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# The Strategic Costs of Civilian Harm

Applying Lessons from Afghanistan to Current and Future Conflicts



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# Foreword

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# I.

## Foreword

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8755. That is the address. I know the way by heart. The number and name is etched into the light gray granite, Thomas Gordon Bostick, Jr.

Staring at Tom's name, my mind races to the mountains of Afghanistan on July 27, 2007. Bulldog—B Troop—as Tom's unit was called, was outnumbered three-to-one by an enemy that knew every rock and cave. I was at my tactical command post, set on a mountain ridgeline six miles away, to coordinate airstrikes, artillery, and attack helicopters. The hammering of large caliber weapons, the crash of grenades, and the thunder from airstrikes pummeling enemy positions marked the battle's intensity. Apache Attack helicopters swooped in with deadly rockets and machine guns.

The battle raged for several hours. Then it stopped. The insurgents broke contact.

After several hours, the raging battle suddenly stopped. Tom gave me an update over the radio. His platoons were consolidating their positions, all casualties evacuated, and preparing to continue the mission. Tom was a masterful tactician and an extraordinary leader. At 37 years old, he was nearer in age to me than his peers. We were close friends.

Then I heard it.

A single explosion shattered the calm. The fight erupted with renewed intensity. The Bulldogs fought bravely. Their skill and the weight of airstrikes forced the enemy to break contact a few hours later. But we had two men killed, and a dozen wounded. The explosion I heard was a rocket propelled grenade that killed Tom.

8755, Section 60, Arlington National Cemetery. That is where he rests in peace.

That firefight and others before it made me question every assumption. In time I realized that the character of the conflict was far different than what we had been told and believed.

The Law of Armed Conflict is thoroughly ingrained in U.S. military training and education. Like most of my fellow warriors I regarded civilian casualties as a deeply saddening but inevitable consequence of war—we did all we could to avoid them, striking valid military targets with discrimination and proportionality.

But seeing the war from the eyes of local civilians helped me understand why that view was inadequate. In wars among the people, where the real battles are for legitimacy, civilian harm can have significant tactical and strategic impact.

After Tom's death, his replacement, Joey Hutto, intensified our outreach to the elders. The elders spoke candidly, telling us that they had welcomed the Americans in the hope of developing their economically poor district. What they got instead was fighting, dead and wounded family members, house and mosque searches, and a corrupt government.

The whole ecology of civilian life was shattered—instability increased the prices of food and goods. When civilian men were badly wounded or killed, families lost their breadwinners. When women and children were wounded and killed or their houses searched, the men were ashamed and honor-bound to avenge them. Men carried away to detention facilities could languish for months and were assumed to have been tortured, many of them guilty of no crime. Corrupt officials pilfered economic and humanitarian assistance.

The elders were particularly upset at how some rivals had ingratiated themselves with U.S. forces years earlier. These people fed Americans “bad intelligence,” duping them into killing or capturing community leaders to settle old scores and amass power.

The most significant example was the targeting of a local elder who was a famous *mujahideen* leader in the Afghan-Soviet war. In the beginning he had been a strong advocate for American presence in the district. After being hunted by U.S. forces, he began a deadly insurrection. That summer was our turn to fight it.

Such manipulation was widespread and had a disproportionately large effects. U.S. civilian and military leaders began to recognize that civilian casualties were undermining the mission. In 2008 ISAF caused 39% of civilian casualties.

General Stanley A. McChrystal, who took command in June 2009 drove the importance of civilian protection across ISAF. I stressed the importance of this issue to him before he took command and he asked me to explore it further when we got to Kabul. I was fortunate there to meet with Rachel Reid (this report's co-author, then with Human Rights Watch), Erica Gaston from CIVIC, and many other advocates from the UN and NGOs. Together with then-Colonel Rich Gross, McChrystal's Staff Judge Advocate, and others, we put together recommendations for reform.

These reforms improved over time and reduced ISAF-caused civilian deaths from 39% in 2008 to 9% by 2012, while advancing the mission and sustaining force protection and confidence. Leader emphasis, training, and data analysis and feedback were the most important factors. Generals McChrystal, Petraeus, Allen, and Dunford made civilian protection central to their campaigns.

Reflecting on the years I have been involved in Afghanistan, to include including four combat tours, I am struck by the strategic penalties the United States paid for civilian harm. It was a key factor in the growth and sustainability of the Taliban, it sorely damaged US-Afghan relations, undermined legitimacy of both parties, and alienated the Afghan people.

Studies show that counter-insurgencies fail when an insurgency has sustainable internal and external support, or a host nation government loses legitimacy. Civilian harm tends to accelerate both problems—it is like burning a candle at both ends with a blowtorch .

Remarkably, the vast majority of ISAF-caused civilian harm occurred *while operating in accordance with the Law of Armed Conflict*. We would expect penalties for violations of LOAC. But those that occur within LOAC are damaging, too—and far more frequent.

Civilian harm inflicted by local partners with “Made in the USA” weapons, training, equipment, and support can also damage to U.S. strategic interests while undermining host nation legitimacy. Sectarian, kleptocratic, racist, and ethno-centric governments are at highest risk of using military forces in predatory ways. U.S. skill at training and equipping security forces have outpaced our ability to hold governments accountable.

