for funerals and remarriage. The burdens are particularly acute following the death of a principal income earner and for vulnerable social groups such as widows and orphans.

Providing After the Loss of a Breadwinner

Many of the civilians killed in Afghanistan were adult men, the principal breadwinners for their families. When a breadwinner dies, it is customary in Afghanistan for other family members to provide for the surviving dependents. With resources and jobs in short supply, some survivors are now finding it impossible to feed all the people under their care.

A survivor from the July 17, 2008 bombing of the Zerkoh village in Shindand lost both his brothers in the air-strike. He must now support not only his own family but the family of his two brothers – a total of 25 people – despite having lost much of his property in the bombing.² Similarly, an elderly man, Said told CIVIC how he became the sole income-provider for a family of twelve after his son was shot by ISAF forces for approaching a cordoned-off security area. Said described how he worked as a daily wage earner but “I can’t find enough money for my family. I’m in trouble.”³

Farhad, a 70-year old man from Kandahar province told us how his son — the sole income earner for the family — was killed in a suicide attack directed at ISAF forces. Now ten family members were left without an income, including five children under the age of four. Farhad said they were forced to “borrow things such as wheat and vegetables from relatives and it is hard to survive day to day ... we rely on our relatives a great deal.”⁴

The necessity to earn money after the death of a breadwinner also affects the education of children who are forced to find jobs rather than attend school. Two young brothers, Karim and Hasan, described how their father had been riding in a rickshaw on his way to a wedding party when a suicide bomb directed at a military convoy exploded. International forces returned fire and the boys’ father was killed. Although they were still only in high school, the brothers dropped out of school and started work full-time so they could support their family of seven brothers and two sisters.⁵

Finally, the death of a son or brother who assisted in a family business also leads to a reduction in income or a significantly added workload for the remaining breadwinner. One boy who helped his father work an ice-cream truck in Kandahar was killed by a suicide bomb when he went to get a haircut. The father, Nazar, said he could not cope without the assistance of his son: “I wasn’t able to keep working because my job requires a lot of physical exercise. I have to move and chop the ice and move the truck. My boy was giving ice cream to customers and helping me. I would get some free time when my son was there.”⁶

2 Masood, Interview #42b, July 29, 2008, Shindand district, Herat province.

3 Said, Interview #83, July 22, 2008, Kandahar city, Kandahar province.

4 Farhad, Interview #79, July 20, 2008, Kandahar city, Kandahar province.

5 Karim and Hasan, Interview #24, July 2, 2008, Kunduz city, Kunduz province.

6 Nazar, Interview #84, July 22, 2008, Kandahar city, Kandahar province.

Surviving as a Widow

According to an October 2008 report by the Food and Agriculture Organization (FAO), “widows, especially in rural areas, remain one of the most vulnerable groups in the country. ... The absence of food security has had a particularly negative impact on rural women, who are at the bottom of the patriarchal ladder of access to resources.”⁷ Women are excluded from most types of employment in Afghan society.⁸ Typically, the only way for widows to support their families is to be taken in by other members and/or marry one of the deceased husband’s brothers.

CIVIC interviewed Ara, a woman whose husband and son were killed in a suicide attack in November 2007. Her husband ran a grocery shop where her son had also worked. The deaths were a traumatic experience: “When the blast happened, pieces of the flesh thrown from the blast landed in our yard. I ran down to [where the blast had happened] to see.”⁹ Ara now faces a significant economic challenge:

“The big problem is that there’s no male in our family now. Only one very old father who cannot work much. I have five daughters to support. I’m not sure what else we can do. I am not able to think of these things or what we can do. We are drowning in agony and misery.”¹⁰

Another widow, Samira, managed to find some employment after her taxi-driver husband was killed in a US aerial bombardment in 2001. Her income, however, was insufficient to support the family and she was forced to rely on the generosity of various relatives. She told us how it was difficult to support all her children and that she started washing clothes, housekeeping and taking any other small job to earn money. Eventually, she could not survive alone because “our family could no longer afford a home of our own and [so] we were passed from one relative to another.”¹¹

Samira described how the economic situation is causing her children to suffer:

If my husband was alive my children would have everything like other girls and boys. They ask me sometimes for things... normal things that all



Sewing factory in Kunduz city where widows and female children can work to help their families. *Photo courtesy of Erica Gaston*

7 Internal Displacement Monitoring Center, *Afghanistan: Increasing hardship and limited support for growing displaced population*, 77.

8 Ibid., 61 (noting that the “economic exclusion” of widows and their children together with their “social marginalization” complicated the reintegration of IDP and returnee widows); Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy, Social Protection Sector Strategy*, 27.

9 Ara, Interview #17, May 19, 2008, Kabul city, Kabul province.

10 Ibid.

11 Samira, Interview #8, March 13, 2008, Kabul District 11, Kabul province.

children ask for... a son would ask his father for a bicycle, a computer, a daughter for pretty things. Everyone has a wish. I wish my husband was alive so they could have all these normal things. So they could have a normal childhood.¹²

Orphans

Orphans in Afghanistan find themselves in a desperate situation. United Nations Joint Programme on HIV/AIDS (UNAIDS) estimated that, through 2007, 2.1 million children had lost a father, a mother or both.¹³ There are likely even more now, given increasing rates of civilian casualties. These children are extremely vulnerable members of society and, when they do not have extended family members to provide for them, they frequently end up in orphanages or on the street.

CIVIC spoke with children in Jalalabad orphaned by the July 2008 IMF air-strike that hit a wedding party. One eight-year-old boy called Rafullah lost both his parents in the same air-strike and now lives in social services. His three sisters are also in care.¹⁴ Another ten-year-old girl called Magwell described how she lost both her mother and her father in the air-strike, leaving eight daughters as orphans. Three of the daughters are married, but the other five have been taken to a social services organization caring for children with nowhere else to go.¹⁵ Both of these children were angry at the death of their parents and understandably did not have a positive view of the international community.

Cost of Funeral and Remarriage

The burden of funeral and remarriage expenses was mentioned by a number of individuals interviewed by CIVIC.

Nasrallah from Jalalabad lost his father in a March 2008 suicide bombing and subsequent shooting by IMF forces. His father was caught in the gunfire while walking to a shop. Nasrallah told us how “the cost of funeral expenses was very difficult for the family to cover.”¹⁶ All seven brothers had to contribute money.

In another suicide bombing, Ahmed lost his wife who was five-months pregnant with their first child. Ahmed was not only emotionally distraught, but suffered financially because of the funeral expenses and the cost of remarriage.¹⁷

Two or three men whose wives had been killed mentioned the financial burden of remarriage.¹⁸ While it might seem callous to talk about the expense of remarriage in the wake of tragedy, this is the reality for many men given the Afghan social structure. For them, remaining unmarried was unthinkable, particularly if they had small children needing care.

12 Ibid.

13 United Nations Joint Programme on HIV/AIDS, “Orphan estimates,” United Nations Joint Programme on HIV/AIDS, December 2008, <http://www.childinfo.org/orphans.php>. UN official definition of an orphan includes a child who has lost his or her mother, father or both.

14 Rafullah, Interview #71a, August 6, 2008, Jalalabad city, Nangarhar province.

15 Magwell, Interview #71b, August 6, 2008, Jalalabad city, Nangarhar province.

16 Nasrallah, Interview #54, August 5, 2008, Jalalabad city, Nangarhar province.

17 Ahmed, Interview #55, August 5, 2008, Jalalabad city, Nangarhar province.

18 Ibid. Nasrallah, Interview #54, August 5, 2008, Jalalabad city, Nangarhar province.

Injury of a Family Member

Estimates of civilians killed by the conflict in Afghanistan show only one slice of the picture. For every Afghan killed, as many or more are injured by conflict, often with equally devastating consequences for their families. Many who are injured can no longer work or contribute to their family's livelihoods because of their disabilities. This loss of income or livelihood support, compounded with initial or continuing expenses for medical treatment, can be devastating for the many Afghan families already struggling economically. The emotional costs of injuries are impossible to quantify.

Injury of a Breadwinner

Families suffer significant financial burdens when a primary breadwinner is injured such that he (and occasionally she) is no longer able to earn a wage or contribute to the family livelihood. The 2006 National Disability Survey in Afghanistan found that 53 percent of men with a disability over 15 years old were unemployed, compared with 25 percent of unemployed men in the general population.¹⁹

One farmer, the sole provider for his family, told us how he was injured in a suicide attack and could no longer work as effectively in the fields. His family felt the impact, as he brought far less produce home.²⁰

Ziaudin earned an income selling material from a cart before being injured in a suicide attack. Pieces of shrapnel were still embedded in his face and shoulders when CIVIC spoke with him. Ziaudin said the pain in his arms makes it impossible for him to push the cart so he can no longer make an income: "I was in the hospital for three days. I am the only breadwinner in the family and so I have taken half a piece of bread this morning and then I haven't taken anything."²¹

Cost of Medical Expenses

Expensive hospital bills and continuing treatment of an injury create heavy burdens on many Afghan families already struggling to survive. Such expenses put families into debt, forcing them to sell land and livestock or personal belongings, such as cars and motorbikes, in order to raise cash. One man whose son was injured described how, "in order to pay for the hospital treatment, we sold half our land to pay for the bills."²²

Another man described how he has had to pay for medical treatments for every member of his family for the past seven years. Although he and his wife sustained relatively minor injuries, his now-teenage daughter, Miriam, has shrapnel wounds that severely disfigured her abdomen and one of her legs:

My wife was injured, my daughter was injured, I am injured.... From the time of the incident [Oct. 22, 2001] until now my family has been under treatment. When I earn any money, I spend it on my family's treatment. My house, my home, my life are getting worse all the time.²³

19 Ministry of Labor, Social Affairs, Martyrs and Disabled, *Afghanistan National Disability Action Plan 2008-2011*, 19.
 20 Abdul, Interview #42d, July 29, 2008, Herat city, Herat province.
 21 Ziaudin, Interview #43, July 22, 2008, Herat city, Herat province.
 22 Alif, Interview #92a, July 22, 2008, Kandahar city, Kandahar province.
 23 Ziaudin, Interview #43, July 22, 2008, Herat city, Herat province.

This father also worried his daughter would never marry or have a normal life. Miriam would probably remain financially dependent on her aging parents.

Like Miriam, many injured civilians become dependent on the full-time care and support of their families. This naturally puts financial and emotional pressure on the family member-turned-caretaker.



Families are often left struggling to find appropriate medical care for family members, including children. *Photo Courtesy of Rebecca Agule*

One man who lost sixteen members of his family in an air-strike in Kandahar described the long-term care now required for both his brother and sister, injured in the same attack: “My sister cannot eat by herself anymore. And my brother lost one leg and is paralyzed in the other leg. He is in a wheelchair.”²⁴

Civilians Living with an Injury or Disability

Increasingly, international organizations, non-governmental organizations and the Afghan government are developing broader medical, social, and vocational services for those with disabilities, but the network of support for the disabled, including those disabled by conflict-related injuries, is thin. In Afghanistan, life is hard enough for the perfectly healthy; there are few extra resources or accommodations for the disabled. Additionally, stigmas against the disabled create significant social barriers against holding a job, going to school, marrying or other aspects of daily life.

Alberto Cairo, an orthopedic doctor associated with the International Committee for the Red Cross who has been treating amputees in Afghanistan for 19 years, has emphasized the problems facing Afghan civilians living with a disability:

To be disabled is never easy. [It’s] not easy in Europe ... we can imagine in Afghanistan. The future of the disabled, of the amputees in Afghanistan is going to be a very difficult condition for many years.²⁵

Poverty and Inadequate Treatment for Injuries

The overall weakness of the health system offers few opportunities for follow-up treatment after an injury – including operations, prosthetic limbs or physical therapy. A very small majority of Afghan families can afford to send their relatives abroad, so individuals live with crippling injuries that in other countries could be entirely overcome.

24 Alif, Interview #92a, July 22, 2008, Kandahar city, Kandahar province.

25 International Committee for the Red Cross, “A decade of assisting Afghan disabled - interview with Alberto Cairo,” Segment 3, 0:56 seconds, June 16, 2003, <http://icrc.org/web/eng/siteeng0.nsf/htmlall/5nkclc?opendocument>.

One man named Bilal suffered shrapnel wounds to his eyes when he was 19 years old. Six years later, he was finally able to travel to India to have his eyes examined. The doctor told him his vision could have been saved if he had been treated immediately or even a few years later, but it was now irreparably damaged.²⁶

Many organizations and hospitals in Afghanistan seek resources to provide free or subsidized treatment for injured survivors, but the overwhelming need and widespread poverty mean their limited resources cannot keep up with the immediate treatment and long-term care civilians require due to the conflict.

A boy named Khaled, injured by a cluster munition when he was 14 years old, described how he lost his leg because the local doctors were unable to treat his injury and his family could not afford to send him abroad:

My father had already died when I was two so we were very poor. My mother went to relatives when I was injured to ask for some money. ... The doctors said that if we could go to foreign countries they might be able to treat my leg and not cut it but here the doctors did not have the skill. We did not have the money to do this though so they amputated my leg.²⁷

The ICRC has noted that the “rehabilitation needs of mine survivors and other people with disabilities are seldom met.”²⁸

Social Stigma and the Denial of Education

In Afghanistan, the way the disabled are treated by society can be as limiting for the injured as the injuries themselves. The man who lost his eyesight to shrapnel wounds above was well educated, especially for an Afghan. Though blind, he might have found work, but his family never considered the option. “Family and clan ... they tend to take over and protect the person in need. That’s OK. The problem is they don’t give the disabled the chance to rebuild their life,”²⁹ Alberto Cairo, the ICRC orthopedic doctor, said. “As a result of attitudes like this, Bilal spent most of his days thinking bitterly about his lost future and listening to the radio,” his family said.³⁰

An estimated 196,000 school-aged children are disabled, about 20 percent as a result of conflict.³¹ Social barriers compound physical injuries and keep them from a bright future. Parween Azimi has been working on inclusive education in Afghanistan for the past 20 years and described how: “It’s a struggle just to get the school management, or the Ministry of Education to allow [children with disabilities] to go to school. People think that they cannot be accommodated.”³² According to the 2006 National

26 Bilal, Interview #3, February 20, 2008, Gardez city, Paktia province.

27 Khaled, Interview #49, July 30, 2008, Herat city, Herat province.

28 ICRC cited in International Campaign to Ban Landmines, *Landmine Monitor: Afghanistan 2007*.

29 International Committee for the Red Cross, “A decade of assisting Afghan disabled - interview with Alberto Cairo,” Segment 3, 1:20 minutes.

30 Family of Bilal, Interview #3, Feb. 20 2008, Gardez city, Paktia province.

31 Parween Azimi, “UNESCO-MOE Focal Point for Inclusive Education,” (Kabul: United Nations Development Program, June 29, 2008).

32 Ibid.

Disability Survey in Afghanistan, 73 percent of school-aged children with disabilities (above 6 years of age) received no education, versus an estimated 51.4 percent of children without disabilities.³³

Soraj was 11 years old when he lost both his legs and was severely disfigured by a cluster munition dud in Herat city.³⁴ When the doctor first saw him, he recommended to his parents they not treat the boy and instead give him an injection to kill him. “One of the doctors, a surgeon, thought it was not good in Afghanistan to have a life with this type of body.”³⁵ His parents fortunately went against the doctor’s advice, but they must now fight to get him any help or chance of a normal life. Soraj told us how after the incident the headmaster refused to let him return to school and only after Soraj personally convinced the schoolmaster was he allowed to go:

At that time the headmaster also had a disability. I told him: now you have lost your hand but you are the headmaster. And I promise to be the same as you: I can improve, I can learn. In the future, for example, I could work as an accountant or in a shop if I know how to read, how to write.... It was my right to go to school and I don’t want anybody to put my rights under their feet.³⁶

Now a young adult, Soraj says he only wishes there were more agencies and programs to help people like him develop their education and job skills, so they had an alternative to “begging in the streets.”³⁷

Loss of Property

Damage or destruction of civilian property due to the ongoing conflict is even more pervasive than civilian deaths and injuries. Decades of conflict in Afghanistan, the overall poor level of development, and the geographic isolation of many communities combine to make property loss a particularly severe and long-term hardship. Many families do not have the means to rebuild a home or replace livestock or other livelihood supports. Even where they do, it may take a long time to get materials given supply and transport limitations across the country. In the meantime, these property losses can leave families homeless and destitute, leading to malnutrition or other suffering.

Destruction of Family Home

Air-strikes are one of the most prominent causes of home destruction. In particular, Human Rights Watch found that responsive air-strikes called in to support ground troops are less accurate and increase the risk to civilian property.³⁸ Insurgent tactics of firing from homes or villages and then fleeing before IMF air retaliation has led to the destruction of many homes, particularly in the south.³⁹

When homes are destroyed, civilians must either find large sums of money to rebuild or they become

33 Ministry of Labor, Social Affairs, Martyrs and Disabled, *Afghanistan National Disability Action Plan*, 26.

34 Soraj’s name has not been changed to protect his identity, as have most of the other interviewees. Soraj has been very outspoken about the effects of cluster munitions, and has taken a public role in the movement to ban cluster munitions. See Patrizia Pompili, “My Story, by Soraj Ghulam Habib,” November 26, 2007, <http://blog.banadvocates.org/index.php?post/2007/11/02/Soraj-Ghulam-Habib>.

35 Soraj, Interview #44a, July 30, 2008, Herat city, Herat province.

36 Ibid.

37 Ibid.

38 Human Rights Watch, *Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan*, 3.

39 Ibid., 25-28.

refugees or internationally displaced persons (IDPs). Moreover, when a house is destroyed gone too are all the family's personal possessions, livestock and vehicles. Many families told us they had to start again from scratch, with just the clothes on their back.

CIVIC interviewed one family in Herat whose house was destroyed in an air-strike that also killed the father:

The house was completely destroyed and burned. ... After the incident, we lost everything: our two cows were killed, the motorbike was blown up, our six turkeys were killed. We were only able to bring out half of two carpets. Then, after the incident, we moved to our aunt's house in another village in Herat province. When we came to [our] aunt's house, there was just one small room. We started from zero. Then we decided to move back to near where we lived before, where we had some land. And we were living in two small shops – in metal containers. We were living like this for six months. Life was tough.⁴⁰

Another man, injured in an air-strike that also destroyed most of his home, explained how the cost of rebuilding put him into significant debt:

Some of the relatives assisted in rebuilding [the house] and we also took a loan from other relatives. Then after one year [when my injuries were a little better], I started working again so that I could pay. The kitchen was totally destroyed. We still don't have a kitchen and we want to rebuild it.⁴¹

Destruction of Family Business

The economic consequences can be equally dire when family businesses or other livelihood support is destroyed. Civilians who lost their livelihoods repeatedly told CIVIC that without a means of income they could not support any injured or dependents of the deceased or otherwise rebuild their lives.

Haji Mullah in Kandahar owned a nursery where he grew and sold potted plants. In April 2007, a suicide bomb exploded outside his shop:

My nursery shop was damaged and about 800 flower pots were destroyed at a cost of around \$3,200. This was my whole budget. I was selling them and getting money to feed my family. But now although I have started the business again, I have had to borrow money to do it and I became poorer.⁴²

Apart from the specific damage to his stock, Haji Mullah explained that the tense security situation was ruining his ability to make money: "Our business depends on the security situation – many foreigners from different agencies used to come and buy a lot of flowers but now they don't show up any more."⁴³

40 Amanullah, Interview #94, July 31, 2008, Herat city, Herat province.

41 Bashir, Interview #93, July 31, 2008, Herat city, Herat province.

42 Haji Mullah, Interview #86, July 22, 2008, Kandahar city, Kandahar province.

43 Ibid.

A man called Hafizullah had his business totally destroyed as a result of the fighting. He lived in a remote village in Helmand Province before he and his family fled to Kandahar city. Hafizullah was a doctor and a businessman. He owned a clinic and twenty shops in the area around his village. In September 2006, an air-strike by the IMF forces destroyed everything he owned. This left Hafizullah and his three sons without a job or income:

I lost approx 2,000 trees, six houses, the clinic and twenty shops. ...I have three sons and one son was helping me in the clinic when it was destroyed. Now I have nothing to do and I have no experience in other areas so I can't start another business. I also can't start anything without any money. ... I was in health and I was a teacher. There are now no jobs for me. My friends and family are providing me with assistance now.⁴⁴

In an agrarian society like Afghanistan, air-strikes damage agricultural land and livestock, not only destroying a family's livelihood but taking away their basic means of survival.