At some level of accumulation, unique to each conflict, civilian harm inflicts irreversible damage to the prospects of success. I use the imprecise “at some level of accumulation” deliberately. The United States has no institutionalized method to collect, measure, and analyze the strategic impact of civilian harm and the effects of amends. We could be repeating errors, imposing unnecessary restrictions, and losing critical opportunities.

Has civilian harm by partners done irreversible damage to our aims in Pakistan, Syria, Iraq, Yemen, and elsewhere? Are U.S. restrictions strategically beneficial? We have no systematic way to answer those questions.

This is not a question of whether to “take the gloves off” against an adversary—it is a more fundamental question of when do we wear gloves and which ones are best?

The U.S. government takes great efforts to avoid civilian harm in its military operations, and has made important strides to improve doctrine, tactics, and procedures. The findings in this report suggest that the U.S. should address the strategic implications, too. Our recommendations are low cost and high payoff.

Even better civilian protection, however, will not overcome an absent or bankrupt strategy. Why did the U.S. take so long to recognize that protection of Afghan civilians mattered? Failure to understand the nature of the conflict and to devise a credible strategy to succeed prolonged the conflict and the human suffering.

What happened to the insurgent leader mentioned earlier? Due to the efforts of B Troop with local elders, the insurgent leader and his group stopped fighting about 6 months later and eventually made peace with the Afghan government. I have since met with my former adversary eight times.

At a strategic level, success in Afghanistan should not have been a close call—civilian harm is a key reason why it still hangs in the balance 15 years later.

**Christopher D. Kolenda**

## II.

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# Executive Summary

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*“Civilian casualties were threatening the entire relationship between Karzai and the coalition... and undermining the perception of the coalition’s commitment [to] secure and serve the people... If you are killing civilians, then you are obviously not protecting them.”*

— General David Petraeus, Former Commander ISAF

## II.

# Executive Summary

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The purpose of this report is to improve understanding of civilian harm in Afghanistan and its strategic impact, to examine the efficacy of International Security Assistance Force (ISAF) reforms to reduce civilian harm, and to offer lessons on civilian protection for current and future conflicts.

The U.S. military is committed to upholding the Law of Armed Conflict (LOAC) and makes great efforts to protect civilians. The United States' experience in Afghanistan demonstrated how civilian harm, even *in accordance with LOAC*, can cause irreversible damage to a U.S. mission—a serious risk that also applies to U.S. counter-terrorism operations and partnerships with foreign security forces.

We assess with high confidence that civilian harm by U.S., international, and Afghan forces contributed significantly to the growth of the Taliban, particularly during the crucial periods 2002-04, and 2006-08, and undermined the war effort by straining U.S.-Afghan relations and weakening the legitimacy of the U.S. mission and the Afghan government.

We also assess with high confidence that the reforms made by ISAF were successful in reducing civilian harm, while not impeding strategic aims and not undermining force protection. The most important factors in reducing harm were leader emphasis, training, and data collection-analysis-feedback loops. The reforms, however, were too late to reverse the strategic damage.

Third, we take a preliminary look at conflicts in Yemen, Iraq, Syria, and Pakistan. We find that the U.S. military is taking considerable steps to protect civilians, but there remains significant potential for improvement based on several lessons from Afghanistan. In particular, civilian harm by partners risks undermining U.S. credibility and interests.

Finally, we find that the United States has made significant strides to institutionalize civilian protection in military doctrine and tactics, but shortfalls remain that heighten the risk of errors, unnecessary restrictions, and harm to U.S. strategic objectives, now and in the future. “I’m a believer in American exceptionalism but only if you keep proving it,” said David Sedney, former deputy assistant secretary of defense.

The United States should develop a uniform policy on civilian protection, create standing data collection and analysis capabilities, sharpen learning and accountability, improve decision-making tools, enhance training and leader development, and strengthen partner accountability.

In this report we define *civilian casualties* as physical injury or death from military operations. We define *civilian harm* as damage from military operations to personal or community well-being. This may include wrongful targeting of key leaders through malign information, damage and destruction of personal property and civilian infrastructure, long-term health consequences, loss of livelihoods and other economic impacts, and offenses to dignity. Viewing civilian harm in this way is necessary to appreciate the full impact of military operations on civilian life and the choices people make. We concur with the U.S. Army definition of civilian protection as “efforts that reduce civilian risks from physical violence, secure their rights to access essential services and resources, and contribute to a secure, stable, and just environment for civilians over the long-term,” and its stated importance in contemporary war.

This report is based on interviews with over 60 experts, including current and former senior U.S. and Afghan government and military officials as well as UN officials and civil society experts—individuals who have been directly responsible for strategy, operations, and decision-making in Afghanistan. In addition, the report combines an analysis of UN and ISAF data and recent academic studies to assess the tactical and strategic impact of civilian harm and evaluate reforms.

## FINDINGS

### **Civilian harm can be fatal to counterinsurgency and counter-terrorism strategies**

- Civilian harm contributed significantly to the growth of the Taliban and undermined the war effort by weakening the legitimacy of the U.S. mission and the Afghan government and straining U.S.-Afghan relations.
- The U.S. military is committed to upholding the Law of Armed Conflict and has undertaken significant efforts to improve the protection of civilians; despite this, civilian harm can still undermine strategic interests.
- U.S. strategic interests were severely damaged by civilian harm caused by ISAF operations, predatory partners, and wrongful or overbroad targeting and detentions, often driven by intelligence failures and manipulation by local elites.
- Focus on “enemy-centric” intelligence leaves U.S. forces vulnerable to manipulation and less attuned to drivers of conflict.
- Harm inflicted by U.S. partners using “made in the U.S.A.” weapons, equipment, training or support undermines U.S. credibility.
- Afghan National Security Forces caused civilian harm is on the rise, and risks hardening support for the Taliban in contested areas while reducing cooperation with the Afghan government.

- In Iraq, Pakistan, Syria, and Yemen, civilian harm caused by U.S. operations and by partner forces pose strategic risks analogous to those confronted by the United States in Afghanistan. Gaps in institutionalization and knowledge are exacerbating these risks.
- Increased collection and analysis of data on civilian harm can help guard against unnecessary restrictions on U.S. forces that create lost opportunities and fail to improve overall civilian protection.

### **Addressing civilian harm is relatively low-cost, high-payoff for U.S. and its partners. However, many of these positive lessons have not been fully institutionalized**

- ISAF reforms significantly reduced civilian harm in Afghanistan; they did not undermine force protection or give the Taliban a significant military advantage.
- Reforms succeeded by combining tactical directives with leadership, training, and systematic data collection and analysis, and greater openness to civil society inputs.
- U.S. forces have not sufficiently prioritized civilian protection in ANSF development and strategic planning.
- Without consistent leadership attention, education, resources, and training, hard-learned lessons can be lost relatively rapidly.
- Sufficient data and academic research exist to develop much better decision-making tools and intelligence for commanders planning and directing military operations among civilian populations.
- Security sector reform and security force assistance efforts can be improved to address the impact of civilian harm caused by partner forces, lowering the risks to U.S. credibility and helping advance strategic interests.
- Institutionalization can help ensure lessons are not lost, and are effectively adapted to new operational contexts and transferred to partners.
- These lessons also apply to U.S. counter-terrorism operations, which are usually performed in a context within which U.S. partners are also engaged in counterinsurgency and stability operations.

## RECOMMENDATIONS

Our research demonstrates that significant damage to U.S. strategic interests can be caused by civilian harm, broadly defined to include major disruption of local political, social, and economic stability, as well as civilian casualties. These broader impacts also apply to counter-terrorism operations where they undermine the wider counterinsurgency efforts of partners, and therefore U.S. strategic objectives.

### A . To the Department of Defense

1. **Create a Uniform Policy on Civilian Protection** to establish institutional authorities and responsibilities; develop standards and methodology for tracking and monitoring civilian harm (as defined in the ATP 3-07.6 on Protection of Civilians), mitigation efforts, and post incident response, including amends; incorporate civilian protection into strategy and operational planning considerations; and outline expectations for partner support and accountability.
2. **Create Civilian Protection Cells in J3 or J5 of Joint Staff, Combatant Commands, and Operational Headquarters modeled after ISAF's Civilian Casualty Tracking Cell.** These cells should:
  - a) Monitor civilian harm and assess causes and strategic effects;
  - b) Help commanders improve battlefield decision making;
  - c) Communicate regularly with the State Department and relevant international organizations and civil society organizations;
  - d) Consider using the Joint Staff cell to collect and analyze data from all Civilian Protection Cells, and ensuring ongoing lessons learned;
  - e) Strengthen decision-making tools by complementing Collateral Damage Estimation with data and analysis of civilian harm and assessments of strategic impact.
3. As part of a **consistent post incident response policy and practice:**
  - a) Respond to civilian harm in ways that avoid premature denials, provide timely and clear communication of the outcomes of investigations and accountability measures to host nations, victims, and the public.
  - b) Create permanent policies and mechanisms for reporting, verification, and provision of amends to civilian victims of U.S. operations, including civilians harmed in operations outside of areas of active hostilities and in areas inaccessible to U.S. ground forces.

- c) Reflect in this policy the lesson learned in Afghanistan that a lower evidentiary bar for amends and ex gratia payments is more time efficient and cost effective long term.
  - d) Ensure that there is a robust and transparent investigation policy that incorporates civilian, NGO, and open source inputs, as well as a public, transparent means of communicating accountability.
  - e) While there will be some region-specific aspects to this policy, there should be openness to working through or with local government offices for information and delivery, and with international organizations and NGOs for information on harms caused.
4. In addition to threat reporting, **develop intelligence priorities to collect and analyze the political, economic, social, and cultural dynamics of host nations in conflict zones and their effects on U.S. policy and strategic aims.** Collection and analysis should include assessing the risk of U.S. military forces and resources being manipulated by local officials and elites and the strategic impact of civilian harm.
5. **Incorporate tactical and strategic effects of civilian harm and protection into all levels of professional military education.** Incorporate simulations and appropriate books and journals to give leaders intellectual experiences they can draw from before deploying to combat. Increase/target funding for combat training centers to improve pre-deployment training on civilian protection, including scenario realism and tactical judgment.
6. **Develop a strategic plan for strengthening civilian protection and harm mitigation in U.S. partner forces, in conjunction with the State Department.** Condition training, funding, and transfer of arms on clear benchmarks on partner forces' commitment and performance on civilian protection. Indicators should include host nation policy guidance, demonstrated political and military leadership commitment, professional military education and training, and accountability.