One man named Abdul who fled from air-strikes in the Shindand valley of Herat told CIVIC how his farm and livestock were destroyed by an air-strike:

I had cows, sheep, goats, they were all killed. Now I have nothing for my family. I could still manage to look after my family if only I had that.⁴⁵

Abdul's neighbor, who fled from the same strikes had similar concerns:

It is terrible that I am in the country, but I am living like a refugee. I don't know where to go. I don't know how to live. I am supporting in part more than forty members of my family. I lost my tractor, my property. Maybe I will go for begging.⁴⁶

Living as an Internally Displaced Person or Refugee

Persistent fighting and insecurity force many families to flee their homes and communities. With nowhere to live, they become refugees or (IDPs). According to the Norwegian Refugee Council (NRC)'s Internal Displacement Monitoring Center, ongoing conflict has led to the displacement of tens of thousands of Afghans each year since 2006.⁴⁷ An estimated 44,000 civilians were displaced in the first half of 2007 alone.⁴⁸ They are now one of the most vulnerable groups in Afghan society for, as the NRC Secretary-General has explained, "[t]hey may not only have lost their homes, family members and livelihoods, but they are receiving practically no support. The tragedy for these people is that as their needs are rising,

44 Hafizullah, Interview #90, July 21, 2008, Kandahar city, Kandahar province.

45 Abdul, Interview #42d, July 29, 2008, Herat city, Herat province.

46 Hayatullah, Interview #42a, July 29, 2008, Herat city, Herat province.

47 Internal Displacement Monitoring Center, *Afghanistan: Increasing hardship and limited support for growing displaced population*, 9 (noting "The conflict is estimated to have displaced tens of thousands of people every year since 2006, but their number has been impossible to determine due to a lack of access to the conflict zones.").

48 Ban Ki-Moon, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, United Nations, October 2007, 2.

our ability to reach them is dramatically decreasing.”⁴⁹

IDPs CIVIC interviewed told a common story: fleeing in response to immediate fighting or bombing, often grabbing what few possessions they had, and returning (if possible) to find everything destroyed or stolen. “We left that same night. Some of our family members left even their shoes.... After four days I went back to the site but when I went to see my house, it was destroyed and nothing was there.”⁵⁰

The decision to flee, even for a few weeks, carries heavy economic and personal consequences. Away from their homes, communities, and their family’s source of income, many refugees and IDPs depend on handouts or day labor to survive. “There are about 20-30 individuals who moved to Kandahar city who are in my family,” one man told us. “When we were in the village, we made a living by working on the land. We had land and gardens. Our family all assisted in this. Now I have one son who has gone to Iran and he works there and sends the money back to the family. That’s how we manage to survive here but it is difficult.”⁵¹



IDP camp in Kabul. Most of the displaced here fled from Helmand province, the sight of still fierce fighting. *Photo courtesy of Erica Gaston*

Some IDPs and refugees are able to take shelter with friends or family in safe areas, but many more are forced into formal or informal refugee camps across Afghanistan and in neighboring countries. With rising violence, these camps are increasingly overcrowded and under-resourced. Families living there for weeks or months at a time are focused on basic survival needs, unable to get adequate health care, education, work opportunities or other services they might need to rebuild their lives.

According to one woman in an IDP camp outside of Herat city:

Our life is very difficult compared to up there in the village. We used to have possibilities up there... we could walk and chat with our neighbors. You know if relatives are together they can solve their problems together. For example, all our relatives had agriculture, had fields, had melons. We could just go to their fields and eat them when we were hungry. Now we have nothing. I have all these children and I cannot provide for them.⁵²

The Director of the Department of Refugees and Repatriation (DORR) in Herat estimated that in the

49 Siri Elverland, “Press Release: Worsening Situation for IDPs,” Norwegian Refugee Council, October 28, 2008, <http://www.nrc.no/?did=9348233>.

50 Ahmad, Interview #42c, July 29, 2008, Herat city, Herat province.

51 Abdul Rahim, Interview #91, July 21, 2008, Kandahar city, Kandahar province.

52 Malali, Interview #45, July 30, 2008, Maslakh Refugee Camp, outskirts of Herat city.

three IDP camps in the Herat city area, 60-65 percent could not support the basic needs of their family.⁵³ Similar problems exist in IDP camps around Afghanistan – and particularly in the east of the country where many civilians are being forced to leave refugee camps in adjacent Pakistan, either because of increased fighting there or because of Pakistani government decisions.⁵⁴

Many civilians driven from their homes are able to return within a matter of weeks while others find the security situation too perilous to return for months or even years. Some IDPs have not been able to return because Afghan Anti-Government Elements have laid anti-vehicle and anti-personnel landmines on the roads leading to their homes.⁵⁵ Economic costs can also play into the decision. One mother in Herat said they spent almost all of their money in the original flight from their home. If they returned to the area and fighting broke out again, she said, they would not have enough money to leave again.⁵⁶

If individuals are unable to return to their villages, they generally face severe difficulties settling in other parts of the country. According to the Afghanistan IDP Task Force of 2008, even though Article 39 of the Afghan Constitution recognizes the right of Afghans to travel or settle in any part of the country, local opposition to outsiders often prevents IDPs from resettling in other areas.⁵⁷

Wider Community Impacts

Civilian losses, such as a school, road, water system, or bridge, have far-reaching and community-wide impact. If an elder or teacher is killed, it can take a generation for the community to recover from the loss. When incidents affect many families in the same community, the burdens are shared and can have long-term consequences. Patterns of fighting in a given area limit available employment opportunities, international and local aid or government services.

Compounding physical or livelihood losses are the emotional and psychological burdens for a community trying to go about its ordinary, daily business. Nighttime searches by international forces or general intimidation tactics by AOG can create a climate of fear across an entire community. Frequent bombings or ongoing fighting can leave even those without tangible losses with feelings of hopelessness, anger, and despair.

Intimidation and Loss of Community Leaders

Many community leaders, doctors, and teachers living in areas of Taliban control are subject to Taliban intimidation and are unable to perform their leadership roles within the community.⁵⁸ Society as a whole suffers the negative effects. In November 2007, a suicide bomber targeting Italian troops

53 Director, Department of Refugees and Repatriation-Herat, Interview #135, July 30, 2008, Herat city, Herat province.

54 Antonio Guterres, "Statement by Mr. Antonio Guterres, United Nations High Commissioner for Refugees, to the United Nations Security Council," New York, January 8, 2009, <http://www.unhcr.org/admin/ADMIN/496625484.html>; Candace Rondeaux, "After Decades, Pakistan Forces Thousands of Afghans to Leave; Officials Cite Extremism, Economics as Reasons for Closure of Camp in Northwest," *Washington Post*, April 15, 2008, A09; Habib Khan Khar, "Afghans Ordered Out," *The Advertiser*, October 8, 2008, 39.

55 Internal Displacement Monitoring Center, *Afghanistan: Increasing hardship and limited support for growing displaced population*, 16.

56 Shameem, Interview #46, August 25, 2008, IDP camp near Herat city, Herat province.

57 Internal Displacement Monitoring Center, *Afghanistan: Increasing hardship and limited support for growing displaced population*, 16.

58 United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties*, 3.

killed nine civilians and injured many others. The most respected community elder, who had helped lead disarmament and peace negotiations among many tribes in the area, was also killed. His loss is irreplaceable, community leaders said.⁵⁹

A local aid worker in the Western region of Afghanistan told CIVIC he was working on delivering aid to a community in the Shindand valley of Herat province for over a year. The only way to access the valley was under the protection of a local community leader. After that leader was killed in a US airstrike on July 17, 2008, the aid worker said it would be impossible to reach those affected communities.⁶⁰

Widespread Property Damage

Large-scale damage stretches community resources and affects the quality of life even for those not directly harmed by the incident, often for many years after the incident.

CIVIC visited a community affected by a US air-strike in Herat city on October 22, 2001. The air-strike reportedly missed a military target and directly hit an area within the city, damaging or destroying the houses of forty-five families, killing twelve and injuring tens of others. According to the father of one family, everyone he was close to was affected: “One of the bombs landed in our yard. The other landed on my brother’s house, the other my neighbor here, the other my neighbor there.”⁶¹ When CIVIC visited the area seven years later, the community was only just recovering. Even those who were spared direct harm complained about a general deterioration of their quality of life, and that they had received no help to recover.⁶²

The strain of recovery can be more pronounced for communities isolated by security conditions. In February 2002, US air-strikes caused widespread damage to a small village called Shar-E-Cott in the southeastern province of Paktia. Multiple families were directly harmed; infrastructure damage to the town itself and to the surrounding roads impoverished the entire community. In part because of its isolated location and because of deteriorating security following the air-strikes, the community was cut off from almost all emergency relief or development aid. Although road access has recently improved through mass infrastructure projects, increased fighting and Taliban attacks still restrict the supplies that can reach the community.⁶³

Conclusion

Losses from conflict go far beyond immediate deaths, injuries, or property losses headlined in the media. From immediate costs following harm to lost opportunities and livelihoods, many Afghans are pushed to the brink of desperation. Their losses can shatter traditional family and community structures, making it even less likely that isolated assistance or one-time payments could be of help. Building on this background in the long-term consequences of conflict, the following chapter will introduce existing compensation, relief, and support mechanisms designed specifically to help families recover from conflict losses.

59 Shah family, Interview #16, May 19, 2008, Kabul city, Kabul province.

60 Afghan aid worker, Interview #175, July 29, 2008, Herat city, Herat province.

61 Ziaudin, Interview #43, July 29, 2008, Herat city, Herat province.

62 Community members, Interview #92, July 31, 2008, Herat city, Herat province.

63 Jon Boone, “Taliban attacks Nato by choking supplies,” The Financial Times, August 12, 2008, http://www.ft.com/cms/s/0/3b437574-6891-11dd-a4e5-0000779fd18c,dwp_uuid=af522be6-4c8c-11da-89df-0000779e2340.html.



Rahim was headed to Jalalabad to pay his bills when a suicide car bomb exploded on the main road. US forces started firing and riddled his car with 1,250 bullet holes injuring him, and killing his father and niece. He received an ex gratia payment from the US military in the amount of \$600 - \$200 for the damage to the car and \$400 for his injury. He also received assistance from ACAP and \$1,000 from the Afghan Government. See page 55 for more of this story. *Photo Courtesy of Rebecca Agule.*



CHAPTER 3:

Assistance from Military Actors

Overview of Assistance Available to Conflict-Affected Civilians: From Military Actors, Foreign Government Actors and the Afghan Government

Since 2001, military actors, governmental agencies, international organizations and non-governmental organizations have developed a range of compensation and assistance programs to help civilians impacted by the conflict. The following three chapters will discuss programs where the criterion for assistance is that civilians must be directly affected by conflict. Discussion of these programs is organized according to the actors providing the assistance: the international military (chapter 3); foreign government actors (chapter 4); and the Afghan government (chapter 5).

In addition to the programs discussed here, a broader network of emergency relief, humanitarian aid and development support is available to all Afghan civilians, including but not limited to those specifically harmed by the conflict. For example, the tens of thousands of families displaced by conflict each year might depend on food and non-food aid from UNHCR, or the Afghan Department of Refugees and Repatriation. The Afghan Red Crescent Society or the International Committee for the Red Cross may provide immediate medical treatment. This broader network of aid helps communities and individuals recover from conflict. The aim of this report, however, is to assess the effectiveness of assistance provided by the warring parties that cause, even if unintentionally, harm to civilians while conducting their operations.

Each chapter includes an overview of existing programs and a discussion of what civilians thought about each program, whether they had heard of the programs at all and, importantly, whether they were helped.

Beyond medical or economic assistance, many civilians told CIVIC they wanted an explanation and/or an apology. Many sought recognition, or a sense that justice had been done even if the harm was unintentional on the part of a particular warring party. Each chapter will therefore discuss whether any of the mechanisms or programs helped conflict-affected civilians feel this sense of emotional “redress,” despite the obvious difficulties in quantifying such an intangible. Additionally, rigorous research should be undertaken on this issue. That said, almost all our interviews with civilians touched on feelings of redress, allowing us to identify certain common expectations and reactions.

This chapter, on military assistance, will go into greater depth on these redress issues than subsequent chapters, in part because most of those interviewed expected apologies to come from IMF. Where civilians perceived the harm to come from IMF – and most of those interviewed did put the blame on the IMF or the AGE, not the Afghan Government – compensation by the Afghan Government or assistance from a

program not directly tied to IMF were no substitute for an apology and compensation from IMF.

Compensation and victim assistance is possible, but there are increasing challenges to distribution. Thirty years of conflict have left most of the country under-developed and impoverished with weak institutional capacity. A largely aid-dependent economy with lengthy and costly supply lines makes delivering even the most basic relief aid cost-prohibitive. Aid workers and civilians alike cited security as one of the most pressing factors delaying or preventing aid and compensation from reaching conflict-affected civilians.¹ One humanitarian worker noted:

“Any external aid, compensation into a Taliban-controlled area... it’s viewed by the Taliban as an external invasion into their zone of control. If someone gets public compensation or aid, and returns to their village in an area controlled by Taliban, they can expect to get it taken away or they can expect to be shot.”²

Access to many areas is limited due to ongoing fighting and, separately, to the difficult terrain.³

Corruption is also a significant problem. Inflated or fabricated claims from civilians or civilian leaders were mentioned not only by military officials but also by civilians working for non-governmental and international organizations, Afghans and internationals alike.

Where relevant, these challenges to successful program implementation will be discussed along with examples where programs were able to successfully deal with these hurdles.

Finally, although some civilians affected by the conflict in 2001 told CIVIC they had received food and medical assistance from the Taliban, CIVIC was unable to confirm any efforts at compensation or amends by Taliban or other insurgent groups in subsequent years. Only one Afghan official mentioned hearing about certain Taliban groups in southern Afghanistan paying out compensation payments; no civilians were found to confirm this.⁴ While AGE were responsible for more civilian deaths and injuries last year than IMF, civilians with whom CIVIC spoke expected little from these insurgent groups. Similarly, when it came to making amends for damages, civilians expected greater recognition and assistance from IMF.

1 Aunohita Mojumdar, “Afghanistan Opinion Survey Reveals Increasing Worry Among Afghans,” *Eurasia Insight*, October 29, 2008, <http://www.eurasianet.org/departments/insightb/articles/eav102908b.shtml> (noting a 2008 Asia Foundation survey of Afghan attitudes which found that: “Corruption was seen as a major problem at the national level (76 percent), with as many as 51 percent terming it a major problem in their daily lives. Over half the respondents felt corruption had increased at the national level over the past 12 months, while a quarter felt it had increased in their daily lives.”).

2 International aid worker based in Kandahar, Interview #164, November 6, 2008, Kabul city, Kabul province.

3 John Holmes, United Nations Under-Secretary-General for Humanitarian Affairs and Emergency Relief, flagged the impact of increasing instability in Afghanistan for humanitarian relief: “Coming on top of chronic vulnerability and widespread poverty, insecurity has contributed to the increase in acute humanitarian needs... The lack of security in some areas also prevents humanitarian aid workers from carrying out their life-saving work.” CBC News, “Afghan civilian deaths increased by 40% in 2008: UN.”

4 Afghan executive official, Interview #166, November 17, 2008, Kabul city, Kabul province.

PROGRAM	TYPE OF AID	ACTOR PROVIDING AID	CRITERIA
Medical relief	Immediate medical care, rehabilitation, longer term medical treatment.	1) International orgs, gov't health systems 2) International military forces	Medical attention needed. International military sometimes set aside resources specifically for conflict-affected
1) ISAF Post-Operations Humanitarian Relief Fund (POHRF) 2) Discretionary Commanders' funds (CERP, CCF)	Emergency relief, & small community reconstruction and refurbishment projects	1) ISAF HQ, ISAF RCs 2) PRTs	1) Nexus to ISAF operations 2) Hearts & Minds rationale
Ex gratia & compensation payments	Cash Payments	Some ISAF troop-contributing countries	Death, injury, or (sometimes) property loss due to international forces' actions

Assistance Available from Military Actors

Many civilians and community leaders expect some form of compensation, recognition or both from the international military forces when IMF is blamed for their loss.⁵ Although providing help to civilians is not traditionally a military role, ISAF member countries have increasingly developed mechanisms for providing medical support, broader community support and most notably, compensation or monetary support to those affected by their troops. There is no standardized system across ISAF forces for providing compensation but when money was provided, and especially when this was combined with an apology, civilians expressed satisfaction and reduced anger toward IMF. This combined approach seemed to be the best way to make amends for civilian harm.

Nonetheless, delivery of military assistance was often problematic. With no way to securely investigate claims in some provinces, and tribal politics and corruption making it difficult to rely on local leaders, IMF were sometimes unable to verify whether a claim was valid. One British official told us: "There are lots of fraudulent claims and we just don't know when the wool is being pulled over our eyes, which is quite a lot. We don't know who to trust."⁶

Given the hurdles civilians face in accessing international military, for any compensation or assistance

5 See, e.g., Ali, Interview #40a, July 20, 20/08, Kabul city, Kabul province; Torjan, Interview #21, July 2, 2008, Kunduz city, Kunduz province.

6 Former UK civilian official stationed with UK troops in Helmand province, Interview #157, October 15, 2008, Kabul city; Kabul province.

mechanisms to work, it is of particular importance that IMF take responsibility to proactively respond to incidents of harm and track the making of amends to civilians. Many civilians told us they had not heard of the military programs, were unable to access the correct official or that it was too difficult to identify the nationality of the troops responsible for damages. More recent prompt and responsive payments made by international militaries suggest that while direct payment to civilians was not a widespread practice in the past, steps are being taken to remedy these problems in the future.

There are legitimate concerns about the expansion of military-led relief and assistance, including that it might infringe on humanitarian space, cause further emotional trauma to civilian beneficiaries, threaten humanitarian workers by blurring the line between civilians and the military, and be a less efficient means of distributing aid. The aim of this chapter is to document what IMF are doing to compensate or otherwise assist conflict-affected civilians in Afghanistan and how these efforts are received. Whether these efforts conform to existing guidelines on appropriate IMF involvement in humanitarian relief, including the Oslo Guidelines, the 2008 UNAMA Civil-Military Guidelines and other civil-military guidance, are policy decisions beyond the scope of this report.⁷

MILITARY MEDICAL ASSISTANCE

One of the most significant ways IMF help civilians is with medical treatment more advanced than they would have access to otherwise. This note from a US Marine working in the Garmsir District of Helmand is indicative of the type of stories CIVIC heard, both from troops and from civilians:

During the first few weeks we had several instances when villagers would come to us for medical assistance; some just general sickness, one case of a child with burned legs caused [by] a family member who poured boiling water on the child and a case of a child that was playing with an old mine when it blew up. Marines never hesitated to assist, and in many cases ensured the local citizen was taken to advanced medical care. The child with the injury from the mine is one of those 'typical' Marine responses; our Marines and Corpsman provided immediate life saving care... rushed the child to FOB Delhi, near Garmsir where UK doctors continued stabilizing him, then ISAF flew him to KAF where an MRI discovered a piece of shrapnel in the brain and a neurosurgeon removed it... 2 weeks later I was on a patrol and happened across the very village where this child was from and they were very glad to hear that he was recovering from his wounds. You don't read about this st[u]ff, but it happens....

L. Rene Cote, Civil Affairs Officer, 24th Marine Expeditionary Unit, July 17, 2008

⁷ See, e.g., Office of the Coordinator of Humanitarian Affairs, *Guidelines on the Use of Foreign Military and Civil Defence Assets in Disaster Relief – “Oslo Guidelines,”* (Geneva: United Nations, November 2007); United Nations Assistance Mission in Afghanistan, *Guidelines for the Interaction and Coordination of Humanitarian Actors and Military Across Afghanistan,* (Kabul: United Nations Assistance Mission in Afghanistan, May 20, 2008).