### B. To the State Department

1. **Work with the Department of Defense (DoD) in creating a standing, uniform U.S. government policy on civilian protection** including standard methodology, tracking, a centralized database and analysis unit, post-incident response, and civilian harm mitigation policy for partner forces.
2. **Develop, with the DoD, standard operating procedures for requesting, assessing, and sharing information on civilian harm from international organizations, NGOs, and other civil society**

**sources.** Work with the DoD to ensure effective implementation of a consistent post-incident response policy, including amends.

- 3. Support priorities for the intelligence community to collect and analyze the political, economic, social, and cultural dynamics of host nations** in conflict zones and effects on U.S. policy and strategic aims. Collection and analysis should include assessing the risk of U.S. military forces and resources being manipulated by local officials and elites, and the strategic impact of civilian harm.
- 4. Refine existing security sector reform policies to ensure that work with partner forces reflects best practice on civilian harm assessment, mitigation, and response;** include civilian protection and civilian harm lessons learned into capacity building and senior leader development efforts.
- 5. Develop metrics and information channels to independently assess civilian harm, and its strategic impact, including harm caused by and information received from partner forces.** Increase capacity within embassies in conflict zones to monitor and report on the political and social impact of U.S. and partner-caused civilian harm, consistent with the Leahy Law.
- 6. Improve coordination with DOD and conditionality on foreign military assistance, including military sales,** in order to enhance the willingness and capacity of partner forces to protect civilians and mitigate risks that civilian harm undermines long-term stability.

### To the Intelligence Community

- 1. Collect and analyze information and intelligence about the impact of U.S. military engagement on a host nation's political, economic, social, and cultural dynamics;** collection and analysis should include assessing the risk of U.S. military forces and resources being manipulated by local officials and elites, and the strategic impact of civilian harm.

### To the U.S. Congress

1. Support these recommendations with the necessary resources and accountability procedures.

### III.

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## Causes and Strategic Consequences of Civilian Harm

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*“We were losing the moral high ground.  
It started undermining support for or  
creating intolerance of the international  
military presence.”*

— former Under-Secretary of Defense for Policy, Michèle A. Flournoy

### III.

## Causes and Strategic Consequences of Civilian Harm

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U.S. forces took great precautions throughout the conflict in Afghanistan to protect civilians. U.S. and ISAF forces were well-versed in the Law of Armed Conflict (LOAC) and, with rare exceptions, applied military force in ways consistent with it. The Taliban have been and continue to be responsible for the majority of civilian casualties. Nonetheless, as the conflict escalated, international forces were killing Afghan civilians at alarming rates. In 2008, the UN Assistance Mission in Afghanistan (UNAMA) attributed 39 percent of civilian deaths to pro-government (mostly international) forces.<sup>1</sup> The wider harm to civilians was not measured.

In this report we define *civilian casualties* as physical injury or death from military operations. We define civilian *harm* as damage from military operations to personal or community well-being. This may include wrongful targeting of key leaders through malign information, damage and destruction of personal property and civilian infrastructure, long-term health consequences, loss of livelihoods and other economic impacts, and offenses to dignity. Viewing civilian harm in this way is necessary to appreciate the full impact of military operations on civilian life and the choices people make.

How were international forces, as careful as they aimed to be, causing so much harm by 2008? Unplanned airstrikes from troops in contact caused the majority of civilian casualties. Civilians were also harmed during night raids and detentions, from misidentification, accidents, and unexploded ordnance. It is important to note that the vast majority of civilian casualty incidents occurred as international forces operated or intended to operate within the LOAC. We also acknowledge civil society has expressed concerns about discrimination and proportionality.

Predatory local actors inflicted significant amounts of civilian harm, many of them became super-empowered individuals who manipulated international forces into targeting their personal and political rivals. Poor understanding of the political, social, and economic context made such partnerships seem expedient and increased the risk of being duped.

Why does this matter? Longitudinal studies of insurgencies and counterinsurgencies suggest that counterinsurgents fail when an insurgency gains tangible and durable local and international support, or when the host nation government loses legitimacy.<sup>2</sup> Civilian harm was exacerbating both problems. By 2009, U.S. political and military leaders recognized that civilian harm was having strategic consequences, helping fuel Taliban growth and sapping the legitimacy of ISAF and the Afghan government.

## Primary Causes of Civilian Harm

### Airstrikes

As the international military effort stepped up, airstrikes were the single biggest cause of U.S. and ISAF inflicted civilian casualties. In 2008, airstrikes accounted for 64 percent of the 828 non-combatant deaths attributed to pro-government forces and 26 percent of those killed overall.<sup>3</sup> The frequency of collateral damage from air delivered ordnance made this highly effective capability very controversial (as ISAF itself has noted).<sup>4</sup> In particular, the use of unplanned airstrikes responding to “troops in contact” was the primary driver of civilian harm by international forces, largely because such operations lacked the mitigation procedures and protocols present in planned strikes.<sup>5</sup> Nonetheless, the political and strategic fall out from major civilian casualty incidents resulting from air strikes eventually forced major changes in ISAF tactics and engagement protocols, and policies meant to address civilian harm.<sup>6</sup> Signature strikes, when an individual or group of military-aged males is tracked over time and targeted for engaging in behavior that is deemed to be suspicious, are a particular concern.<sup>7</sup>

### Airstrikes in Azizabad, Shindand District, Herat, 22 August 2008

*Many experts interviewed for this report cited the August 2008 Azizabad incident as pivotal.*

International and Afghan forces were on patrol in the village of Azizabad in the Shindand district of Herat province, where a Taliban commander was reportedly located. In fact, according to an investigation of the incident, one local contractor for U.S. forces was in a dispute with another local contractor. The former reported that the latter was Taliban, in an effort to use U.S. forces to eliminate his rival. The patrol was ambushed by armed militia (from the latter contractor), and after a 20-30 minute engagement, requested air support. According to different reports from the UN and Afghanistan Independent Human Rights Commission, the ensuing U.S. airstrikes killed between 78 and 92 civilians, mostly women and children.

Despite public outcry, for weeks, U.S. officials dismissed villagers’ claims of civilian casualties as Taliban

propaganda, and insisted that no more than five civilians had been killed. However, after video was released clearly showing large numbers of dead women and children, the U.S. military ordered a more extensive investigation.

President Karzai had been outspoken in his criticism of international forces for civilian casualties for many years. But the Azizabad incident marked a turning point, according to his then chief of staff Mahmood Daudzai. The U.S. investigation concluded that the airstrikes had resulted in 33 civilian casualties, a higher amount of civilian casualties than it initially claimed, but well short of other credible reports; sparking further criticism. U.S. officials eventually apologized. Anger remained, largely because of initial refusals to acknowledge Afghans’ claims of civilian casualties, and subsequent reluctance to investigate and respond to victims’ losses.

[For further information see Senate Armed Services Committee, “Inquiry Into The Role And Oversight Of Private Security Contractors In Afghanistan,” September 28, 2010; see also Bob Dreyfuss, “Mass-Casualty Attacks in the Afghan War,” *The Nation* (September 19, 2013), <http://www.thenation.com/article/mass-casualty-attacks-afghan-war/>]

## Misidentification of Civilians

Civilian casualties regularly occurred due to misidentification of civilians as combatants. Dr. Larry Lewis analyzed hundreds of incidents of civilian casualties between 2007 to 2009 and 2010 to 2011, and found that 50 percent of incidents were cases of misidentification; the other 50 percent involved “collateral damage.”<sup>8</sup> A 2010 Department of Defense Study found misidentification was the primary cause of civilian harm.<sup>9</sup> According to former ISAF Commander General Allen, erroneous determinations were at times driven by faulty assumptions about civilian behavior by U.S. forces. “When we investigated the incidents, we found that civilians were often doing normal things that our targeteers [observers] assumed were hostile. I wanted commanders to presume people were civilians unless the individuals in question proved otherwise. In the vast majority of cases, unless in self-defense, we could use tactical patience and persistent ISR to confirm whether they were hostile.”<sup>10</sup>

These positive identification (PID) errors occurred most often in situations of self-defense, where rapid judgments are made about hostile intent, frequently in close quarters (immediate threat). This can involve escalation of force incidents (EOF), detention operations, and close air support (troops in contact). It can also involve more considered assessments of emerging threat posed by individuals and groups.<sup>11</sup> Positive identification challenges are naturally much higher in irregular wars where the enemy does not wear uniform or distinctive insignia.

There is a persistent discrepancy between military and civilian organizations’ civilian casualty estimates in Afghanistan and other conflicts. Determinations of civilian or combatant status are an underlying factor. Sometimes this relates to different interpretations of the law around “direct participation in hostilities,” where civilians temporarily participate in hostilities and lose their protected status.<sup>12</sup> A taxi driver, for instance, who made a journey with a combatant in his vehicle, was determined by the military to be a combatant but a civilian by UNAMA.<sup>13</sup>

Night raids (as discussed above) often involved misidentification, particularly where civilians felt “under attack” and took up arms to defend themselves. Later reforms such as “call outs” or “soft knocks” had some impact on reducing these incidents.<sup>14</sup> The use of signature strikes has reduced significantly, in part because of concerns about misidentification.