Medical Assistance

Medical treatment may be provided to civilians on military bases, in PRT compounds and on the ground (often in battle situations) by military medics and in mobile medical centers that travel into remote provinces. It is universally of a higher quality than that of local Afghan hospitals.

Many PRTs and military bases also provide “walk-in” medical clinics where civilians who are injured or ill can visit and receive free help. For example, ISAF’s Regional Command West, led by Italy, has a clinic that provides medical care to civilians, whether injured due to conflict or otherwise. Regional Command West (RCWest) MedCap personnel – medical personnel traveling with military patrols – reportedly treated 8,564 civilians in the first seven months of 2008, for conflict related injuries, as well as other non-combat related ailments. French troops stationed in Kabul occasionally hold open clinic days, make medical tours of neighborhoods in Kabul and refer civilians who have been injured, whether by international troops or otherwise, to the French hospital located on the ISAF base on Jalalabad Road in Kabul.⁸

Military medical treatment is provided regardless of whether the Taliban or the IMF was responsible for the civilians’ injuries. While medical assistance through military hospitals, clinics and mobile teams is not exclusive to conflict-affected civilians (assistance is provided whether someone was injured by farming machinery or in an air-strike), many war-affected civilians said it was the only help they received from the IMF, or anyone for that matter.

Community Support

Broader community relief is provided to communities through military projects funded by, for example, ISAF’s Post-Operations Humanitarian Relief Fund, and those undertaken by various PRTs. While these types of projects are sometimes used to help communities suffering from drought or other natural disasters, they are often used to serve communities that have suffered directly from the war. In areas civilians cannot access due to security concerns, they may be the only help available to conflict-affected communities and families.

NATO member states created the POHRF in late 2006 to provide help for civilians affected by ISAF operations. ISAF administers POHRF, and funds are drawn from voluntary donations of ISAF member countries. The fund is prohibited from providing individual compensation or other ex gratia payments. Instead, the fund’s mandate is to rebuild infrastructure damaged by ISAF troops or provide “in extremis” emergency relief or other in-kind, non-monetary aid to civilians affected by ISAF operations.¹⁰ In practice, the use of POHRF often diverges from this narrow category of repairing damage or in extremis relief. For example, in RCWest it was used to provide “drought relief” for Gor province and to fund

8 French Military CIMIC Officer, Interview #168, May 18, 2008, Kabul city, Kabul province.

9 In conformity with the UNAMA Civil-Military Guidelines, and other civil-military guidelines, POHRF is intended to be used only for “in extremis” situations: the military personnel should only provide support to humanitarian assistance in last resort life-saving situations and when requested by the Government of Afghanistan or the humanitarian coordinator in question. The UNAMA Civil-Military Guidelines elaborate what these in extremis situations might include when “there is no comparable civilian alternative”; the assets are needed to meet “urgent humanitarian needs”; and to the greatest extent possible “the assets are used only for indirect assistance or infrastructure support.” James Brown, Humanitarian Affairs officer UNAMA, “Afghanistan Specific Civil-Military Guidelines,” presentation, <http://www.unamagroups.org/Civil-MilitaryGuidelinespresentation.ppt>, slide 10.

10 Chief Ops CJ9 Cdr Henk Warnar, *POHRF Quarterly Oct-Dec and annual report 2007*, (Kabul: NATO/ISAF, January 24, 2008), 1.

general mobile medical supplies to treat civilians, mostly for conditions not caused by ISAF operations.¹¹ While neither of these aid projects had much of a connection with ISAF operations, as required under POHRF guidelines, two ISAF officers in RCWest said they try to use the program as flexibly as possible because they have no other discretionary funds.¹²

Beyond POHRF, many PRTs have their own national funds to undertake similar community-wide projects, with some ISAF countries taking an active role in funding and developing community relief and aid projects through PRTs.¹³ For example, US troop commanders can draw on a fund called the US Commanders Emergency Response Program (CERP) to implement “community impact” projects in their zones of operations.¹⁴ This includes everything from building schools and infrastructure to supporting governance to helping repair communities or providing the funds for “condolences” (described below) for conflict-affected communities.

Similarly, Canadian troops can draw from the Canadian Commander’s Contingency Fund (CCF) to carry out “quick impact” projects in the community.¹⁵ The purpose of the quick impact projects is to elicit community support or information. Projects range from assisting local governance to repairing damaged infrastructure, or anything else requested by the community. Not surprisingly, in conflict-prone areas like Kandahar, where the majority of Canadian troops are based, many of the requests are related to damages or recovery from the effects of conflict.

Compensation & Ex Gratia Payments

There are no ISAF common funds for compensation, nor any ISAF policy on how member countries should provide amends to civilians harmed by their troops.¹⁶ Any procedures on providing compensation or other assistance are shaped by each country’s national laws, and often the personal preferences of the commander involved.¹⁷ There are therefore significant variations across Afghanistan in compensation amounts given, eligibility and verification regulations, and the way money is distributed – from blind bank transfers to multiple face-to-face encounters mediated by community elders.

Some ISAF countries have provisions within their national judicial mechanisms for victims to bring formal compensation and liability claims against troops accused of wrongdoing or negligence in Afghanistan. Through the US 1942 Foreign Claims Act (10 U.S.C. § 2734-2736), foreign citizens can make a formal claim for compensation up to \$100,000 for harm resulting from non-combat activities of US troops abroad, for example. The definition of non-combat activity has been interpreted narrowly, however, and many escalation of force incidents or other cases of accidental harm to Afghan civilians

11 Lt. Alex Miotti, RC West, Interview #134, July 29, 2008, Herat city, Herat province.

12 Ibid.

13 Other countries still refrain from such assistance because they believe that military should only be involved in humanitarian aid or relief in “in extremis” situations. See infra note 9 in this chapter, 33.

14 United States Department of Defense, *Financial Management Regulation, Vol. 12, Chap. 27: Commanders’ Emergency Response Program (CERP)*, (Washington, D.C.: United States Department of Defense, August 2008), 270103, http://www.defenselink.mil/comptroller/fmr/12/12_27.pdf.

15 See, e.g. Jon Baker, “Quick Impact Projects: Towards a ‘Whole of Government’ Approach.” *Paterson Review*, Vol. 8 (2007) at http://www.diplomatonline.com/pdf_files/npsia/2007-08/1_QIPs_Jon%20Baker_FINAL.pdf.

16 It should be noted that ISAF officials sometimes refer to the Post Operations Humanitarian Relief Fund (POHRF), as a compensation fund. In practice, POHRF funds are not intended to be used for directly compensating or providing ex gratia payments.

17 See infra note 9 in Chapter 1, 8.

LEGAL LIABILITY CONCERNS

Despite the ex gratia nature of most military-given assistance in Afghanistan, the military is often wary of providing assistance for fear such amends will be equated with an admission of legal liability, or even just public responsibility.ⁱ Civilians harmed by AGE actions remain largely ineligible for many victim assistance programs, as international actors want to draw a distinction of who is responsible. One representative of an ISAF member country told CIVIC that troops from his country would not provide ex gratia payments to any civilian harmed by insurgent activities because civilians should see the difference between insurgents, who are willing to harm civilians deliberately, and IMF, who are willing to help when they harm.ⁱⁱ

Even where harm was done by IMF, if IMF investigations cannot certify that the person in question (or his/her survivors) was a civilian rather than a combatant, they will not provide assistance. In Afghanistan, though, this is often difficult to determine. Investigators often cannot get to the site before a body is buried – typically within 24 hours of the death – due to security concerns and general transportation issues. This means that in many cases, particularly cases of air-strikes, there are often a large number of those killed who cannot be definitively identified as a civilian. Whereas estimates of civilian casualties by other independent monitors or humanitarian actors might ballpark civilian casualty numbers including some of those with ambiguous status, IMF will not, nor will they generally provide compensation or ex gratia payments for any of these ambiguous cases.

Finally, one reason POHRF provides emergency relief and reconstruction assistance rather than compensation or ex gratia payments is an aversion by some NATO member states to be seen taking responsibility for civilian casualties, particularly those caused by other countries.ⁱⁱⁱ

i Pauline Chatterly, Directorate of Safety and Claims, Ministry of Defence, UK. Interview #128, May 12, 2008, Email to Sarah Holewinski.

ii Foreign Embassy official, Interview #140, April 16, 2008, Kabul city, Kabul province.

iii ISAF official, Interview #180, February 2007, Kabul city, Kabul province.

by US forces would be not eligible.¹⁸ Under similar legislation, the UK court system granted this kind of formal compensation to at least one Iraqi boy paralyzed by the negligent discharge of a UK soldier's weapon in Iraq. The Ministry of Defence (MoD) paid his family £2 million.¹⁹

The vast majority of “compensation” payments, though, are not technically compensation. They are voluntary, non-legally binding “ex gratia” (meaning ‘out of kindness’) payments for unintentional harm caused during combat operations. Nonetheless, civilians tend to interpret these as appropriate compensation and they are made available more quickly than formal compensation mechanisms, which would require lengthy judicial action outside of Afghanistan. A detailed description of the compensation

18 For example, the claim of a father of a 12-year-old boy who was mistakenly shot while playing soccer was denied as “loss resulting from combat operations.” Jon Tracy, *Compensating Civilian Casualties: “I am sorry for your loss, and wish you well in a free Iraq”*, (Washington, D.C.: CIVIC and Carr Center on Human Rights Policy, November 2008), 35.

19 BBC News, “Wounded Iraqi is given £2 million payout,” *BBC News*, April 15, 2008, http://news.bbc.co.uk/2/hi/uk_news/7347691.stm (noting an MoD spokesman's statement that this was an exceptional case and that such high compensation was not likely to be repeated).

and ex gratia systems of individual ISAF member countries can be found in Annex II of this report.

Ex gratia payments vary significantly both across IMF and within each military that maintains such funds: CIVIC heard of families receiving just hundreds of dollars to \$20,000 plus a new car. Many countries provided approximately \$1,000 to \$2,000 for the loss of a family member.

Countries operating in areas of frequent fighting tend to have designated funds and procedures for addressing civilian harm. The United Kingdom, Canada, the Netherlands and Australia, all with troops in the high-conflict provinces in the South, have designated funds for ex gratia payments, and maintain procedures for distributing them (although specific amounts have not been disclosed).²⁰ The United States military has two funds for giving ex gratia monetary payments to civilians for death, injury, or property loss: “solatia” and “condolences.”²¹ The funds for both are distributed at the discretion of the US commander involved, but amount ranges are set for certain circumstances, particularly those involving death (typically \$2,000 - \$2,500 for a death).²²

More detail on these ex gratia payments is provided in Annex II, but to give a few other examples, the United Kingdom gave an estimated £700,000 between April 2006 and October 2008;²³ the US obligated more than \$876,137 in condolence payments alone through troops stationed in Regional Command East between January 2006 and November 2008;²⁴ Canadian troops paid approximately \$243,000 from 2005 to 2008.²⁵

Officials said they often have more discretion in the amounts given for property loss.²⁶ Ex gratia payments for property loss depended highly on the value of the property and the surrounding situation. CIVIC was told of instances where civilians were given the value of property in excess of \$5,000, and other cases where the amount given was as low as \$100 for a lost home.

Ex gratia funds for property loss are also often used in tandem with community or stabilization funds to help rebuild or repair damage to conflict-affected communities. Following extensive operations in

20 See Annex II.

21 Solatia or condolence payments are drawn from different funding sources – solatia from unit funds; condolences from the Commander’s Emergency Response Program – and were created at different periods of time but are used interchangeably in Afghanistan, according to interviews with military officials. Ashwin Corattiyil, US Navy, Interview #152, August 23, 2008, Bagram Air Base; Travis Hartman, CJTF-101, Human Rights Program, US Army, Interview #151, August 23, 2008, Bagram Air Base.

22 Though US commanders have discretion, there are other procedural steps involved, such as verifying the claim through a local Judge Advocate (military lawyer) in the case of solatia. For more, see Annex II, US condolence and solatia.

23 Sean Rayment, “Britain pays out 700,000 in compensation to civilian casualties in Afghanistan,” *The Telegraph*, November 23, 2008, <http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/3501081/Britain-pays-out-700000-in-compensation-to-civilian-casualties-in-Afghanistan.html>.

24 Afghan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces*, 51. See also, Ashwin Corattiyil, US Navy, Interview #179, August 25, 2008, Email to CIVIC (noting significantly higher condolence payments as of August 2008 (45 payments totaling \$190,000) than included in the AIHRC sum because of payments following ISAF operations in Garmsir, Helmand, outside of RCEast).

25 Jeff Davis, “Canada’s Record and Compensation Policy for Afghan Civilian Casualties,” *Embassy*, September 10, 2008, http://www.embassymag.ca/html/index.php?display=story&full_path=2008/september/10/civilian_casualties/.

26 Maj. Jan Vandekamp, Task Force Uruzgan, Interview #155, August 21, 2008, Email to Erica Gaston; Former UK civilian official stationed with UK troops in Helmand province, Interview # 157, October 15, 2008, Kabul city, Kabul province (also noting more discretion in distributing UK funds for civilian property damage or acquisition than with civilian deaths or injuries).

the Garmsir district of Helmand in April and May 2008, US “condolences” and other military funds in excess of \$400,000 were distributed to offset individual property damage as well as community infrastructure damage. Troops coordinated their activities with other efforts funded by the United States Agency for International Development (USAID) and the UK’s Department for International Development (DFID) to give civilians maximum assistance.²⁷ One aid worker working with a displaced community in the central province of Wardak in May 2008 said that after a US airstrike destroyed much livestock and other property of one family, US troops sent a “humanitarian action” team to provide food and other assistance.²⁸

Where possible, troops in high-conflict areas attempted to distribute ex gratia funds directly to the family, but this was not always possible out of concern for the security of the troops and the beneficiaries.²⁹ One former British official who helped with civilian property claims while stationed in Helmand said, “It’s too dangerous [to investigate claims]. We can’t just knock on someone’s door to verify that it is his house. It would require an entire military operation just to go there. And if we did go to his house and investigate it would compromise his position within the community and possibly endanger his own life, just by being associated with us. ... That’s why this becomes such a long process.”³⁰ To get around the problem,

HOW MUCH COMPENSATION IS APPROPRIATE?

When compensation is paid, the amount must be sufficient so as not to be insulting. According to human rights lawyer Lal Mohammad, “To offer too small a sum flat out can be insulting. People who get \$2,000 only and not even an apology, and no reason given [for the incident], will likely be insulted.... People say ‘They just smile on us. This is not compensation.’” Military officials with discretion to decide the amount of ex gratia payments said it was difficult to determine appropriate amounts.

As one German officer involved in an ex gratia payment said, “The amount of money was difficult [to determine]. We didn’t know [what was appropriate]. We really had no idea. Someone said \$1,500 but we thought that might be very bad.”ⁱ He ended up relying heavily on a local leader with whom the German military had close relations to negotiate an appropriate sum. “It would be good if all troops who might face such a situation have some instruction or some hint of what could be done. I might explain first that money is not compensation but a symbol and must be presented as such. ... The family didn’t ever say ‘we want money’. They never referred to it at all and when we gave it, it was ‘We accept your gesture.’”ⁱⁱⁱ

i Lal Mohammad, Afghanistan Human Rights Organization, Interview #160, October 28, 2008, Kabul city, Kabul province.

ii Dr. Peter Ptassek, Civilian Leader, German PRT based in Kunduz, Interview #158, October 16, 2008, Telephone interview.

iii Ibid.

27 L. Rene Cote, 24th Marine Expeditionary Unit, Interview #136, July 17, 2008, Email to Erica Gaston; UK civilian official stationed with PRT in Lashkarga, Interview #127, June 19, 2008, Kabul city, Kabul province.

28 Foreign aid worker, Interview #118, June 29, 2008, Email to Erica Gaston.

29 See, e.g., Jason Straziuso, “Afghans Threaten US Troops Over Civilian Deaths,” *Associated Press*, January 31, 2009, <http://www.iht.com/articles/ap/2009/01/31/asia/AS-Afghan-Civilian-Deaths.php> (describing a face-to-face distribution of monetary payments, together with public apologies to civilians harmed by US Special Forces night raids in Laghman province).

30 Former UK civilian official stationed with UK troops in Helmand province, Interview #157, October 15, 2008, Kabul city, Kabul province.

IMF sometimes distributes the money through local intermediaries, through government officials, and at least in one case, through blind bank transfers.³¹ Embassy officials said distributing IMF payments or support through local government intermediaries also met a secondary goal of reinforcing the legitimacy of the local Afghan government.³²

In contrast to designated funds and procedures for delivering payments, ISAF troops in low-conflict areas tended to deal with civilian losses on a case-by-case basis and with a personalized approach. They typically have no official policy on how to deal with a civilian casualty incident, no set amount that should be given and no designated funds. This is the case for German troops, which sometimes donated a few hundred euros of their own personal funds when a suicide attack or other incident led to civilian losses.³³ When German troops unintentionally shot three civilians (a mother and her two children) at a checkpoint in August 2008, they wanted to give more and had to go through special procedures to find \$25,000 in the German army budget.³⁴ The German PRT worked closely with local leaders to negotiate this sum of money so that it would be received as a gesture of good will.³⁵

Civilian Responses to Military Assistance

Within the category of military assistance, civilians were most positive about medical assistance, both because the medical treatment was highly valued and because medical assistance appeared to be more accessible than, for example, compensation or ex gratia mechanisms. The broader community assistance funds, like POHRF or CERP, were not mentioned by any civilians interviewed by CIVIC. The impact of compensation and ex gratia payments was decidedly mixed. Whether civilians received one of these forms of military assistance depended a lot on where they lived and which ISAF country was involved. As discussed below, the number of civilians who reported receiving such funds from IMF has been low in the past. However, where they did receive funds, it often had significant impact and was meaningful for the family.

Medical Assistance

Medical assistance seemed the most accessible of the three types of assistance. Civilians generally know that medical assistance is available and they take advantage of it. In contrast to civilians who told us they were turned away when bringing compensation or ex gratia claims to PRTs or IMF bases, no civilian said they were turned away for medical treatment. Many conflict-affected civilians noted, with gratitude, receiving free, high-quality medical treatment (and sometimes medical transport) from IMF immediately after an incident.³⁶ Better than the Afghan medical system, this assistance was highly valued by many families; some said they did not even care or want further compensation or apologies

31 Foreign Embassy official, Interview #165, November 11, 2008, Kabul city, Kabul province; Foreign Embassy official, Interview #182, August 20, 2008, Telephone interview. Some IMF member countries may also prefer to distribute aid through Afghan Government officials in order to reinforce the importance and legitimacy of local government, which are often weakest in the least secure provinces.

32 Foreign Embassy official, Interview #149, April 16, 2008, Kabul city, Kabul province; Foreign Embassy official, Interview #148, August 6, 2008, Kabul city, Kabul province.

33 French Military Civil-Military Co-operation Officer, Interview #168, May 18, 2008, Kabul city, Kabul province.

34 The \$25,000 included \$20,000 in cash payments and \$5,000 for a new car.

35 Dr. Peter Ptassek, Civilian Leader, German PRT based in Kunduz, Interview # 158, October 16, 2008, Telephone interview.

36 See, e.g., Shah family, Interview #16, May 19, 2008, Kabul city, Kabul province; Ulam, Interview #18, June 29, 2008, Bagram area, Kabul province; Said, Interview #20, June 29, 2008, Bagram area, Kabul province; Masood, Interview #7, February 21, 2008, Gardez city, Paktia province.

so long as their family members received necessary treatment.³⁷ We spoke to the mother of one boy who received emergency treatment at Bagram Air Base following a suicide attack near Kabul. The son was in the military hospital for forty days and was given a special boot cast.³⁸ The mother told CIVIC: “When I saw the bicycle [that my son was riding at the time of the suicide attack] I never felt that my son could have survived. We were so fortunate, and to have the Americans at Bagram help us.”³⁹

Community Assistance

At the other end of the spectrum, broader community assistance from the military such as that provided by POHRF was not specifically noted by any civilians. This does not necessarily mean the assistance provided through these funds is not important, although it does suggest the assistance is not recognized by civilians as a specific response to their suffering due to conflict. A few civilians vaguely referred to the larger contribution international troops were making. These comments were more common in the Eastern region controlled by US troops, which have the most funding for these types of projects and the most discretion to do them. Overall, the POHRF fund is very small; as of October 2008 only €2.8million had been donated and of that only €1.7million have been used since its inception in late 2006.⁴⁰ This lack of funding would also contribute to civilians being unaware of POHRF.