UNAMA reported that at least 205 civilians died and many more were injured in EOF incidents in Afghanistan from January 2008 (when UNAMA first began tracking these incidents) to December 2013.<sup>15</sup> These deaths represented 7 percent of the total 2,931 caused by pro-government forces during that time period.<sup>16</sup> For several years, the annual number of EOF deaths generally hovered around 40, and then dropped to 14 by 2012. This welcome improvement was attributed to “increased efforts by pro-government forces to distinguish civilians from genuine threats at security force checkpoints and convoys, as well as to ensure the use of non-lethal alternatives.”<sup>17</sup> Those efforts also included new standard operating procedures on EOF issued in 2012.<sup>18</sup>

## Night Raids and Detentions

Night raids were largely intended to capture specified insurgent and terrorist leaders, often in populated areas. Night operations maximized U.S. technological advantages while minimizing the risks of firefights that could result in civilian harm. Civilian harm from night raids and detention operations included collateral damage in the operations themselves (injury, death, and property destruction), allegations of CIA torture in 2002-4, and the broader harm of wrongful targeting and detentions based on malign information.

According to UNAMA, search and seizure operations, especially night raids, caused more than 11 percent of civilian deaths attributable to pro-government forces from January 2009 to December 2013.<sup>19</sup> UNAMA documented 332 civilian deaths, although it noted that the deaths were likely underreported due to the difficulty of obtaining information about night raid casualties. The annual deaths from search, seizure, and detention operations decreased from 98 in 2009 to 54 in 2012 and 37 in 2013, due largely to improved guidance and procedures discussed in the next section.

In the early years of U.S. engagement there were serious allegations of abuse, torture, wrongful detention, and a number of deaths in custody in both U.S. military and CIA detention sites.<sup>20</sup> Detainees, some of whom were wrongfully detained, reportedly died after suffering beatings, ceiling handcuffing, sleep deprivation, and strip humiliation. The case of Dilawar, a 22-year-old taxi driver, became notorious because it seemed a clear case of wrongful arrest.<sup>21</sup> Many of the CIA abuses took place at the “Salt Pit,” a CIA detention facility north of Kabul, including the death of Gul Rahman, who was tortured and died of hypothermia after being chained semi-naked in a cold concrete cell.<sup>22</sup>

Such cases were often portrayed as isolated incidents by the U.S. government, and they pale in comparison to the scale of abuse in Iraq. However, over time, evidence emerged that torture was more commonplace. The Senate Select Committee Study of the Central Intelligence Agency Detention and Interrogation Program Intelligence Committee report, released in 2012, also revealed evidence of more cases of abuse in Afghanistan than had previously been known, including the presence of “well worn” waterboarding equipment in the Salt Pit (a practice never officially admitted to at the site).<sup>23</sup> With over 20 military detention facilities, CIA “black sites,” and poor record keeping, the real scale of abuse is hard to determine. Abuse in Afghan government detention facilities, meanwhile, has been widespread and persistent throughout the conflict, and generally resistant to international efforts at reform. (See Section V). The full effect of these abuses on support for the U.S. and Afghan governments is difficult to calculate. As discussed in relation to civilian casualty incidents, the greatest impact may have been caused by the targeting of important community leaders, such as Haji Rohullah (see boxed insert below). While safeguards were improved, there was enduring damage and mistrust.<sup>24</sup>

Civilian harm from night raids and detentions, including wrongful detention and detainee abuse, were a major source of grievances. Afghans complained frequently, with some justification

according to journalist reporting and academic research, that civilians had been targeted and that pro-government forces were acting in an abusive manner.<sup>25</sup>

#### **Accidents and Unexploded Ordnance**

Additional civilian casualties were caused by episodes like road traffic accidents and unexploded ordnance (UXO). Military convoys would drive aggressively through crowded streets and traffic, often causing damage to civilian vehicles, goods, livestock, and small businesses—and injuring or killing people.<sup>26</sup> International military convoys became so problematic that ISAF issued a driving directive in 2009.<sup>27</sup> After over 30 years of war in the country, unexploded ordnance was a persistent threat to civilians. Much of the UXO was left over from the Soviet war or the civil war, but some was due to international military forces since 2001.

#### **Predatory Partners**

The U.S. military contributed to the entrenchment of a layer of “super-empowered” individuals and factions who were often violent and predatory, but were able to operate with near impunity due to their close and highly visible relationship to the U.S. military.

Successive waves of disarmament and rearmament programs, for instance, were frequently exploited by the strongest or best connected power brokers, exacerbating the sense of exclusion and resentment among multiple factions.<sup>28</sup> When international forces began various counter-narcotics drives, some of their Afghan allies were running lucrative opium businesses, plundering stockpiles of opium or seizing opium rich land while performing the periodic theater of a drugs burn. In other cases, they directed international poppy eradication efforts toward their rivals, which eliminated competition, drove up prices and often motivated farmers to seek Taliban protection.<sup>29</sup>

The creation of multiple community-based militia or defense forces contributed to this pattern of empowering local strongmen, which had a destabilizing effect in some areas, particularly those that were ethnically and politically diverse. As a recent, detailed study by the Centre for Security and Governance found, international support since 2001 has allowed “the most powerful non-state security actors in Afghanistan to operate without the consent of communities... accountable to foreign donors or political patrons in Kabul.”<sup>30</sup>

Other reports have exposed the extent to which predatory partners benefitted from the U.S. military contracts and development aid, heightening entrenchment of corruption and the war economy.<sup>31</sup>

#### **Intelligence Failures and Manipulation**

The causes of civilian casualties described above were exacerbated by intelligence shortfalls that left international forces and officials vulnerable to manipulation. Local and national elites exploited the latter’s naiveté and aggressiveness by fingering their personal and political rivals as al Qaeda or Taliban in the hope of duping international forces into military action.

It is difficult to quantify the frequency and scale of operations that were based on flawed intelligence. Those flaws include misidentification of targets; deliberate misinformation from Afghan intelligence sources; and poor understanding of the political economy and conflict drivers. These factors left international forces vulnerable to being duped by local partners into targeting the latter's personal and political rivals.

Almost all those we interviewed for this report agreed that such intelligence failure contributed significantly to civilian harm. The near-exclusive focus on enemy-centric information often blinded international forces to the political, social, and economic issues that were critical to understanding the nature of the conflict and to avoid manipulation.<sup>32</sup> By being used in such ways, particularly in the formative 2002-5 years, the United States was unintentionally exacerbating pre-existing conflicts and helping to alienate communities from the new government.<sup>33</sup>

Many of these concerns were captured in an unprecedented report in 2010 by ISAF's director of intelligence, then Major General Michael Flynn, who expressed alarm at the inadequacy of U.S. intelligence efforts. "Because the United States has focused the overwhelming majority of collection efforts and analytical brainpower on insurgent groups, our intelligence apparatus still finds itself unable to answer fundamental questions about the environment in which we operate and the people we are trying to protect and persuade," the report concluded.<sup>34</sup> He made key changes to the ISAF intelligence staff and recommended sweeping reforms in the intelligence community. The enemy-centric focus marginalized social, political, and cultural understanding—and led to costly mistakes.<sup>35</sup>

These intelligence deficits were compounded by divisions between military and civilian leadership, different ISAF partners, as well as between U.S. conventional forces, special operations forces, and the CIA. The proliferation of inconsistent databases prevented cross-fertilization of data. "At one point there were 39 different databases scattered throughout the DoD and the intelligence agencies," said former journalist and analyst Candace Rondeaux.<sup>36</sup>

"There's always the fog of war," according to Ambassador Doug Lute, a retired lieutenant general, but "a persistent pattern that eroded confidence. This wasn't just 'stuff happens,' but that maybe our intelligence wasn't as good as advertised...our ability to strike surpassed our ability to target accurately."<sup>37</sup>

The lack of ground forces increased reliance on aerial assessments of civilian harm, which masked its scale. In a study by Dr. Larry Lewis, air-video BDAs (Battle Damage Assessments) had missed civilian casualties later discovered during ground-led investigations in 19 out of 21 cases.<sup>38</sup> "Assessing battle damage post an air strike is less than satisfying—in fact, it is imperfect, other than knowing a building has been destroyed or a new hole in the ground created," according to former DIA director Lieutenant General Michael Flynn. "In the military, we have had very technical requirements assessing battle damage. It's for effects, technical effects and feedback. What we need, and have done very poorly, is recognizing and institutionalizing assessment of battle damage to the [local] eco-system...or the ecology of civilian life."<sup>39</sup>

## Impact of Civilian Harm

We assess with high confidence that civilian harm by U.S., international, and Afghan forces contributed significantly to the growth of the Taliban, weakened the legitimacy of the U.S. mission and the Afghan government, and undermined the war effort by straining U.S.-Afghan relations.

### Contributing to the Growth of the Taliban while Forfeiting Public Support

The academic evidence surveyed for this report, as well as the views of experienced military commanders, diplomats and regional experts interviewed support the conclusion that civilian harm by international forces and Afghan partners contributed significantly to the growth and resilience of the insurgency. Civilian harm by international forces and Afghan partners eliminated avenues for reconciliation, convinced targeted community leaders to fight back, reinforced the Taliban’s “occupation” narrative, and provided incentives to seek protection and retaliation.

The question of scale is harder to answer, given the host of methodological challenges. To be sure, civilian harm was not the only factor, and probably not the most significant one. Most interviewees for this report pointed to the failure to create an inclusive transitional government and Pakistani foreign policy as more critical. Further research would be needed to determine the salience of civilian harm relative to other factors.

In the years immediately following the U.S. invasion, many former Taliban remained in Afghanistan hoping to live peacefully in their home villages or to reconcile and work with the new government.<sup>40</sup> Al Qaeda operatives were soon killed or had quickly fled. But U.S. forces continued to target members and supporters of the former Taliban regime, often at the behest of former Northern Alliance allies, while rebuffing efforts at surrender or reconciliation.<sup>41</sup> “The strategic impact is that when you’re slow to adapt, you turn lots of people against you because of the lack of restraint on the use of force,” argues a former senior U.S. military official. “In the early days that’s when you have the best opportunity to bring people to your side—that’s the risk in that transitional phase, it’s a lost opportunity.” Rejecting purported peace offers was an early but significant mistake, based in part on the belief that the Taliban and al Qaeda were largely co-belligerents in a global jihad.<sup>42</sup>