Compensation and Ex Gratia Payments

In many ways, this is the most important category of military assistance (if not of any assistance) because many Afghans have an expectation of receiving compensation from those they blame for their losses.⁴¹ CIVIC’s interviews suggest that past mechanisms providing compensation or ex gratia payments were not transparent, known or negotiable by the average Afghan. However, there are signs that troops across ISAF are making efforts to be more responsive.

Within Afghan society, loss of family members, property or other harms are often settled through informal dispute systems that require those responsible to make an apology and provide a sum as a token of recognition for the loss. Perhaps for this reason, many civilians said they wanted or expected direct compensation from the military, but few were satisfied.

There is evidence that troops in low-conflict provinces reached a greater proportion of families affected by their troop activities, perhaps because they had more time to devote to each case and fewer security restrictions in doing so. More generally, though, the record for providing prompt, consistent, and regular compensation and ex gratia payments is low. Of the 143 interviews CIVIC conducted, only 14 had received payments from IMF. This may in part reflect the period of time covered by CIVIC’s interviews: CIVIC interviewed civilians who suffered losses in conflict as far back as 2001 and at that point in time, few ISAF militaries had any ex gratia funds established. As time has passed, ISAF countries have been working to establish better means of responding to civilian losses, but they do not necessarily trace back to address the harm done to civilians in years past.

Part of the problem has been that many ISAF military units expected Afghans to come to them when

37 Family of Bilal Interview #13, June 18, 2008, Gardez city, Paktia province.

38 Aziz, Interview #14, May 3, 2008, Bagram area, Kabul province.

39 Wahida, Interview #14, May 3, 2008, Bagram area, Kabul province.

40 Media Operations Centre, “NATO-ISAF Post-Operations Humanitarian Relief Fund (POHRF) October 2008,” North Atlantic Treaty Organization, October 2008, 3.

41 See, e.g., Afghanistan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces*, 53.

an incident occurred. But Afghan communities in many areas did not know these funds were available. One man who lost two brothers in an IMF airstrike in Shindand province did not ask foreign military for assistance because: “We didn’t know where we could go to do this.”⁴²

Even if civilians knew they could request assistance, security concerns often prevented them from reaching out to IMF. Many were simply afraid to approach a PRT, the most obvious place to turn for help, for fear of being shot.⁴³ Others feared Taliban retribution if they received help from IMF. In February 2008 the Canadian PRT in Kandahar gave wheat, oil and blankets to 300 families. Researchers from the AIHRC discovered that the Taliban immediately targeted this aid and “arrived to grab the donations after the distribution trucks left, igniting a dispute with the villagers. The insurgents settled the argument by kidnapping eight men, holding them for 70 hours, and only releasing them when they came under fire by foreign troops.”⁴⁴

Those Afghans who did go to the military authorities to make a claim faced an uphill battle getting it heard. While many IMF say they have an “open door” to civilians,⁴⁵ Afghans often found it barricaded by sandbags, razor wire and hostile, heavily-armed soldiers. Many said they are turned away without their grievances heard. As one Afghan staff of an international organization described: “People don’t even try [to get compensation from the military] because the military are so hard to get to. You cannot get through or you can’t even get to the gate sometimes.”⁴⁶ One man, whose brother was shot in ISAF crossfire following a suicide attack on a military convoy, described how he “went to the airport to see the PRT twenty times but nobody was ever available to see me.”⁴⁷

Another problem civilians faced was identifying the nationality of the troops involved in a particular incident. The military compensation and ex gratia mechanisms were not coordinated among troop-contributing countries, so Afghans had to identify which troops were responsible for their losses and bring the claim directly to that foreign actor to be heard. Overlapping and often ambiguous force structures made it impossible for civilians harmed by IMF to know which troop-contributing country was responsible, much less which unit. Troops involved in any given incident are not necessarily stationed at the local PRT or military base. The presence of mobile Special Forces units and other paramilitary or intelligence units make identification even more difficult.⁴⁸

CIVIC was contacted by two elders from Wardak province in November 2008. They said their property was destroyed in US air-strikes and others in their village were injured. The local PRT questioned them and took down information about property lost and they also traveled to Kabul to present their case to ISAF headquarters. After six months they had heard nothing.⁴⁹ The local PRT in Wardak province is run by Turkish troops but given the timing and location of the incident, US forces likely caused the harm. These men took initiative, presented their case to authorities, but brought their claims – through no

42 Masood, Interview #42b, July 29, 2008, Shindand district, Herat province.

43 Afghan aid worker involved in victim support, Interview #132, June 30, 2008, Telephone interview.

44 Graeme Smith, “Daily attacks against civilian targets on rise,” *The Globe and Mail*, October 7, 2008, <http://www.theglobeandmail.com/servlet/story/RTGAM.20081007.wafghancivilians07/BNStory/Afghanistan>.

45 Lt. Alex Miotti, RC West, Interview #134, July 29, 2008, Herat city, Herat province.

46 Afghan aid worker involved in victim support, Interview #132, June 30, 2008, Telephone interview.

47 Bakhtiar, Interview #23, July 2, 2008, Kunduz city, Kunduz province.

48 See, e.g., Jason Straziuso, “Afghans Threaten US Troops Over Civilian Deaths,” (noting a night raid carried out by US Special Forces who were not based in the targeted area in Laghman province).

49 Haji Sharif, Interview #97, November 8, 2008, Kabul city, Kabul province.

fault of their own – to the wrong forces. It is unlikely their claims were ever forwarded to the appropriate troops.

Continual troop rotation compounds these obstacles. In some cases, military units take the records of civilian claims with them when rotating out of an area. One man and his brother shot by ISAF troops following a miscommunication at a checkpoint approached their local PRT three times to ask for assistance with their medical bills and invoice for car damage. An individual at the PRT would tell him, “We will come after three days, after four days.”⁵⁰ But no one came to see him. Then, when a new rotation of troops arrived, the PRT told him that they had no record of the event: “At one point they [the PRT] gave me a written statement telling me they would help, but then they took the statement back. Then a new rotation came in and I visited them also and they did not know anything about it.”⁵¹



Mohddin’s ankles, showing scars from when he was shot by ISAF troops while riding on his motorbike. The winter snow and darkness made it impossible for him to see the laser ISAF troops used as a signal to halt. The troops provided him with immediate first aid at the time of the incident but no ex gratia payments were made. Mohddin is an ACAP beneficiary. See his comments on page 12. *Photo courtesy of Rebecca Agule.*

Even if all these hurdles could be overcome, not all troop-contributing countries have the funds or the discretion to grant payment. As one aid worker in Kandahar put it: “If you’re injured under a Romanian flag, then you’re unlikely to get compensation, but if you’re injured by a Canadian or an American soldier then you’ve got a chance at least to get something.” One official at the German PRT explained to CIVIC: “It was difficult for us to find the money [to help a war-affected family] because we don’t have a proper fund for casualties. ... It would be good if all troops who might face such a situation have some instruction or hint as to what could be done.”⁵² Other ISAF countries have the funds, but the procedures for verifying and approving a claim are so cumbersome that the funds are rarely used.

Not all of these critiques apply to all ISAF member countries, of course. The case described above where German troops sought out those harmed by their troops and worked with the community to provide adequate apologies and compensation is an example of how some troops are pro-active in making amends. Providing pro-active follow-up and individualized attention is no doubt more difficult in

50 Torjan, Interview #21, July 2, 2008, Kunduz city, Kunduz province.

51 Ibid.

52 Dr. Peter Ptasek, Civilian Leader, German PRT based in Kunduz, Interview # 158, October 16, 2008, Telephone interview.

conflict-prone provinces. Just as these positive efforts by some militaries create gains for all militaries working in Afghanistan (given that civilians do not know the difference between the various troops), militaries that do not take such proactive steps create negative feelings toward all international forces.

Recent steps taken, at least on the part of the largest troop-contributor, the United States, suggest that troops may be taking more seriously measures to make *ex gratia* payments more accessible and responsive. Following a summer in which US troops in particular received heavy criticism for high civilian losses in several airstrikes, US Secretary of Defense Robert Gates visited Afghanistan in September and ordered US forces to pay compensation and make amends promptly in the future airstrikes. In November 2008, US airstrikes resulted in the death of 37 civilians and 35 injured in Kandahar province. In contrast to US foot-dragging in admitting and addressing civilian losses in summer 2008,⁵³ following the November 2008 incident representatives quickly recognized the civilians losses and sent representatives to Kandahar within a week to meet with families and ensure compensation was paid.⁵⁴

US responses to three US Special Forces Operations (a January 7 nighttime raid in Laghman province; a January 19 raid in Kapisa province; and a second Laghman raid on January 23) that reportedly killed 50 people, mostly civilians, suggest the response to the November 2008 airstrike was not an isolated incident. On January 27, 2009, US troops distributed \$40,000 to the relatives of the deceased in Kapisa province – \$2,500 for each death, \$500 to two wounded civilians, and an additional \$2,500 in property damage. US commanders then traveled to Laghman province approximately a week after the second incident to offer public apologies and assess how much should be provided in condolences and solatia payments. According to an Associated Press account of the meeting, US officials expressed apologies and told those from the community, “We know these raids have left many widows and orphans, and we want your advice on how we should help them.”⁵⁵

On the same day the \$40,000 in payment were being made in Afghanistan US Secretary of Defense Robert Gates testified before the Senate Armed Services committee stated in a response to a question asked by Senator Lindsey Graham (R-SC):

[P]articularly in terms of how we respond when there are civilian casualties, I think we’ve been too bureaucratic about it. Our approach has been in a way classically American, which is let’s find out all the facts, and then we’ll decide what to do. But in the meantime we have lost the strategic communications war. And so the guidance that I provided is that our first step should be if civilian casualties were incurred in this operation, we deeply regret it, and you have our apologies. And if appropriate, we will make amends. Then we will go and investigate, and then we will figure out whether we need to do more or frankly, if – if we paid somebody we shouldn’t have. Frankly, I think that that’s an acceptable cost. But we need to get the balance right in this in terms of how we interact with the Afghan people, or we will lose.⁵⁶

53 Afghan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan*, 19.

54 M. Karim Faiez and Laura King, “U.S. acknowledges 37 Afghan civilians killed in fighting last week.” *Los Angeles Times*, November 9, 2008, <http://articles.latimes.com/2008/nov/09/world/fg-afghan9>.

55 Jason Straziuso, “Afghans Threaten US Troops Over Civilian Deaths”, *Associated Press*, January 31, 2009, http://news.yahoo.com/s/ap/20090131/ap_on_re_as/as_afghan_civilian_deaths.

56 Robert M. Gates, Testimony before the Senate Armed Services Committee, January 27, 2009.

ISAF has also taken measures to be more responsive to incidents of civilian harm. In the summer of 2008, ISAF headquarters established a “civilian casualty tracking cell” to enable the office to better monitor the harms civilians were suffering.⁵⁷

The recent prompt and effective payments may reflect a changed priority for compensation and public condolences.

Overall, with the exception of military medical assistance, civilians did not have a positive response of the way compensation and ex gratia mechanisms worked on the ground. Some of the issues in delivering monetary payments were due to factors beyond the control of IMF, particularly security. However, a great number of the problems are due to programmatic and implementation flaws. In lieu of overhauling the whole system, better coordination between IMF and greater proactive efforts following any known or potential civilian loss might reduce some of the civilian access problems. Were IMF more proactive and coordinated, false claims might be easier to spot and aid might be distributed in a more timely manner, as civilians suffering losses need and prefer.

Redress

In addition to tangible assistance, many civilians said they wanted some form of recognition, apology, or justice done. Much of the harm done to civilians in Afghanistan is not considered a violation of international law governing warfare (though there have been cases of intentional violence committed by troops against civilians). For most of the civilians with whom CIVIC spoke, a formal trial or tribunal that would provide redress is not likely. Yet as the AIHRC has noted, “The fact that [...] perceived abuses or offenses are typically met without recognition, apology, or compensation has led to increased anger and resentment toward [Pro-Government Forces, including IMF]”.⁵⁸ Whether civilians felt a sense of resolution or recognition from those responsible for their loss may also be relevant for broader strategic discussions by the military of “winning hearts and minds,” although such effects are not discussed specifically in this report.

Providing civilians with this sense of closure or resolution is not easily done, and CIVIC’s interviews suggest there is no “one-size-fits-all.” However, one of the more significant findings from our interviews was that civilian satisfaction was far more dependent on *who* gave the assistance than on the type or amount provided. When, for example, responsibility for the loss was attributed to the IMF and apologies, financial aid or livelihood assistance came directly from the IMF, civilians were more likely to feel redress had been provided.

Requests for Redress and Acknowledgement by IMF

What exactly redress implies for Afghan civilians varies on a case-by-case basis. Overall, we discovered that civilians wanted three main things: 1) a formal trial of soldiers responsible for deaths or injuries; 2) an apology or other gestures of respect; and/or 3) compensation. Sometimes a combination of these forms of redress worked; other times, civilians identified one of the factors as critical.

Lal Mohammad is a human rights lawyer who has represented many would-be claimants against IMF.

57 James Brown, Humanitarian Affairs officer UNAMA, “Briefing for the Kabul Civil-Military Working Group,” presentation, January 29, 2009.

58 Afghan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan*, 53.

He told CIVIC that most civilians who come to him wanted formal judicial resolution: “Most people want justice first of all. They want the killer brought to trial. Second they want sentences for any crime. Third, they want compensation for their families.”⁵⁹ CIVIC found similar sentiments in some, but not most, of those interviewed. One father lost his brother, his daughter was almost lethally wounded and his home severely destroyed in a 2001 aerial bombardment by US troops in Herat province. He said he wanted justice done: “All I would ask from international forces is to please introduce me to the person



Alefuddin and his father. Alefuddin was paralyzed in the bombing and subsequent escalation of force incident in Jalalabad on March 4, 2007. ISAF paid for the boy’s treatment in both Jalalabad and Kabul. His father’s entire salary goes to his son’s care and thus ACAP stepped forward to further assist the family in expanding their spare parts shop. *Photo courtesy of Rebecca Agule.*

who bombarded the area and give that person to us. We don’t want any assistance. We want them to be punished.”⁶⁰

Another man from Kandahar had not been directly harmed but had watched many of those around him suffer the consequences of war: “The soldiers should be put on trial and money should be paid,” he said. “When a few of them are put on trial, then others will pay attention and not make mistakes. And if they are destroying people’s property, then they should have to provide compensation.”⁶¹

Beyond requests for formal justice, more civilians told us that some sense of redress could be achieved through a simple apology from those responsible for their loss. Time and again, CIVIC interviewees noted whether troops had apologized to

them, publicly or personally. According to Lal Mohammad: “In our culture, apologizing is very important. If I go and apologize, sometimes the person will forgive without any compensation at all.”⁶² Anja de Beer, the head of ACBAR said similarly, “The [IMF] are not straightforward on a human level to say that they’re sorry and in Afghanistan that is important. ... Compensation is important in Afghanistan – yes, that is the whole justice system. But showing you’re sorry is also important.”⁶³ Those CIVIC interviewed said the same. In addition, civilians also told us that they appreciated basic gestures of respect – such as stopping a convoy when a civilian has been injured – even when a formal apology was not provided.⁶⁴

59 Lal Mohammad, Afghanistan Human Rights Organization, Interview #160, October 28, 2008, Kabul city, Kabul province. It should be noted that those seeking a lawyer are likely a group that self-selects for seeking judicial redress.

60 Ziaudin, Interview #43, July 22, 2008, Herat city, Herat province.

61 Gol, Interview #89, July 21, 2008, Kandahar city, Kandahar province.

62 Lal Mohammad, Afghanistan Human Rights Organization, Interview #160, October 28, 2008, Kabul city, Kabul province.

63 Anja de Beer, Director, Agency Coordinating Body for Afghan Relief, Interview #144, August 4, 2008, Kabul city, Kabul province.

64 Aziz, Interview #14, May 3, 2008, Bagram area, Kabul province; Omar, Interview #39, July 8, 2008, Jalalabad

Even still, a number of our interviewees said they would not be satisfied with a simple apology without an accompanying form of compensation as a gesture of respect for the loss. Within many tribes in Afghanistan, the payment of “blood money” is a traditional way to extinguish a debt of honor and a way to resolve conflicts. The payment of compensation is therefore important and generally well-accepted within the Afghan population.

Impact of Attempts (or Failure) to Provide Redress

Whether civilians felt a sense of recognition or redress from any of the military assistance discussed in this chapter depended on the type of aid, the tact used to distribute the aid, and, of course, the individual emotional response of the family involved. The security situation in the relevant province also seemed to be a factor, although more research should be conducted to determine how much of an influence this had on civilian attitudes.

Civilians who felt there was no substitute for a formal trial and punishment of those soldiers involved were, not surprisingly, left unsatisfied by assistance of any kind. According to the Military Technical Agreement governing the conduct and obligations of international troops in Afghanistan, ISAF troops are not required to pay any compensation, and are immune from the Afghan judicial system for activities carried out within the scope of their military duties.⁶⁵ Any disciplinary measures or judicial resolutions are to be handled in the national courts of their own country; while such investigations do occur, the results are generally not made public and certainly not in local languages.⁶⁶

Medical assistance from the military, while greatly appreciated, was not generally viewed as a form of amends or redress. When asking for an apology or that justice be done, civilians never mentioned medical assistance. Those receiving medical assistance seemed to have more positive impressions of IMF, but it is not clear they felt their losses were recognized and addressed absent an apology or payment of compensation.

Given desires for an apology and the cultural tradition of compensation to settle conflicts, ex gratia or compensation payments given by IMF are more likely to provide a sense of resolution and redress. However, because only 14 of those interviewed had actually received compensation, it is difficult to judge whether this would hold true for the larger population without further research.

There were a few civilians who received a direct apology and compensation from the military; they told CIVIC they forgave the troops involved. One man whose 10-year-old son was killed in a road accident with US troops noted that the troops involved stopped, took care of the body, and then apologized personally to him and his family with visible grief over the accident: “The guy [who was driving] was crying. He was shouting. The guy was totally unhappy about this incident. ... And sometimes accidents are happening on these roads but the drivers leave without waiting to find out what happened. When they hit someone they leave the area. We were happy that the soldiers waited for us. They had respect for the dead.”⁶⁷ The father said he forgave the troops because he could tell it was an accident and that they intended no harm. In addition, the troops gave him \$1,000 and he later received assistance through the USAID ACAP program, discussed in the subsequent chapter.

city, Nangarhar province.

65 International Security Assistance Force and Interim Administration of Afghanistan, “Military Technical Agreement,” December 5, 2001, <http://www.operations.mod.uk/isafmta.pdf>.

66 For a larger discussion on the impact of this on civilian perceptions, see Afghan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan*, 47-50.

67 Omar, Interview #39, July 8, 2008, Jalalabad city, Nangarhar province.

In contrast, the lack of an apology can lead to significant resentment. One man mistakenly shot by US troops in an escalation of force incident at a checkpoint in June 2003 said he had a “lot of anger” toward US troops: “The Americans offered me no reason for what they did, they offered me no help, no excuse... not even an apology.”⁶⁸ In July 2008, a US airstrike killed 37 civilians, mostly women and children, who were part of a wedding party in a remote district of Nangarhar province. Coalition authorities issued a statement from Bagram Air Base immediately after the attack denying that any civilians had been killed. Although independent investigations later confirmed that civilians were killed, no subsequent retraction or apology was forthcoming from US authorities. CIVIC interviewed several men from that community shortly after the attack: “In our culture if something happens to someone – they are killed, their property is destroyed – you come and apologize. ISAF should have come to the village and guaranteed that it would never happen again.”⁶⁹

Of course, there are no firm rules for whether an individual, or even a community, will accept payments as a gesture of condolence and redress. Much depends on the attitude of the individual concerned. CIVIC spoke with a widower in the eastern province of Jalalabad whose wife was shot in the head by a stray bullet as the family was driving through Jalalabad city. He said he was offered \$4,000⁷⁰ through the Governor of Nangarhar but he originally did not want to take the money: “\$4,000 cannot cover the space of my wife. I don’t need that money.”⁷¹ Another widower, whose wife was shot in the same incident while working in the family’s fields, said the same: “Human beings are very important. You cannot compensate as far as losing a wife.”⁷²

Although the two widowers had the same initial desire to reject offers of compensation, their feelings after receiving assistance were different. Both men accepted the money and were also assisted later by ACAP. Both said the money helped cover funeral and other expenses for their children, and that the later ACAP assistance helped them substantially improve their businesses and quality of life. One of the men said he was not angry at IMF anymore.⁷³ The other said he was still upset and that if the IMF did not stop “killing innocent civilians,” they could leave.⁷⁴

Anja de Beer of the Agency Coordinating Body for Afghan Development (ACBAR) noted that while IMF should “always try to get in touch [with the family affected] and show that they are sincerely sorry... It becomes more difficult to have that come across as sincere if incidents keep happening.”⁷⁵

According to CIVIC’s preliminary research, a combination of apology, a gesture of respect by those perceived as responsible for the loss and monetary payment appears most likely to satisfy desires for redress. While this approach will not work for every individual – and particularly not for those civilians

68 Torjan, Interview #21, July 2, 2008, Kunduz city, Kunduz province

69 Jamahon, Interview #40b, July 20, 2008, Kabul city, Kabul province.

70 Nasar, Interview #57, August 3, 2008, Jalalabad city, Nangarhar province. CIVIC learned that many of the affected families for this particular incident received both solatia payments from the US military, and payments from President Karzai’s Code 99 Fund. Since both funds provide approximately \$2,000, it is likely that this is how the widower was able to receive \$4,000.

71 Nasar, Interview #57, August 3, 2008, Jalalabad city, Nangarhar province.

72 Ahmed, Interview #55, August 5, 2008, Jalalabad city, Nangarhar province.

73 Nasar, Interview #57, August 3, 2008, Jalalabad city, Nangarhar province.

74 Ahmed, Interview #55, August 5, 2008, Jalalabad city, Nangarhar province.

75 Anja de Beer, Director, Agency Coordinating Body for Afghan Relief, Interview #144, August, 4, 2008, Kabul city, Kabul province.

who demand nothing less than a full investigation and trial, providing an apology and compensation does appear to alleviate the anger and resentment of many Afghan civilians.

Conclusion

For foreign troops in Afghanistan to make amends to civilians unintentionally harmed is a balancing act. Limitations on military-driven assistance or relief, as envisioned in the Oslo Guidelines, the UNAMA Civil-Military guidelines and other documents, are important to preserve the humanitarian space in Afghanistan, ensure protection for civilians, and ensure the most efficient use of resources. Yet the assistance or gestures civilians told CIVIC they most valued from IMF are relatively uncontroversial. Medical assistance, particularly in the immediate wake of an incident or in areas where better help is not available, were spoken of more positively than any other type of aid CIVIC investigated. Civilians also often (though not always) found value in public apologies and recognition, especially when coupled with a gesture of condolence such as ex gratia payments.¹ Meanwhile, the military's broader community assistance efforts, sometimes used for "hearts and minds" and most at odds with the humanitarian space, was not largely noted by civilians.

The findings in this chapter suggest that IMF can make an important contribution to the emotional and physical recovery of conflict-affected civilians, while still respecting the civil-military divide. Despite mechanisms for providing public recognition and compensation being weak to non-existent in the past, there are encouraging signs that most ISAF member countries have recognized the importance of these measures and are improving. Within the course of CIVIC's year-long research, the attitudes and responsiveness of IMF shifted. International forces of one member country who, upon a first visit in early 2008, had never dealt with a civilian casualty and compensation issue, had by the end of the year been confronted with such a situation and found an appropriate way to deal with it. The efforts of countries like the United States, with high troop contributions, to be more responsive in admitting civilian losses and getting aid or funds to affected civilians promptly are a further step in the right direction.

1 Far from being contentious among humanitarian actors, many humanitarian organizations have made calls for IMF to provide compensation, or at a minimum apologies to civilians harmed by their activities. See, e.g., Agency Coordinating Body for Afghan Relief, *Protecting Afghan Civilians: Statement on the Conduct of Military Operations*, (Kabul: Agency Coordinating Body for Afghan Relief, June 19, 2007) 3.



Nazar's father. Nazar's face was badly burned when the taxi he was driving was shot between Torcham to Jalalabad. They received nothing from the Afghan Government or IMF. ACAP granted them assistance in the form of cattle, which provided both food for the children and goods to sell for income. *Photo courtesy of Rebecca Agule.*

CHAPTER 4:

Assistance from Foreign Government Actors

PROGRAM	TYPE OF AID	ACTOR PROVIDING AID	CRITERIA
Afghan Civilian Assistance Program (ACAP)	Livelihood assistance including in-kind materials & vocational training, money for medical assistance, & non-food kits for families	USAID (implemented by IOM)	Any civilian suffering losses, directly or indirectly, due to U.S. military since 2001; any civilian suffering losses, directly or indirectly, due to any ISAF troops since 2006

Although the civilian counterparts of IMF countries provide much foreign aid and development assistance in Afghanistan, CIVIC was only able to identify one program funded by the civilian branch of an IMF country that specifically addressed conflict-affected civilians: the Afghan Civilian Assistance Program (ACAP).² Created by the United States Congress and implemented on the ground by the International Organization for Migration (IOM), ACAP's mission is to seek out and provide tailored, in-kind assistance to civilians harmed by IMF as far back as 2001. In fiscal year 2008, the US Congress appropriated US\$20 million for the program.

ACAP aid packages require several meetings with a family and are tailored to meet their specific circumstances. This family-specific approach results in a far longer processing time and delayed delivery of assistance as a side effect. As a civilian organization, ACAP faces significant problems accessing civilians in some areas because of security concerns. Nonetheless, ACAP is unique among the programs surveyed in that it was the only organization with a mandate to seek out and help all civilians specifically impacted by IMF and provide them equal and sustainable treatment. Many of CIVIC's interview subjects were located with the help of ACAP, so the vast majority of those CIVIC interviewed received assistance

² Sometimes ex gratia payments are distributed by civilian officials based at an IMF Forward Operating Base (FOB) or PRT; nonetheless, the funds are provided by the Defense ministries or agencies of that country.

Nowadays, if you get a piece of bread from someone, you are happy. So this [ACAP] aid is very important. It will help to expand my supplies and to expand business. It will bring positive effects to my family. With this business, we can pay off the loans that we owe to people. Thank you.

Mirweiss, Interview #41, July 21, 2008, Kandahar city, Kandahar province.

from ACAP.³ Still, civilians repeatedly noted that ACAP was the only program that followed through on promises of assistance.

In this sense, ACAP was one of the few programs that met civilians' expectations of assistance following harm. Also, because ACAP provides sustainable livelihood assistance rather than cash handouts, those who received aid frequently told us that their quality of life and economic situations were significantly improved; some now had better livelihood opportunities than existed prior to the incident. ACAP assistance was far less successful than military aid in providing civilians with a sense of redress, primarily because most of those receiving aid did not connect ACAP with those responsible for their losses.

Assistance Available through the Afghan Civilian Assistance Program (ACAP)

ACAP was officially established by the US Congress in 2006, though its work had been operating under another similar mechanism several years before. It is funded by USAID and implemented by IOM. According to the legislation, ACAP is "designed to assist Afghan families and communities that have suffered losses as a result of the military operations against the Taliban and insurgents."⁴

Civilians eligible to receive ACAP assistance include families suffering losses due to US military activities since 2001 or any ISAF activities since 2006. This includes losses indirectly resulting from IMF actions, including suicide bombings or other attacks against IMF or support personnel for IMF.⁵ Eligible losses include the death of a family or community member, the severe injury of a family breadwinner, significant property loss and the loss of important community buildings or infrastructure.

Staff from ACAP, usually Afghans, work individually with families to help them rebuild. Aid packages include any or all of the following: developing a local business, supplementing an existing business, providing literacy or vocational training for children or adults in the family, rebuilding or constructing shelter, medical treatment or other in-kind assistance.

Civilian Responses to ACAP Assistance

ACAP assistance varies depending on the needs of the affected civilians. The primary form is livelihood

3 As noted in the Methodology section, CIVIC has in the past advocated that the US Congress, and other countries, support ACAP. This chapter is not intended as an advocacy tool; however, it does reflect the reasons CIVIC continues to advocate on behalf of this program.

4 United States Agency for International Development and International Organization for Migration, "Eligibility Criteria for ACAP Beneficiaries," [Date not available], Copy on file with CIVIC.

5 Ibid.

development. Families with an existing business may be given material to help expand it – from infrastructure improvement to additional stock for grocery stores, wood-selling businesses or other trades. Families with no regular business or income may be given material or the training necessary to develop one, such as materials for a grocery store, carpentry or mechanical training for sons of a family, or vocational training in cosmetics or sewing for women of the family.

CIVIC interviewed a widow, Bibi Merra, who was training to become a beauty technician. She lost her husband and her home in a US air-strike in 2001 and, seven years later, was still forced to rely on relatives to provide food and shelter for her children. She told us: “After I finish I will set up a beauty

salon for this business. ... At first I could not imagine that I could learn to do it. ... [Now] I hope to have my own independent income and when I do this will take the pressure off of me a little bit.”⁶

GETTING AROUND CORRUPTION

No organization in Afghanistan can completely avoid issues with corruption. ACAP avoids some of the worst pitfalls by hiring its own carefully vetted, local, independent staff and giving in-kind gifts directly to individual families. They also regularly check that the aid is being properly implemented. The ACAP staff, however, still emphasized their constant battle to ensure that all applications made by community members were valid. This sometimes led to delays in aid delivery.

Timor, a taxi driver from the eastern province of Jalalabad, told CIVIC his taxi was destroyed by stray bullets in an escalation of force incident with US troops. He described how: “When I was discharged from hospital, I was totally recovered but I didn’t have any way to support my family now that my taxi had been destroyed. ACAP recently helped me purchase a vehicle. ACAP has also given assistance for the education of my three sons and five daughters.”⁷

For many families, this livelihood assistance was not only a source of income but a way to reintegrate the disabled into their communities. Social stigmas in Afghanistan often prevent the disabled from receiving an education, finding employment or otherwise carrying on a normal life.⁸ CIVIC spoke with one young man whose arm was

incapacitated when a suicide blast exploded near him in the central market of Gardez city. ACAP helped pay for an apprenticeship as a mechanic and purchased the equipment he needed to start his business. He pointed to his partner, who was his teacher during the apprenticeship, “I was a student of this man [senior mechanic] but now I am better than he is!”⁹

CIVIC also visited the tailoring shop of Khaled whose leg was amputated when he was 14 years old due to a cluster munition explosion. ACAP helped Khaled receive training as a tailor and to set up a shop for himself. Seven years after he lost his leg, his tailoring business was thriving and he could barely keep up

6 Bibi Merra, Interview #48, July 30, 2008, Herat city, Herat province.

7 Timor, Interview #35, July 7, 2008, Jalalabad city, Nangarhar province.

8 See Ministry of Labor, Social Affairs, Martyrs and Disabled, Afghanistan National Disability Action Plan 2008-2011. See infra Chapter 2 “Social Stigma and the Denial of Education.” Other disability-focused non-governmental organizations or international organizations, including the International Committee for the Red Cross and the Swedish Committee for Afghanistan, have microfinance and other livelihood support programs for the disabled, not limited to those whose disabilities are due to conflict. Fiona Gall, Swedish Committee for Afghanistan, Interview #130, June 25, 2008, Kabul city, Kabul province.

9 Khalil, Interview #6, February 20, 2008, Gardez city, Paktia province.

with the work.¹⁰

Most families also receive standard educational “kits” for children of the family. Literacy training for women or children in the family is strongly encouraged. Women of the family are often given sewing kits, and where possible, found employment as seamstresses or other work appropriate to women.

In some cases ACAP funds medical expenses or travel to/from medical treatment centers. Given the high poverty levels in Afghanistan, the cost of transport to the place where treatment is provided can prevent civilians from receiving critical or continuing treatment. In one of its more exceptional cases, ACAP assisted Bilal to go to India for eye treatment after shrapnel wounds from a US air-strike in 2002 destroyed his vision.¹¹ The treatment had not restored his eyesight as of the date of this report, but the operation provided him with a chance and he and his family were extremely grateful. They said they had written countless letters to the US Embassy, military authorities and other agencies for years, and while everyone promised to help them, ACAP was the only one that actually did.¹²

Bilal’s comments are common. Other civilians told CIVIC that while they had asked for help – sometimes for years – from IMF, from the government or from other agencies, ACAP staff were the only ones to follow through on promises of aid. Three friends in Kandahar city lost their carpentry businesses and nearly their lives to a suicide bomb. The men said they received no help from anyone despite extensive publicity surrounding the bombing. When ACAP identified them, medical expenses had put them into such dire economic straits they could barely feed their families.

WHAT CIVILIANS WANT

While every beneficiary seemed happy to receive ACAP aid, not every beneficiary agreed that in-kind assistance was the best way to make amends for the harm caused by the current conflict. “WFP distributed one bag of wheat for each family at that time; other agencies distributed blankets and some kitchen kits. From that time we did not receive any assistance from any national or international organization. One year ago ACAP discovered us. I am still not happy though because we wanted IOM to give us money, not a business.”ⁱ Other aid workers, though, suggested that in-kind aid was more sustainable and helped civilians more in the longer term. One USAID official who worked on stabilization and immediate relief programming alongside US troops said in-kind aid was also less likely to be taken away from insurgents than money.ⁱⁱ

i Ziadaun, Interview #43, July 29, 2008, Herat city, Herat province.

ii USAID mobile stabilization officer, Interview # 171, July 4, 2008, Kabul city, Kabul province.

ACAP also provides community assistance, usually when an incident has affected the whole community or when security concerns prevent individual assistance. For example, a February 2002 US air-strike caused heavy losses for one village in southeastern Paktia province, but because of its remote location and high security risks, little aid or assistance by any humanitarian or government agency had been possible for years.¹³ In 2008, ACAP was able to help the community by providing them the materials and cash-for-work payments to build a retaining wall.

10 Khaled, Interview #49, July 20, 2008, Herat city, Herat province.

11 Some expenses of the trip and treatment were born by Bilal’s family. ACAP only contributed and helped enable the visa process. Brother of Bilal, Interview #13, June 18, 2008, Gardez city, Paktia province.

12 Ibid.

13 Interview with ACAP staff and beneficiaries, Interview #12, June 18, 2008, Gardez city, Paktia province.

Where ACAP assistance was delivered at approximately the same time as IMF ex gratia payments or Code 99 payments from the Afghan Government (described in the next chapter), civilians were far more likely to recover from their losses.¹⁴ ACAP assistance usually requires families to provide some input – for example, jointly splitting expenses with ACAP for an investment in a new business. A cash influx from IMF or the Afghan government together with ACAP’s livelihood assistance tended to help families pay their share of these costs, or enabled them to pay for immediate funeral or medical expenses and still have money to contribute toward making the most of their ACAP assistance, according to ACAP staff.¹⁵

While most beneficiaries seemed happy with the ACAP assistance, implementing this type of program has its challenges.

Months can pass between when a family is identified and when they actually receive aid because identifying eligible civilians is exceedingly difficult and any resulting aid package takes time to personalize. Further, while distinct funding from the US Congress for ACAP did not come through until 2006, civilians are eligible for assistance based on losses suffered as far back as 2001. These beneficiaries will receive aid five or more years after the harm occurred. ACAP staff has a goal of turning around new cases within eight weeks, but the backlog of cases combined with new cases has made that goal impossible thus far.

As violence escalates across Afghanistan, identifying civilians and delivering assistance becomes that much more difficult. As Masood Karakhoil, a humanitarian working in conflict-prone areas said: “The situation now... the frequency and intensity of attacks makes it difficult to find families [who are eligible] and makes it even more difficult to find out how to help them, what they need.”¹⁶ Reports by the media or other independent monitors are an important way for ACAP to verify claims but, as security conditions have crumbled, journalists and other monitors are able to access fewer areas to verify the number of civilians harmed.¹⁷

Poor information sharing between independent monitoring agencies, the military and ACAP made it even more difficult for ACAP staff to overcome these issues. ACAP staff regularly reaches out to representatives of international organizations, military actors or others with knowledge of civilian losses, but such efforts did not always result in the type of information sharing or referrals that might help it identify and verify the eligibility of civilians more quickly. While energy is put into catching military commanders early in their rotation and information about ACAP is included in some briefings, no military representative CIVIC spoke to knew about the program. Afghan Government agencies most related to ACAP’s mission or the Afghanistan Independent Human Rights Commission Kabul office also said they did not know about the program. Several UN officials knew of the program but said they did not generally refer cases. A UN worker said he stopped referring cases to ACAP because the response time was so slow.¹⁸

Security issues also get in the way of quick and effective implementation. USAID programming and other US government-funded programs have long been targeted by insurgents, so ACAP staff are not

14 Catherine Northing, ACAP official, Interview #101, February 21, 2008, Gardez city, Paktia province.

15 Ibid.

16 Masood Karokhail, Tribal Liaison Council, Interview #163, November 4, 2008, Kabul city, Kabul province.

17 UN World Food Program Area Officer, Interview #181, July 21, 2008, Kandahar city, Kandahar province.

18 UNAMA Human Rights Officer, Interview #129, July 15, 2008, Kabul city, Kabul province.

required to tell beneficiaries where their funding comes from, particularly where doing so might put anyone involved at risk. Now representatives of the international community in many areas across Afghanistan and regardless of their source of funding are being targeted. Afghan staff of ACAP face significant risk going into high-conflict areas to deliver assistance. One ACAP worker described how he was threatened by the Taliban in Kandahar:

I was taking a survey and I had cameras up there. The Taliban surrounded us with guns pointed at us. We were captured and we were taken to an area with 70 other Taliban, and fortunately I met someone up there who I knew and that person saved me.¹⁹

Another staff member described how the Taliban intimidated civilians eligible to receive ACAP assistance: “The Taliban said [to civilians] that if you take any money from the UN, then we will take it from you. Any international organization’s money will be spent on your burial.”²⁰

Security is a bigger hurdle for ACAP relative to other programs given its goal of providing individually tailored aid. Each tailored package may require three or more visits to complete assistance, and each visit could be delayed by days, weeks or even months due to persistent security threats in an area, setting the whole process back. A civilian we spoke with described how these security problems undermined his ACAP assistance. An ACAP loan to rebuild his home was to be provided in four installments, with a progress check between payments. However, the requirement that an observer had to check the building process before installments were paid proved impossible in the security environment:

The [ACAP] observer said that we would have to guarantee his safety if he went up to see the land. But we cannot guarantee his safety. We cannot guarantee our own safety, so how can we guarantee the safety of the people coming to assess? The Taliban will see us bringing the observer and they will say that we are helping the government and bringing spies to the area.²¹

The family’s inability to protect the observer means they have not received their second installment and cannot continue building their home.

While ACAP is working to solve some of the issues noted above (for example, hiring more staff in order to speed delivery time), it should be noted that many of the problems ACAP encountered were due to the difficulty of implementing a program like this in Afghanistan rather than any weak or faulty program design. Many challenges are interrelated, making it difficult to address any one concern without creating other problems. For example, efforts to minimize the time it takes to deliver aid may involve trade-offs in minimizing corruption, ensuring equal and consistent aid distribution, or a level of personalization in approach.

While conflict-affected civilians may prefer more timely, plentiful and personalized support, or monetary compensation rather than in-kind aid, program administrators and donors must balance these concerns

19 Kandahar ACAP Field Worker, Interview #172, July 21, 2008, Kandahar city, Kandahar province.

20 Ibid.

21 Alif, Interview #92a, July 22, 2008, Kandahar city, Kandahar province.

against institutional priorities of ensuring that aid is accountable, fairly and consistently delivered, and reasonably priced. The fact that ACAP has been able to overcome so many of problems inherent to the current environment of Afghanistan and reach so many civilians in such a specialized way is in itself a huge achievement and certainly a step above many of the other civilian assistance programs discussed in this report.

Redress

Sustainable livelihood assistance through ACAP seemed extremely valuable to beneficiaries given the economic pressures in Afghanistan. The assistance, however, did not always meet the emotional desire of civilians for redress. Although the program was funded by the US Congress in part to make amends (and promote strategic “hearts and minds” concerns), beneficiaries did not often view the assistance as a source of atonement or condolence for their losses and did not report a sense of redress or reconciliation.

One father benefiting from ACAP appeared to attain a sense of redress from the assistance:

In the first few weeks or so, we were frustrated that [my son] got killed... After a few months we received assistance, [and] then we thought this shows that they care and that they didn't do it intentionally now that they are helping our family. If we hadn't received this assistance, we would have still been frustrated. It would have left our family hopeless. ... So now we don't hold anything personal against the international forces.²²

Not everyone shared his sense of resolution and many civilians had mixed responses on whether the assistance was received as an expression of concern by the warring party. For example, one man lost his father and niece in an escalation of force incident in Jalalabad. The shots from US forces left approximately 1,250 holes in his car. He said the assistance he received from ACAP was a big help but he still wanted accountability in a formal trial: “We want justice,” he said. “Yes, there [have] been a lot of changes to my life since ACAP – but I still want justice.”²³

One man's son was killed by US troops in a road accident. He not only received ACAP assistance for a new business but also a direct apology and monetary support from the troops involved. When interviewed, he seemed to have found greater peace with the military payment and apology than with the ACAP assistance. He was enthusiastic in talking about the ACAP assistance he had received. But when he told CIVIC how the troops apologized directly to him and seemed genuinely remorseful, he said he forgave them and did not associate the same sentiments with the later ACAP assistance:

“We appreciate the assistance. Nobody can give the price of the dead. Nobody can replace what you have lost. But this assistance that ACAP provided to us ... we are very happy with it.”²⁴

Although civilians may suspect the US Government as the source of ACAP aid, the lack of formal acknowledgement might undercut the potential for civilians to believe that those who harmed them

22 Habibullah, Interview #82, July 20, 2008, Kandahar city, Kandahar province.

23 Rahim, Interview #56, August 5, 2008, Jalalabad city, Jalalabad province.

24 Omar, Interview #39, July 8, 2008, Jalalabad city, Jalalabad province.

were attempting to take responsibility or offer support. Yet even in provinces where civilians did know that ACAP was supported by the US Government, it did not always provide a sense of redress. One civilian whose family was killed by a suicide bomb targeting IMF said he knew the money came from USAID but that it “didn’t change my impression.”²⁵

It may be that unless the apology or form of amends comes from a military actor, it is not received as a gesture of respect. As mentioned previously, ACAP assistance often comes long after the actual incident. The gap in time between the incident and the response may also help explain why the assistance is often not considered a direct response to the harm done.

While few civilians talked about ACAP assistance as a means of redress, many said they enjoyed a better quality of life, and as a result seemed more positive about their situation and less resentful about the incident. Further research should be done into how this type of assistance might contribute to a sense of redress.

Conclusion

ACAP is one of the more successful victim assistance programs and the only one funded by a foreign government specifically for conflict-affected civilians. The tailored aid seemed better able to meet the variety of needs from which conflict-affected families suffer than other approaches like military compensation. In many cases, ACAP assistance was extremely effective in helping victims of conflict rebuild their lives and recover from an incident.

Challenges include the slow delivery of aid and access limitations due to increasing and geographically shifting insecurity. More funding and coordination might address some of these problems. Greater funding for staff (in the works already, according to ACAP staff) might speed delivery times, and greater coordination with other victim support or ex gratia mechanisms might help get around security hurdles to identifying beneficiaries.

CHAPTER 5:

Assistance from Afghan Government

PROGRAM	TYPE OF AID	ACTOR PROVIDING AID	CRITERIA
Code 99 Fund	Cash Payments	Afghan Government President Karzai's Office	Death or injury due to ongoing conflict
Martyrs Fund	Small Monthly Allowance	Afghan Government MoLSAMD	Killed in any conflict
Fund for the Disabled	Small Monthly Allowance	Afghan Government MoLSAMD	Injured either in conflict or otherwise

The Afghan Government has three mechanisms for providing support to those who have lost a family member or who have themselves been injured in conflict: President Karzai's "Code 99" Fund and two funds administered by the Afghan Ministry of Labor, Social Affairs, Martyrs, and the Disabled (MoLSAMD) called the Fund for Martyrs and the Fund for the Disabled.

Afghan Government agencies are also involved in broader government services – from medical care overseen by the Ministry of Health to reconstruction and development projects overseen by the Ministry of Rural Rehabilitation and Development. While important, full descriptions of the ways these ministries provide broad support to conflict-affected civilians and communities is beyond the focus of this report.

Overall Afghan Government programs hold promise. They are administered by Afghan Government agents, and so were more accessible than IMF payments for example. Civilians are generally not afraid to approach Afghan Government offices to register a complaint or claim. They also may be more accessible than ACAP assistance; whereas most civilians did not necessarily know about ACAP until they received it, many thought to file a complaint or inquire with local authorities about assistance. In addition, following a well-publicized incident with multiple civilian casualties, the Afghan Government was proactive in providing immediate assistance and did not wait for civilians to file claims.

All three programs, however, are plagued by implementation issues and seriously undermined by corruption. Available assistance was often not distributed uniformly. At least with the Martyrs and

Disabled funds, few eligible civilians seemed to have even heard of the funds, much less received benefits from them.

Assistance Available through the Afghan Government

President Karzai's "Code 99" Fund

The "Code 99" Fund is an executive fund created and administered by the office of Afghan President Hamid Karzai. The Code 99 Fund gives 100,000 afghanis (approximately \$2,000) to families who have

TALIBAN PROGRAMS

A common question CIVIC receives is whether the Taliban or other insurgent groups are also providing compensation. At least one government official told CIVIC that he knew of Taliban actively compensating civilians 300,000 afghanis (approximately \$6,000) in some areas in the south.ⁱ A few civilians interviewed whose losses stem from initial US bombings in 2001 – while the Taliban was still arguably in power – said they received immediate medical treatment, and typically food and non-food aid, immediately after an incident.ⁱⁱ With increasing reports of the Taliban establishing "shadow governments" in some districts and provinces, with the capacity to mediate and resolve claims and disputes (including those not related to combat) it seems likely that there are other instances of compensation, though the practice is not widespread and seems at odds with Taliban tactics like using civilians as human shields and suicide bombings in civilian areas.ⁱⁱⁱ

i Afghan executive official, Interview #166, November 17, 2008, Kabul city, Kabul province.

ii See, e.g., Bibi Merra, Interview #48, July 30, 2008, Herat city, Herat province; Ziaudin, Interview #43, July 29, 2008, Herat city, Herat province.

iii James Joyner, "Taliban Shadow Government Nears Kabul," Atlantic Council of the United States, December 28, 2008, https://www.acus.org/new_atlanticist/taliban-shadow-government-nears-kabul.

lost a family member in the ongoing conflict and 50,000 afghanis to individuals injured (approximately \$1,000). In addition, where someone is killed, a member of the family is sent on the Haj to Mecca. Civilians injured in any aspect of the ongoing conflict – whether due to activities of IMF, insurgent attacks or Afghan forces activities – are in theory eligible for this assistance, though in practice neither CIVIC nor other monitoring agencies have heard of the fund being given to civilians or their families harmed by Afghan force activities alone.¹

An Afghan official reported that more than 270 million afghanis (approximately \$5 million US dollars) was distributed from the fund in 2007,² far more than the reported ex gratia payments of all ISAF countries combined.

Civilians eligible for the program may be nominated either by local governors or officials, by Ministers of Parliament or the Afghan President himself.³ After

the names of those eligible are sent to the President's office, the information is fact-checked with other local government offices and then payments may be distributed either directly to the families or via the officials who originally nominated them.

1 Civilian casualty investigators, Afghanistan Independent Human Rights Commission, Interview #173, November 8, 2008, Kabul city, Kabul province.

2 Afghan executive official, Interview #166, November 17, 2008, Kabul city, Kabul province.

3 Wasil Noor Mohammad, Ministry of Labor Social Affairs, Marytrs and the Disabled, Interview #120, May 6, 2008, Kabul city, Kabul province.

MoLSAMD Fund for Martyrs and Fund for the Disabled

The Fund for Martyrs and the Fund for the Disabled are administered by The Ministry of Social Affairs, Labor, Martyrs, and Disabled. The Martyrs Fund is similar to a pension system. Those killed due to conflict in Afghanistan, either before or after the 2001 invasion or due to ERW,⁴ are considered “martyrs” and their survivors are eligible for monthly financial assistance. Dependents of martyrs receive a monthly allowance of 500 afghanis (approximately \$10 per dependent). Support is tied to each child and ends when a male child turns 18 or when a female child marries.⁵ To be eligible for payment, families or individuals must be certified by a local court.

The MoLSAMD Fund for the Disabled has the same structure and purpose as the Martyrs Fund and is intended as a form of social solidarity with those injured during conflict. Injured individuals receive 250 to 500 afghanis a month (\$5 to \$10), depending on whether they were certified by health officials as 50 or 100 percent disabled.

As of January 2009, there were 118,000 “martyrs” and 74,000 disabled persons registered with MoLSAMD and receiving payments.⁶

Civilian Responses to Afghan Government Assistance

The level of accessibility and effectiveness of Afghan Government aid strongly depends on which office – either Karzai’s office or MoLSAMD – is administering the claim. Code 99 payments are significantly more common and are sometimes distributed more quickly than any other type of assistance discussed in this report. In contrast, only one civilian CIVIC interviewed had received support through the Martyrs and Disabled funds, and only one other civilian knew they existed. Corruption and coordination were significant problems for both programs.

There are no firm statistics on the total number of payments received by civilians from the Code 99 Fund... In the interviews CIVIC conducted, twice as many civilians reported receiving government assistance through the Code 99 Fund than reported receiving compensation or payment from IMF. Other humanitarian and international observers confirmed that they heard of the Code 99 funds being distributed far more frequently than IMF compensation.⁷ Many civilians also seemed aware of this program. Local and provincial government officials, typically the ones to nominate civilians for the Fund, have an incentive to actively identify civilians eligible for this assistance because in doing so they can provide services to their communities.

Implementation was not uniform. Civilians and aid workers across different regions confirmed that Code 99 payments were more likely to be distributed after large-scale rather than smaller, isolated incidents. Payments have, for example, been made after most air-strikes that caused significant civilian losses: forty-seven Code 99 payments were given when a US air-strike in Nangarhar province on July 6,

4 See *infra* Chapter 1 “Landmines and Other Explosive Remnants of War”, 13.

5 Wasil Noor Mohammad, Ministry of Labor Social Affairs, Martyrs and the Disabled, Interview #120, May 6, 2008, Kabul city, Kabul province.

6 Wasil Noor Mohammad, Ministry of Labor Social Affairs, Martyrs and the Disabled, Interview #183, January 20, 2009, Email to CIVIC.

7 Civilian casualty investigators, Afghanistan Independent Human Rights Commission, Interview #173, November 8, 2008, Kabul city, Kabul province.

2008 killed 47 and wounded another 10 civilians in a wedding party.⁸ Code 99 has also been used after many of the more high-profile suicide bomb incidents. By comparison, CIVIC rarely heard of Code 99 payments going to civilians injured or killed in isolated incidents, like escalations of force at checkpoints or incidents involving only Afghan national security forces.

As with direct payments from IMF, money civilians received from the Code 99 Fund was helpful in paying for immediate expenses (funeral expenses are often quite large in Afghanistan) or immediate

“Compensation or development projects that target an area but that don’t reach the people they are intended for... because of corrupt elders or officials... raise even more resentment.”

Afghan aid and development worker, Interview #163c, November 4, 2008, Kabul city, Kabul province.

medical bills. Afghan officials said this was one of the Fund’s original intentions: “The initiative was initially taken from the President himself. When someone dies their family can’t even afford the process of grieving in many cases.”⁹ However, many civilians affected by the conflict said that after these initial expenses were paid, there was not much left for anything else, particularly if a breadwinner was killed.

Corruption stymies many good intentions in Afghanistan and these government programs are not immune. Some civilians told CIVIC they thought

the allocation and distribution of Code 99 funds was skewed by corruption. One man from Kandahar province lost six members of his family in an IMF airstrike; another 24 members of his community, some extended family members, were killed in the strike and subsequent fighting. He said:

We were promised by the government that we would be given 50,000 afghanis for the injured and 100,000 afghanis for the dead from the government fund. We went to the provincial government and a member of the provincial council went to Karzai and Karzai promised the money. But it has never come.¹⁰

He thought the money was taken by local leaders:

There are a few tribes who rule the government and they are in administration. Some tribes don’t have representation in the administration and the money will go directly to those with connections.¹¹

Those involved in administering the Code 99 Fund said they were aware of this issue and were working on various types of distribution mechanisms, sometimes bypassing local leaders, to allow them to get around this problem in some areas.¹²

Corruption is a likely factor behind the poor implementation of the Martyrs and Disabled program. In contrast to the number of civilians and communities who knew of the Code 99 Fund, only two of the 143

8 Martin Patience, “Concern over Afghan civilian casualties,” *BBC News*, July 11, 2008, http://news.bbc.co.uk/2/hi/south_asia/7502137.stm.

9 Afghan executive official, Interview #166, November 17, 2008, Kabul city, Kabul province.

10 Haji, Interview #92b, July 22, 2008, Kandahar city, Kandahar province.

11 Ibid.

12 Afghan executive official, Interview #166, November 17, 2008, Kabul city, Kabul province.

war victims CIVIC interviewed knew of the Martyrs and Disabled funds and only one had succeeded in receiving payment (see adjacent box “A Success Story”).¹³ Any person eligible for the Martyrs and Disabled funds must be certified through the judiciary, which is notoriously corrupt.¹⁴ For this reason alone, civilians may have been discouraged from trying to register for the funds; the costly bribes and judicial fees involved in getting certified can outweigh the funds’ benefits.

The fact that so few civilians mentioned these funds suggests that the implementation problems stem from more than just corruption. As the Afghan National Development Strategy has noted regarding the Martyrs Fund: “The benefit is paid quarterly through banks that are usually situated in the provincial capitals. Given this, many poor and eligible Martyrs families and disabled are discouraged to apply as the transportation costs exceed the benefits.”¹⁵ Prior to 2006 the Ministry had not kept up with recent injuries and losses. It does not seek out civilians but rather expects those eligible to initiate the process of certification through local authorities and courts. As a result, many beneficiaries on the MoLSAMD Martyrs and Disabled lists were from decades-old conflicts.

MoLSAMD itself has recognized these issues and as a result, in 2006, the Ministry put a stop to all payments while it conducted a census to update its records. A database was introduced in 2007 and payments to all registered individuals or families recommenced in fall 2008.¹⁶ While updating the current roster is an improvement, it was not clear from interviews with MoLSAMD what steps would be taken in the future to make sure the database is kept current. At the date of this report, other accessibility issues have not been addressed to CIVIC’s knowledge.

One way in which MoLSAMD could improve their records of eligible civilians would be to work with other programs that continuously identify and track conflict-affected civilians. It would make particular sense if various government offices that record civilian casualties had a centralized database. The Code 99 Fund keeps a database, and appears to effectively and quickly identify potential beneficiaries, but President’s Karzai’s office and MoLSAMD Martyrs and Disabled funds administrators do not share information about civilian victims of conflict.

A SUCCESS STORY

After he lost his leg due to shrapnel wounds from a US air-strike in northern Kunduz province in 2001, Neurallah applied first to the governor’s office for MoLSAMD disabled funds. The degree of disability he suffered then had to be certified at the hospital, and his final application and disability status was then verified by a mullah and finally referred to MoLSAMD in 2003/

Neurallah, Interview #22, July 2, 2008, Kunduz city, Kunduz province.

13 Neurallah, Interview #22, July 2, 2008, Kunduz city, Kunduz province. See also, Hasan, Interview #32, July 2, 2008, Kunduz city, Kunduz province (saying he had applied for the Disabled Fund through the local governor’s office in Kunduz province but had never heard anything back).

14 Sayed Yaqub Ibrahim and Jean MacKenzie, “Fears over ‘Islamicisation’ of Afghan judiciary, *Institute of War and Peace Reporting*, October 9, 2008, <http://www.humanrights-geneva.info/Fears-over-Islamicisation-of-3588>.

15 Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy, Social Protection Sector Strategy*, 13.

16 Wasil Noor Mohammad, Ministry of Labor Social Affairs, Martyrs and the Disabled, Interview #120, May 6, 2008, Kabul city, Kabul province; Wasil Noor Mohammad, Ministry of Labor Social Affairs, Martyrs and the Disabled, Interview #183, January 20, 2009, Email to CIVIC.

Redress

Payments made to civilians by the Afghan Government did not appear to provide a significant feeling of redress. The lack of emotional impact of these payments is due, no doubt, to civilians not linking gestures made by the Afghan government to the harm caused them by AGE or international military forces. CIVIC found no cases where Code 99 or Martyrs Fund payments were made to civilians suffering harm due solely to Afghan forces.

Even though the amount given is the same, civilians did not appear to receive similar emotional redress when Code 99 payments (as opposed to IMF ex gratia funds) were offered as a result of IMF activities. Following the July wedding party bombing, the Afghan Government gave each family that had lost a loved one 100,000 afghanis (approximately \$2,000) from the Code 99 Fund. Those CIVIC interviewed said unless it came from those forces who attacked them, it did not make any difference. One civilian affected by the wedding party bombing told us: “If President Karzai pays all of Afghanistan for one killed person, it is not enough. . . . People believe ISAF just pours salt in the wound, because of how they acted. People are angry because no representative from ISAF came to see what happened, or to apologize that it was a mistake.”¹⁷

Unfortunately, because the Afghan Government is eager to be seen as addressing civilian harm and they have fewer obstacles to verifying civilian losses quickly,¹⁸ Code 99 payments are often given in place of IMF ex gratia payments following large airstrikes or attacks. CIVIC and other observers noted that where the Afghan Government has provided Code 99 payments, IMF will not provide ex gratia payments, perhaps in an attempt to prevent double compensation.¹⁹ For example, following two incidents in summer 2008 in which OEF airstrikes resulted in tens of civilian casualties and much public attention (the July 6, 2008 air-strike in the district of Haskamina, Nangarhar province; the August 22, 2008 strike against the Azizabad district of Herat), Code 99 payments were distributed to civilians.²⁰ While it is possible that IMF involvement would have provided ex gratia payments in these cases, the Code 99 payments were given out within days or weeks of the incident, before investigations by the IMF involved had even taken place much less before any ex gratia payments could be processed.

This speed of delivery is good from a humanitarian point of view (quick aid is helpful for families dealing with medical and funeral expenses), but it creates unintended side effects in terms of redress. The US representatives involved in these incidents decided not to provide monetary payments because the civilians had already received Code 99 funds and instead decided to channel their aid into schools and other construction projects in the area.²¹ But according to the BBC’s Ian Pannell, who organized a meeting between Azizabad local leaders and US representatives in Kabul, *who* gave the civilians the payments mattered as much as whether any money was given or not.²² Pannell said that although, “the US had met with families and offered sympathies... the families felt more was required and concepts of justice (and blood money), in the eyes of those bereaved were not met.”²³

17 Ali, Interview #40a, July 20, 2008, Kabul city, Kabul province.

18 See Chapter 3 box “Legal Liability Concerns.” 35.

19 See also Afghanistan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on the Operations of Pro-Government Forces*, 13, 17 and 49.

20 Burhanullah Shinwari, Deputy speaker of the Afghan Senate, Interview #174, July 17, 2008, Kabul city, Kabul province (noting his role as head of the Afghan Government investigation into the incident and subsequent payments); BBC News, “US Killed 47 Afghan Civilians,” *BBC News*, July 11, 2008, http://news.bbc.co.uk/2/hi/south_asia/7501538.stm; BBC News, “Inside US Hub for Afghan Air Strikes,” *BBC News*, November 29, 2008, http://news.bbc.co.uk/2/hi/south_asia/7755969.stm.

21 Ian Pannell, BBC News, Interview # 184, December 1, 2008, Telephone interview.

22 Ibid.

23 Ian Pannell, BBC News, Interview #185, January 4, 2009, Email to Erica Gaston.

Conclusion

The success of Afghan Government mechanisms to address civilian harm is mixed. Ideally, if these programs shared information and were better coordinated they might be an effective way of helping members of the population affected by conflict, i.e. the Code 99 Fund would give families a large sum of cash to deal with any immediate funeral or medical bills, while the Martyrs and Disabled monthly payments might provide more sustained support in years to come. In practice, though, there is no coordination between the two programs, not even sharing of databases compiled on newly identified civilian victims. In addition, the Martyrs and Disabled funds have a limited reach and serious implementation flaws. Corruption inhibited effective delivery of assistance for both of these programs.

The Afghan Government Code 99 Fund was very successful in other ways. Within the category of monetary payments, Code 99 payments seemed to reach more civilians and more quickly than most IMF ex gratia payments or other forms of assistance. Many more civilians also knew of the Afghan Government payments, suggesting awareness of the Code 99 Fund is more widespread than IMF payments. Building on this promise and coordinating efforts with other assistance programs might enable the Afghan Government to make an even more significant contribution to the recovery and rehabilitation of its population.

CONCLUSION & RECOMMENDATIONS

... Particularly in terms of how we respond when there are civilian casualties, I think we've been too bureaucratic about it. Our approach has been in a way classically American, which is let's find out all the facts, and then we'll decide what to do. But in the meantime we have lost the strategic communications war.

And so the guidance that I provided is that our first step should be if civilian casualties were incurred in this operation, we deeply regret it, and you have our apologies. And if appropriate, we will make amends. Then we will go and investigate, and then we will figure out whether we need to do more or frankly, if -- if we paid somebody we shouldn't have. Frankly, I think that that's an acceptable cost. But we need to get the balance right in this in terms of how we interact with the Afghan people, or we will lose.

Secretary Robert M. Gates, US Department of Defense
In testimony given to the Senate Foreign Relations Committee
January 27, 2009

This report draws out the need for, challenges to and successes of compensation and victim assistance programs in Afghanistan. The analysis will, we hope, encourage more research and the development of best practices. We hope it will generate greater information sharing and coordination between the actors mentioned: ISAF troops, the US Government and the Afghan Government. Finally, we hope it will encourage other ISAF member states, those with troops in relatively peaceful posts as well as those involved in active combat, to increase their support for conflict-affected civilians.

Above all, CIVIC's research shows that compensation and support to victims of conflict are both possible and practical, despite statements from government and military officials to the contrary. Several mechanisms for addressing civilian losses exist and are now working on the ground. Their creation is an important symbolic statement about the concern of international actors and the Afghan Government over civilian casualties. On the ground, however, there remains a disconnect between worthy intentions and successful implementation. Problematic elements detailed in this report can be addressed with concrete, immediate efforts to: identify civilians harmed by the conflict and respond to them proactively, track affected civilians and any aid they receive and, importantly, improve coordination among actors providing compensation and victim assistance so that no civilian suffering losses is overlooked or ignored.

There is no single, ideal approach to delivering aid to individuals, and no “one-size-fits-all” strategy. Each approach to civilian suffering detailed in this report has its benefits. Combining different types of programs and approaches already working in Afghanistan may be the only way to address victims’ economic, physical and emotional needs while more effectively sidestepping corruption, security and poor development progress.

In 2007 and 2008, an estimated 3,641 civilians were killed by parties to the conflict in Afghanistan.¹ For every civilian killed, as many or more are injured, lose their homes or livelihoods. For each family struggling to recover from losses, there are ripple effects on the continued development and stabilization of Afghanistan. No amount of compensation or assistance can bring back a loved one, yet survivors can experience a real sense of redress when provided with an apology, recognition and/or monetary payments by the actor that caused them harm. It only takes seeing one family maltreated and ignored by military forces for an individual or community to turn against the international effort. For moral and strategic reasons, the billions of dollars spent to win, keep and rebuild Afghan communities must include specific outlays for recognition and assistance to civilians suffering losses due to the conflict.

Take-Aways and Lessons Learned

For countless Afghan families living on the margins, the loss of a breadwinner, high medical or funeral costs, or the financial burden of supporting disabled or dependent relatives can make basic survival difficult. Civilians who suffer losses want help with any necessary medical assistance, timely and adequate help rebuilding and recovering economically, and to know their losses have been recognized. The more assistance efforts can provide these elements, particularly if the civilians perceive the help as coming from those they blame for their losses, the more families are able to recover.

CIVIC’s interviews affirmed that many civilians want more than physical or financial help – they expect apology, recognition or some other form of redress. Existing compensation and support mechanisms did not offer a sense of redress in all cases, stymied by the approach taken, larger program design issues, the situation surrounding the incident in question or varying individual emotional responses to assistance. Still, in many cases civilians *were* satisfied. General trends and patterns in civilian responses suggest that three factors contribute to feeling a sense of redress when: 1) any follow-up and assistance came immediately or soon after the incident; 2) any apologies or response were perceived by the victim(s) as coming from the entity responsible for the loss; and, 3) the entity responsible attempted to personalize any responsive gestures, often in discussion with community elders. CIVIC hopes these conclusions will be tested with more rigorous research.

Most programs specific to war victims are relatively new, as is the concept of warring parties providing amends to civilians they harm. It will take time for best practices and strategies for assistance to emerge. Without taking away from the enormous strides military, governmental and non-governmental actors have already made in addressing the needs of conflict-affected civilians, it is important to note a few overarching concerns and constraints:

¹ In 2007 and 2008, an estimated 3,641 civilians were killed by parties to the conflict in Afghanistan. United Nations Assistance Mission in Afghanistan, *Civilian Casualty Estimates Update, January – December 2008*, 1.

- ***Gaps exist. A significant number of civilian survivors of combat operations receive no help and those that do often find it is too little, too late.*** Those who are victims of AGE attacks still have little chance of receiving most types of compensation or assistance. Those harmed before these programs were created have a minimal chance of now receiving compensation or certain types of redress or help. Many civilians suffering in high-conflict districts can seldom be reached even when mechanisms exist to help them. If civilians leave zones of conflict they may be out of immediate danger but are more likely to lose their homes, property and any means of support, and in many cases are not able to establish these losses to the satisfaction of aid and compensation program criteria.
- ***Lack of coordination leads to missed opportunities to improve victim identification and assistance.*** The same casualties are identified over and over again, while others fall through the cracks. Aid is delayed across the board. To CIVIC's knowledge, six distinct governmental, international and military entities including most of the programs discussed in this report have some form of database or register tracking civilian casualty incidents; yet none of these organizations coordinate information or resulting efforts to address the recorded harm.² Coordination and information sharing might also allow families to make better use of what aid is available to them. As an Afghan Government official told us: "During a bombardment often the house is destroyed, property, animals and other losses like death or injury. [A one-time payment by one group] is not enough to cover all that. If there was coordination then they [different groups] could cover all their needs."³ Frequent communication and cooperation among those actors might address some of these issues, even if not publicized or tightly knit.
- ***Victim needs are consistently – and mistakenly – given a lower priority than liability concerns.*** In discussions with representatives of ISAF member countries, many said they did not donate to some of the mechanisms described in this report for fear of being associated with liability for their own or other countries' casualties. Yet the average Afghan cannot tell one ISAF troop from another. Popular anger and resentment over civilian casualties and property loss does not distinguish between one ISAF country or another. These emotions run especially strong when no help is provided following harm. To the extent this is a collectively recognized problem (as it appears to be given recent statements by US and other ISAF officials), it should be supported by all ISAF countries.
- ***There is often a regrettable disconnect between policy level recognition of the importance of these programs and the dedication of sufficient resources and energy toward making them to work on the ground.*** Ex gratia payments by ISAF member countries work on paper, but are often hamstrung in practice by unworkable procedures. They are not made accessible to average Afghans. Many actors involved in compensation and victim assistance complained that funding shortfalls prevented them from helping those identified, or from dedicating sufficient staff and resources to fully address any claims or beneficiaries. In some cases, particularly with US and other military compensation, the ad hoc nature of mechanisms severely limits fair and equitable distribution across Afghanistan. IMF forces with funds for ex gratia payments should have a

2 Some of the program operators discussed in this report said they tried, for example, to reach out to other government or military entities in order to better share information but to little effect.

3 Afghan government official, Interview #166, November 17, 2008, Kabul city, Kabul province. See also, Catherine Northing, ACAP official, Interview #101, February 21, 2008, Gardez city, Paktia province.

clear set of guidelines to ensure that all Afghans are treated fairly. Any actor engaging in combat in Afghanistan should have dedicated, sufficient funds for addressing civilian harm that may occur during the course of operations. ISAF should establish policies that allow troops in one location to refer known civilian losses to ISAF troops in another.

These overarching concerns present significant challenges. The good news is that the necessary tools for more holistic and widespread victim relief are already in place. Existing victim assistance mechanisms can appropriately address civilian suffering. A perfect scenario following an incident might be the provision of immediate medical and emergency relief to affected families, subsequent cash from military ex gratia funds and/or the Afghan Government Karzai Fund, livelihood assistance from ACAP and then long-term support from the Martyrs or Disabled funds. These efforts can be bolstered by the extensive network of humanitarian aid available through NGOs, the UN and other actors active in helping the civilian population more broadly in Afghanistan.

Going Forward

The success of victims' assistance programs in Afghanistan holds larger lessons for the ability of compensation or victim support programs to successfully address civilian suffering in other conflict and post-conflict zones. Some of CIVIC's interviewees in the military sector, and not just in Afghanistan, told us that compensation for individual civilian victims is not realistic given the insecurity and difficulty in identifying victims in conflict – that these efforts are only feasible in a post-conflict environment. Others working on international legal standards and mass atrocities suggest that because such compensation or support can provide an element of redress, it should be considered along with long-term considerations of transitional justice, often commenced post-conflict.⁴

The issues discussed in this report inform both of these debates. In many ways, Afghanistan is both a conflict and a post-conflict zone. Provinces in the south and in some areas in the east have the violence and instability of a conflict zone, while the north, central and some parts of the western provinces are more characteristic of post-conflict zones with latent insecurity and spillover effects. Noting how the same types of programs work across these regions offers preliminary responses to these two critiques. Above all, they prove that compensation and redress programs are feasible in periods of conflict albeit with significant limitations.

Research on the issues discussed in this report should not stop here. More studies are needed, particularly as regards program effectiveness versus program cost, indirect effects of some of these programs in the larger aid schema, and more rigorous testing of the impact of these programs in providing redress.

Recommendations

There are concrete, immediate measures that can and should be taken to fix many of the problematic issues detailed in this report, particularly those that deny civilians appropriate amends for harm. The below recommendations are not all easy. They do, however, match the gravity and urgency of civilian suffering in this conflict.

4 ISAF official, Interview #180, February 2007, Kabul city, Kabul province. Also, CIVIC's executive director, Sarah Holewinski, has found in discussions with humanitarian organizations and military actors in regions of incredible instability – for example, Somalia – would be infeasible until greater levels of security were established.

CIVIC first and foremost urges *all* parties to the conflict in Afghanistan to take all possible steps to avoid civilian deaths, injuries and property damage. In the event that civilians are directly harmed or otherwise affected by the conflict, CIVIC urges:

All actors involved in implementing compensation and victim support programs, to:

- Work jointly to improve identification of civilians, whether through sharing databases, establishing mechanisms for civilian referral and identification or other measures that respect confidentiality concerns of both the actor and the civilian;
- Coordinate efforts to ensure civilians receive any and all aid measures available, preferably in a way that maximizes the benefit;
- Share best practices with other compensation and victim assistance programs.

Militaries comprising the International Security Assistance Force and NATO, to:

- Adopt a coordinated if not collective response to providing compensation and ex gratia payments across all ISAF participants, whether they have combat troops or not;
- Make standard procedure the tracking of any ISAF efforts at compensation, follow-up or other amends alongside the new ISAF Civilian Casualty Tracking Cell created in 2008;⁵
- Ensure that any coordinated policy includes mechanisms for referring cases of civilian casualties that may be eligible for compensation or ex gratia funds to the appropriate troops;
- Develop practices and procedures that enable troops to be more pro-active in providing compensation and ex gratia payments where harm occurs;
- Be as transparent as possible in investigations of civilian casualties and, where necessary, admit responsibility (though not necessarily legal fault) quickly and publicly;
- Share best practices among ISAF countries on how to appropriately interact with civilians when offering compensation and recognition;
- Make an attempt to provide civilians with a sense of redress and closure through public apologies and recognition;
- Ensure designated funding streams to address civilian harm resulting from combat operations.

Member countries of the International Security Assistance Force, to:

- Adequately fund the programs currently in place, which currently means increasing donations;
- Develop mechanisms for providing compensation or ex gratia payments that provide immediate relief and recognition in ways consistent with ISAF countries' national policies;
- Work jointly with other member countries to develop common policies on compensation and ex gratia payments to ensure Afghans are treated fairly no matter where they are or by who they were harmed.

The United States Government and/or Military, to:

- Create a position at the Pentagon to strategically address potential and actual civilian casualties;
- Assess compensation, ex gratia and ACAP support to ensure they are providing a level of assistance that matches civilian losses and the stated strategic interest of the United States to “win hearts and minds”⁶;

5 James Brown, Humanitarian Affairs officer UNAMA, “Briefing for the Kabul Civil-Military Working Group,” presentation, January 29, 2009.

6 See, e.g., Robert M. Gates, Testimony before the Senate Armed Services Committee, January 27, 2009; United States Army, *Counterinsurgency*, United States Army, December 2006, 191.

- Better coordinate with the Afghan Government and other IMF, where applicable, to ensure that efforts to avoid double compensation do not result in civilians feeling ignored or unrecognized by US troops.

The Afghanistan Government, to:

- Develop alternate mechanisms for identifying and verifying those eligible for the Martyrs and Disabled funds that minimize corruption and maximize speed and accuracy;
- Share casualty information across all three existing programs;
- Ensure all Afghans are aware of their rights to register a complaint or concern about *any* warring party;
- Ensure Code 99 payments are provided to victims of Afghan National Security Force actions, even where these forces are acting independently of IMF;
- Ensure Code 99 and Martyrs and Disabled payments are provided equally to victim of insurgent attacks, unless doing so would put the recipients at risk of reprisals;
- Coordinate the distribution of Code 99 funds with IMF (where the incident involved IMF) to jointly plan the best available means of aid and redress for affected civilians.

The United Nations Assistance Mission to Afghanistan, to:

- Undertake a complete analysis of civilian-assistance programs currently in place so that aid efforts are streamlined and, to the greatest extent possible, avoid duplicating aid to some civilians while entirely overlooking others;
- Track whether and when specific relief for conflict-affected civilians is provided by the military or other actors concurrently with tracking civilian casualties;
- Coordinate information gathering across all groups to facilitate the proper and prompt identification of civilians in need.

ANNEX I:

Civilians, in their own words

	What happened to your family?	What assistance did you receive?	What are your feelings about the incident now?
Mother lost a husband and son to a suicide attack	“My husband and only son were killed [in a suicide bomb attack]. ...When the blast happened, pieces of the flesh thrown from the blast landed in our yard.”	Received ACAP assistance; Italian soldiers who were the target of the suicide bomb provided immediate medical help and rebuilt a bridge that was destroyed.	“The big problem is that there’s no male in our family now.... I am not able to think of ... what we can do. We are drowning in agony and misery.”
IDP fled Helmand province with 100 other fellow villagers following months of fighting and bombardment	“We came because there is no security and there is fighting all the time in the village we came from. There was one night of fighting and a lot of bombardment. We became afraid and finally ran away. ... We first went to Kandahar to but then the fighting spread there also so we came to Kabul ... We don’t have enough shelter and food. We don’t have wheat on our own here.”	Some assistance provided through the Afghan Red Crescent Society, UNHCR, and DoRR.	“When there is security we will go back. You see our lifestyle here and the problems we face. As soon as there is security we want to go back but we just don’t know when that will be. We would leave but we don’t have any option but to be here.”
Boy lost his legs and was permanently disabled due to cluster munitions dropped in 2001 in Herat province	“When I was taken to the hospital ... the doctors were thinking that I almost died and they put me in the place for dead bodies.... After 7 days in surgery I swallowed and [another explosion]... there was a piece of the bomb inside my belly”	No assistance provided as yet.	“They told me to talk to the PRT or other government officials. Because I cannot walk, ... I cannot go like you and others to meet with people to tell them what happened to me.”
Two relatives from Paktia province lost several family members and their homes in 2001 bombing	“About 1:00am the airplanes started to drop their bombs. In the first bombardment four family members of my uncle were killed. ... [As we went to help them the] 2nd bombardment hit ... My mother lost her leg; my sister was killed. My sister was 14 years old. Her name was Sharifa. She was too young to die.”	ACAP assistance; US military gave \$5000 to distribute among everyone affected.	“When the incident happened, the Americans announced ‘We are sorry, that was not our intention. Our intention was to hit the Taliban.’... Mistakes happen but our family members had already lost their lives and [those who] were not killed, we could not get our lives back.”

	What happened to your family?	What assistance did you receive?	What are your feelings about the incident now?
Man from Kunduz lost a leg in US airstrikes in 2001	“I saw a convoy of Taliban and then suddenly the bombing started. I heard first the sound of aircraft and then I felt on my leg a great pain The shrapnel had cut a major artery in my leg so when they got to the hospital they had to cut most of it off or it would be worse for me.”	Received a prosthetic leg from ACAP and livelihood support; Receives monthly payments from the MoL-SAMD Disabled Fund.	“Well it’s true that I was injured [by international troops] but on the other hand there was no security in the province before they came. Now there is security. Before my family and I felt in danger all the time. Now we know we are safe. I do not worry that something will happen to them.”
Man’s wife was killed by US Marines in an escalation of force incident in 2007	“We were traveling from Kabul to Pakistan for a wedding. I heard firing and I tried to push my wife down to protect her. But then I saw the blood. ... Our children were there when it happened and they watched her die.”	Received ACAP assistance; received \$2000 from US solatia payments and \$2000 from Karzai’s Code 99 fund.	“I was left with 2 young daughters, one was only 8 mo. old when she was killed. I wish I could protect them from knowing what happened to their mother but I know that isn’t possible.”
Father lost seven members of his extended family in 2008 airstrike in Wardak; living as IDP in Kabul	“When I arrived at the house, I saw that a bomb had hit it directly... I could see all the dead and injured bodies. My son’s wife was horribly injured. My son had injuries on his feet and the force of the blast had thrown him over the tree. Another daughter was blasted into so many pieces that we still have not been able to find her body.”	In process of receiving ACAP assistance; received immediate transport from US troops to medical services; one son given \$200 and a guitar from US military who temporarily detained him mistakenly.	“Everything we have now has been provided to us by friends and relatives ... The ICRC offered to give us tents and mattresses. But this wasn’t enough. We couldn’t live in a tent. ... The cost of transportation for the tents and mattresses to Kabul where we have family and support would cost us more than the items are worth.”
15-year-old boy lost his sister in a US airstrike on a wedding party in Nangarhar, July 2008	“I was also a member of the wedding party [that was bombed] but I was farther away [from the direct hit]. We lost my 16-year-old sister though.”	Received Code 99 payment.	“I feel bad and angry when I see international soldiers. I thought that they were coming to help and bring peace but they aren’t paying attention to civilians.”
Brother-in-law killed in escalation of force incident in Kandahar in February 2007	“That morning he went to consular of Pakistan to get a visa... and on the way back, he was faced with an ISAF convoy. He wasn’t aware and they ended up shooting. ... His brother called him and asked him what’s taking you so long. And one of the doctors from the hospital replied and said you should come and collect the body.”	Received ACAP assistance	“In the first few weeks, we were frustrated that he got killed, but after a few months we received assistance, then we thought ‘This shows that they care – that they didn’t do intentionally.’ Now we don’t hold anything personal against the international community or international forces”

	What happened to your family?	What assistance did you receive?	What are your feelings about the incident now?
Three neighbors whose village in Shindand district, Herat was bombed twice by US forces as of interview date, once in April 2007 and once in July 2008	“I was asleep but woke up with the bombing and got out and saw that my cousin was killed by this incident. I was seeing that there were helicopters that were shooting the people they were seeing so I fled into a home for cover... When I went to see my house [4 days later]. It was destroyed and nothing was there. Some of our family members left even their shoes.”	Eligible for ACAP assistance but blocked for more than a year due to persistent security concerns; Some members of this community received Code 99 payments and community assistance when the area was bombed a third time approximately 6 weeks later.	“Last year also our house was bombarded. Completely destroyed in the bombing. Still I don’t receive any help for that. Why should they help me this time?”; “In my mind, I thought that international forces were not using force on civilians. Now I see that it has changed – they are killing all people. They don’t care if it is civilians or the bad guys. They think all the people are the same. They see it all from the same lens.”
Man lost his father and niece and himself injured by US Marines in March 2007; vehicle also destroyed	“We were going to Jalalabad to pay bills and then on the main road, a suicide bomber attacked [a US military convoy] and they started firing. ... I was injured and I also lost my father and my 14-year-old niece. Our vehicle was totally destroyed -- we found 1,250 holes in the car.”	Received ACAP assistance; received \$1000 from the Afghan government, \$400 from US military for his injuries and for damage to his car.	“I’m disappointed by international forces. They are killing innocent civilians. If they are here for peace and prosperity, that is good. But if [they are here] for killings and bombardments, then there is no reason for them to be here...We want justice. We want a trial of those harming civilians.”
“I’m disappointed by international forces. They are killing innocent civilians. If they are here for peace and prosperity, that is good. But if [they are here] for killings and bombardments, then there is no reason for them to be here...We want justice. We want a trial of those harming civilians.”	“After a few days, the attacks of the Taliban had started. The Special Forces did an air-strike. Then there was a 9 month battle and the British forces cleared 5 km all around their base and destroyed everything in that 5km radius. On the 3rd day of the air strike, my clinic was hit and destroyed completely.”	None; British forces promised to provide money for a new clinic but the Afghan Government denied the application for land.	“I would expect the British forces to give me compensation ...The international forces come in the name of reconstruction and rehabilitation ... but they should first reconstruct areas that they have destroyed themselves.”

ANNEX II:

IMF Compensation & Ex Gratia Programs

The below annex provides detailed information about the various compensation and ex gratia mechanisms maintained by ISAF member countries with such mechanisms in place. This annex supplements the discussion of military compensation and ex gratia payments in Chapter 3. CIVIC has made every attempt to provide the most up-to-date information; however, the mechanisms and procedures for distributing funds are constantly in flux and may have been amended by any of the below ISAF countries subsequent to this report, published on February 17, 2009.

This list is not intended to be inclusive. Not all ISAF countries responded to CIVIC requests for information. CIVIC interviews focused primarily on ISAF countries with significant troop deployments in conflict-prone provinces. CIVIC also surveyed the approaches of some other ISAF member states whose troops are stationed in low-conflict provinces for comparison. These countries may not have experience with civilian combat casualties, but have sometimes provided monetary support for other civilian deaths or injuries resulting from non-combat activities.

United States

“Solatia” and “Condolence” payments

US military units have two available mechanisms for giving ex gratia payments where death, injury, or individual or community property losses result from US troop activities: solatia and condolence payments.¹ Both are given without inference of legal liability for harm. Solatium are drawn from unit funds, whereas condolences are drawn from the Commander’s Emergency Response Program, described briefly in Chapter 3.² Condolences could be approved in a couple of days, whereas solatium usually take at least one month to be approved.³

Despite these technical differences, in practice the two systems are used interchangeably except that condolence payments (sometimes called “battle damages”) are more likely to be used for community property damage.⁴ The US PRT Commander for the Jalalabad PRT approved dozens of solatia payments related to a shooting incident involving US Marines on the main Jalalabad highway on March 4, 2007.⁵

1 The stated purpose of solatia payments are to “alleviate grief, suffering, and anxiety” and to “meet cultural expectations.” Dr. Sharon Westbrooks, CJ8, Special Programs Fund Manager, Interview #153, July 8, 2008, Email to CIVIC.

2 See infra Chapter 3 “Community Support”, 9.

3 Travis Hartman, CJTF-101, Human Rights Officer, US Army, Interview #151, August 23, 2008, Bagram Air Base.

4 Community property loss could either be due to one-time damage or to instances where repeat use by the US military (e.g. - a road frequently used by troops) causes persistent, long-term damage.

5 UNAMA official, Interview #167, August 20, 2008, Kabul city, Kabul province.

Following the destruction of many families' homes and business during joint operations in Garmsir, Helmand, US Marines set up a temporary station for Afghans to come and report damages, and provided "battle damages" and condolences ranging from \$1 to \$500 for confirmed damages.⁶

The amounts given by the two funds is roughly the same:

	Solatia ¹	Condolences
Death	\$2,000	\$2,500
Serious Injury	\$400	\$1,500
Non-Serious Injury	\$200	\$600
Serious Property Damage	--	\$2,200
Non-Serious Property Damage	\$200	\$250

These amounts are often used as only rough guides. For example, while the same amount of condolences given for a death (\$2,500) are often also given for large-scale property loss for families (including complete destruction of a home or livelihood support), the amounts vary greatly from province to province and depend on the operation in question.⁷

Although each claim is investigated and must be vetted by a local military lawyer and approved by the commander,⁸ solatium or condolences can be given to civilians even when there is doubt about which warring party caused the harm. The commander on the ground maintains discretion. The program is designed primarily to quell anger among the local population, so the perception of harm often matters most: "There's no policy of this, but say there's a firefight between our forces and the bad guys and some civilians get injured, we're likely to just pay it without worrying who the bullet comes from."⁹

US Foreign Claims Act

Through the 1942 Foreign Claims Act (10 U.S.C. § 2734-2736), foreign citizens can also make a formal claim for compensation up to \$100,000 for harm resulting from non-combat activities. The definition of what is a non-combat activity has been interpreted narrowly. Analysis of legal claims released through the Freedom of Information Act to the American Civil Liberties Union in April 2007 suggests that incidents at checkpoints, roadblocks or other escalations of force are likely to be excluded.¹⁰ For example, the claim of a 16-year-old boy who was mistakenly shot while walking near an American base was denied as

6 L. Rene Cote, 24th Marine Expeditionary Unit, Interview #136, July 17, 2008, Email to CIVIC. See also David Zucchino, "First war, now peacemaking: After routing the Taliban in the south, Marines take on unfamiliar roles as they try to win over wary Afghans," *Los Angeles Times*, July 6, 2008, at A1.

7 Ashwin Corattiyil, US Navy, Interview #187, September 6, 2008, Email to CIVIC.

8 Whether an Afghan civilian or family is eligible for a solatia payment is at the discretion of the commander responsible for that area of operation; however, the local Staff Judge Advocate must approve the decision before a solatium payment will be made.

9 Travis Hartman, CJTF-101, Human Rights Officer, US Army, Interview #151, August 23, 2008, Bagram Air Base.

10 See, e.g., Jon Tracy, *Compensating Civilian Casualties: "I am sorry for your loss, and wish you well in a free Iraq"*, (Washington, D.C.: CIVIC and Carr Center on Human Rights Policy, November 2008), 22.

“loss resulting from combat operations.”¹¹ According to a 2007 report by the United States Government Accountability Office, “Department of Defense paid about \$26 million to settle approximately 21,450 claims filed between fiscal year 2003 and fiscal year 2006 in Iraq and Afghanistan.”¹²

United Kingdom

Ex gratia payments

Between April 2006 and October 2008, the United Kingdom made 858 ex gratia payments to Afghan civilians who suffered the loss of a family member, injury or property.¹³ The total amount of payments for injuries or property loss was £90,000. Much more has been given for property loss or acquisition: £120,000 for 35 cases involving property in 2006; £271,000 for 332 property claims in 2007; and £199,000 for 440 property claims up to April 2008. British government personnel formerly stationed with the British military in Helmand province said there are civilian MoD officers on-the-ground with discretion to give ex gratia payments, primarily for property damage or acquisition but also for isolated cases of death or injury.¹⁴

Formal compensation claims

Civilians may make a formal liability claim through the UK court system if they believe that UK troops acted negligently or wrongfully toward them. In the only claim CIVIC has found to have succeeded so far, an Iraqi boy was paralyzed by the negligent discharge of a UK soldier’s weapon in Iraq. The MoD paid him and his family £2 million.¹⁵

Canada

The Canadian military maintains ex gratia payments for Afghan civilians injured by Canadian troops. In March 2008, *The Toronto Star* reported at least eight instances in which the Canadian government compensated Afghan families or individuals for unintended deaths or injuries.¹⁶ The paper reported that payments ranged from \$1,971 to \$31,584. In an *Embassy* magazine story on Canadian compensation, the Canadian Defence Department spokeswoman Lt. Isabelle Riché “told Embassy that Canadian Forces personnel help Afghan civilians file claims for compensation following incidents in which they were wronged. ‘Each request is expeditiously investigated and ex-gratia payments of up to \$2,000 are delivered under the authority of Department of National Defence and Canadian Forces legal officers.’”¹⁷ Canadian troops paid approximately \$243,000 from 2005 to 2008.¹⁸

11 Peter Symonds, “Civilian compensation claims: a glimpse into US crimes in Iraq and Afghanistan,” *Global Research*, April 15, 2007, <http://www.globalresearch.ca/index.php?context=va&aid=5388>.

12 Government Accountability Office, “Department of Defense’s Use of Solatia and Condolence Payments in Iraq and Afghanistan,” GAO-07-699, (Washington: Government Accountability Office, May 2007), 50.

13 Sean Rayment, “Britain pays out 700,000 in compensation to civilian casualties in Afghanistan.”

14 UK civilian official stationed with PRT in Lashkarga, Interview #127, June 19, 2008, Kabul city, Kabul province; Former UK civilian official stationed with UK troops in Helmand province, Interview #157, October 15, 2008, Kabul city, Kabul province.

15 BBC News, “Wounded Iraqi is given £2 million payout,” *BBC News*, April 15, 2008, http://news.bbc.co.uk/2/hi/uk_news/7347691.stm, (noting an MoD spokesman’s statement that this was an exceptional case and that such high compensation was not likely to be repeated).

16 Murray Brewster, “Compensation for Afghan families under wraps,” *The Canadian Press*, March 24, 2008, <http://www.thestar.com/News/Canada/article/350077>.

17 Jeff Davis, “Canada’s Record and Compensation Policy for Afghan Civilian Casualties,” *Embassy*, September 10, 2008, http://www.embassymag.ca/html/index.php?display=story&full_path=2008/september/10/civilian_casualties/.

18 Ibid.

The Netherlands

Dutch troops stationed at the Dutch PRT in Uruzgan province have a “pocketmoney” fund, which they may draw upon to provide ex gratia payments to Afghans who suffer the death of a family member, injury or property loss as a result of troop activities.¹⁹ The payments are not considered an acceptance of blame, nor are they required under the Dutch agreement with the Afghan government. Instead they are treated as an expression of moral obligation to families unintentionally harmed, as well as a politically prudent step to avoid alienating the population from Dutch troops.²⁰ Unlike some ex gratia mechanisms, it must be established without a doubt that Dutch troops caused the damage, signed off by the legal advisor to Task Force Uruzgan (the Dutch mission) and at least the commander of the Mission Team (in some cases a more senior official depending on the amount in question).

In June 2007, predominantly Dutch troops engaged in a four-day battle with AGE to defend the Chora district of Uruzgan province from AGE attack, resulting in the death of at least 50 civilians. Two hundred and fifty thousand euros was made available for families, although the entire amount was not necessary to settle all of the claims.²¹

Australia

Australia has a fund for providing “honour” payments to civilians. The standard for distributing such funds is high: two separate ministries must sign off on any payment.²² With such cumbersome verification procedures, where a given operation involves Dutch troops who are co-stationed at the same PRT as Australian troops, Dutch compensation is relied on because it can reach the families more quickly.²³

In September 2008, Australian troops in Uruzgan province unintentionally killed a local community leader who was helping them oppose insurgent forces. Following a joint ISAF-Afghan investigation they provided compensation to the family.²⁴

Italy

Neither the Italian military nor the Italian Government have a formal fund for helping civilians harmed by Italian troop activities.²⁵ Although most Italian troops are stationed in a province where there is ongoing conflict (Herat), Italian troops are less frequently involved in combat operations unless as part of general ISAF Regional Command West activities.²⁶ There have been at least two cases where the Italian government assisted families of those injured in accidents involving Italian convoys. On June 2, 2006, a

19 Maj. Jan Vandekamp, Task Force Uruzgan, Interview #155, August 21, 2008, Email to Erica Gaston. See, also, C.J. Shivers, “Dutch Soldiers Stress Restraint in Afghanistan,” *The New York Times*, April 6, 2007 (“[M]ost Dutch units now take extraordinary steps to avoid military escalation and risks of damage to property or harm to civilians. (When armored vehicles damaged a grove of mulberry trees, a captain came by the next day to negotiate a compensation payment for the farmers.)”).

20 Maj. Jan Vandekamp, Task Force Uruzgan, Interview #155, August 21, 2008, Email to Erica Gaston.

21 Maj. Jan Venekamp, Task Force Uruzgan, Interview #188, November 1, 2008, Email to CIVIC and AIHRC.

22 Foreign Embassy official, Interview #147, August 18, 2008, Kabul city, Kabul province.

23 Ibid.

24 Tom Hyland, “Lack of Coordination & Intelligence Missteps; Intelligence gaps blamed for fatal Afghan gunfight,” *The Sunday Age*, October 26, 2008, 7.

25 Foreign Embassy official, Interview #149, August 20, 2008, Telephone interview. Italian officer with the PRT in Herat, Interview #141, July 31, 2008, Herat city, Herat province.

26 Italian officer with the PRT in Herat, Interview #141, July 31, 2008, Herat city, Herat province.

child was killed when he ran in front of Italian convoy.²⁷ The Italian government helped the family cover funeral expenses and gave them several thousand dollars as a condolence for the loss of their child. In another case in early 2008, a child was hit by a convoy and received immediate medical assistance but no additional compensation as he survived his wounds. In both cases, Italian troops stopped on the scene and identified the families by talking to locals in the community. In one case, the driver and translator of an Italian journalist were captured and killed by the Taliban. The newspaper of the Italian journalist raised funds for both families. The Italian government facilitated a four-year scholarship for the younger brother of the translator killed. They also worked with the Afghan Red Crescent to set up a trust fund for the driver's family from the funds collected by the Italian newspaper.²⁸

Germany

German soldiers have no designated funds to help civilians injured in conflict. However, when German soldiers shot three civilians at a checkpoint in northern Kunduz province in August 2008, they provided \$20,000 in cash and a car worth \$5,000 to the family, a sum they arrived at in consultation with the family and community leaders.²⁹ Although they did not formally accept liability, they did accept responsibility and apologize to the family, "We didn't make any attempt to excuse our behavior or [suggest that] this man did something wrong [in approaching the checkpoint]. We just kept expressing apologies," the civilian commander Peter Ptassek, the lead person dealing with the situation, said.³⁰

Prior to this incident, officers at the German PRT in Kunduz said that the German military does not engage in direct combat activities but where a suicide bombing or a road accident results in civilians injuries or losses, the troops themselves have pooled some of their own money, or donations from family and friends back in Germany, to give something to those injured or to the families of those killed (often in the range of a couple to a few hundred euros).³¹ They also may try to find additional medical services for injured civilians, or find jobs around the base or with non-governmental organizations for those injured or for family of civilians who are killed.

Sweden

The Swedish PRT in northern Afghanistan has not had to deal with issues of civilian casualties due to its location; however two road accidents inform how they might handle such a case. In two incidents where a civilian was accidentally killed or injured due to a road accident with Swedish troops, Swedish troops consulted with the community to determine an appropriate sum in conformity with local traditions. In both cases, the amount constituted a few hundred dollars and was delivered to the families by the commander of the PRT with his apologies for their loss.³²

27 Foreign Embassy official, Interview #149, August 20, 2008, Telephone interview.

28 Ibid.

29 Dr. Peter Ptassek, Civilian Leader, German PRT based in Kunduz, Interview #158, October 16, 2008, Telephone interview. See also Quil Lawrence, "Afghan Civilian Deaths," *PRI's The World*, September 15, 2008, <http://www.theworld.org/?q=node/21167>.

30 Dr. Peter Ptassek, Civilian Leader, German PRT based in Kunduz, Interview #158, October 16, 2008, Telephone interview.

31 CIMIC representative, German PRT, Interview #133, July 2, 2008, Kunduz city, Kunduz province.

32 Foreign Embassy official, Interview #150, August 21, 2008, Kabul city, Kabul province.

ANNEX III: Civilian Casualty Estimates

2008

Civilian Casualties	Organization Reporting	Groups Responsible for Casualties – and other specific information about figures
2118	UNAMA ¹	1160 AGE; 828 PGF; 130 other
2000	Amnesty (citing ANSO) ²	25% IMF; 50% AGE
1445	Brookings Institute ³	N/A
1070	ISAF ⁴	97 ISAF; 973 AGE

2007

Civilian Casualties	Organization Reporting	Groups Responsible for Casualties – and other specific information about figures
2026	ANSO ⁵	996 AOG; 541 IMF; 489 ACG
1633	HRW ⁶	950 insurgents; 434 IMF
1500	UNAMA ⁷	46% insurgents; 41% IMF and pro-gov

2006

Civilian Casualties	Organization Reporting	Groups Responsible for Casualties – and other specific information about figures
1315	ANSO ⁸	557 AOG; 161 IMF; 458 ACG (armed criminal group)
1000	Amnesty Intl ⁹	All “insurgency related” deaths.
929	HRW ¹⁰	699 insurgents; 230 IMF
670	ICRC ¹¹	N/A

- 1 United Nations Assistance Mission in Afghanistan, *Protection of Civilians*, 1.
- 2 Amnesty International, *The State of Human Rights 2008: Afghanistan*, <http://thereport.amnesty.org/eng/Regions/Asia-Pacific/Afghanistan>.
- 3 Max Boot, "Déjà vu in Kabul," *Los Angeles Times*, February 7, 2009, http://www.latimes.com/news/opinion/commentary/la-oe-boot7-2009feb07_0,4669288.story.
- 4 Reuters AlertNet, "NATO says killed 97 Afghan Civilians in 2008," *Reuters News*, January 28, 2009, <http://www.alertnet.org/thenews/newsdesk/LS452608.htm>.
- 5 Afghan NGO Safety Office, *ANSO Quarterly Data Report: Q.3 2008*, (Kabul: Afghan NGO Safety Office, October 2008), 15.
- 6 Human Rights Watch, *Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan*, 14.
- 7 *CBC News*, "Afghan Civilian Casualties Mount: UN."
- 8 Afghan NGO Safety Office, *ANSO Quarterly Data Report: Q.3 2008*, 15.
- 9 Amnesty International, "Afghanistan," in *The State of the World's Human Rights*, (New York: Amnesty International, 2007), <http://report2007.amnesty.org/eng/Regions/Asia-Pacific/Afghanistan>.
- 10 Human Rights Watch, *Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan*, 5.
- 11 International Committee for the Red Cross, "Afghanistan: three decades of war and no end in sight," (Geneva: International Committee of the Red Cross, June 12, 2007), <http://www.icrc.org/Web/eng/siteeng0.nsf/html/afghanistan-briefing-120607>.

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