Michael Semple, who spent many years studying and interviewing the Taliban, contends many of them were prevented or dissuaded from joining the new government in 2002-04 because of this pattern of U.S. forces “working with militias under newly re-installed power brokers, going after their rivals, or former Taliban officials, harassing them, attacking their houses, stealing their motorbikes and cows... creating the impression that there was no room for them in the new order.”<sup>43</sup> The political and military impact of Afghan elites using of American forces as hit-men to target rivals has never been calculated, but as one senior U.S. official said: “You have to consider the strategic effects of being used by one or more faction in a civil war against one or more other factions in a civil war. The impact of this kind of thing on elite politics was enormous.” The U.S. official went on to name a senior Afghan government official, famously anti-Taliban, who he said is “still afraid he’s on our hit list.”<sup>44</sup>

Overall, the assessment of scholars and experts on the Taliban suggests that the direct impact of individual *civilian harm* on Taliban recruitment has been most significant when it involved the targeting of significant community leaders, often as a result of manipulation and intelligence failures. Such events tended to trigger individual and community backlash against international forces, which could range from loss of public support to local retaliation to tangible support for the insurgency, particularly as the number of mistakes mounted. “High profile incidents drove it, in particular the killing of key individuals... You kill people in this society of elevated social status, and you’ll live with that for the rest of your life.”<sup>45</sup>

It’s not necessarily the scale of civilian harm that does most damage, as Ambassador Ronald Neumann put it, “[Civilian casualties], that’s not the problem for Afghans—they understand people get killed in a fight. When you get the big burn is when you bomb a target and you get it wrong. Particularly with misinformation... We got lots more blowback for these mistaken targets.”<sup>46</sup> In a context of increasing insecurity and predatory actors, sometimes backed by the United States, individual and community self-protection and survival also became powerful motivations.

Taliban recruitment efforts clearly benefitted from civilian harm, and capitalized on local Afghans’ desire for vengeance or retribution for losses suffered. “Why were there so many so-called successful CT raids in the early years but every year the problem got worse?” challenges David Sedney, former deputy assistant secretary of defense. “To me the threat we face from extremist sub-groups comes from a complex of factors—revenge is one—personal revenge from people whose direct family members or close associates are killed, but also societal revenge—people who feel their societies, families, and coreligionists have been targeted.”<sup>47</sup>

## Manipulation in Kunar

Kunar province has been the scene of some of the most intensive fighting between international forces and antigovernment forces for many years: arguably this most bitter fight was also one of the most futile, born out of bad intelligence and detention mistakes.

After the fall of the Taliban, the most prominent leaders in Kunar appeared to be in favor of the emerging new government, including Haji Rohullah Wakil, an important tribal and spiritual leader. Rohullah was a Salafist— a deeply religiously conservative—but also notoriously anti-Taliban, and seen by many as a strong contender for the governorship of Kunar. In late 2002, he was accused by local rivals of being in league with Al Qaeda, and detained by U.S. Special Forces, and spent six years in Guantanamo.

His connection with Al Qaeda is contested; instead the accusation against him was likely connected to the intense competition over lucrative counter-narcotics contracts, timber smuggling, and contracts for building U.S. bases.

His detention is widely seen as a tipping point in turning the province against the new government and the United States. As one analyst told us, the imprisonment of Rohullah “was more damaging than all the civilian casualty cases that came after.”<sup>48</sup> It was compounded by other factors, including the unexplained death of a man in the custody of coalition forces in June 2003, and the appointment of a number of Karzai aligned “outsiders” to key provincial and district government positions.

Empirical studies suggest strong correlations between civilian harm and detrimental effects on public support and levels of violence in Afghanistan.<sup>49</sup> Such studies in conflict zones are methodologically challenging and their findings of causality vary. One study involving over 200 Afghan villages in conflict areas showed “harm inflicted by ISAF was met with reduced support for ISAF and increased support for the Taliban, but Taliban-inflicted harm does not translate into greater ISAF support.” Although the Taliban were causing far higher levels of civilian harm, the study found strong evidence that in the eyes of the civilian population, ISAF carried a heavier burden. This “asymmetry” indicates that ISAF (and ANSF in contested and Taliban influenced areas), perceived as an “outsider group,” may be judged more harshly for harm inflicted than the Taliban, perceived more as an “in-group.”<sup>50</sup>

Other empirical studies showed that civilian harm and the liberal use of airstrikes led to increases in insurgent violence. Two studies identified statistically significant correlations between civilian casualties and insurgent violence.<sup>51</sup> A different study argues, “Evidence consistently indicates that airstrikes markedly increase insurgent attacks relative to non-bombed locations for at least 90 days after a strike.” Interestingly, the report notes that “the Taliban respond in equal measure to airstrikes that do, and do not, kill civilians.” It suggests that insurgent retaliation was motivated more by a desire to “maintain their reputations for resolve in the eyes of local populations,” than to avenge civilian casualties.<sup>52</sup>

Civilian harm was easily exploited by the Taliban. Taliban publications, public communications, and propaganda routinely made use of incidents of civilian harm to paint U.S. forces as an indiscriminate, anti-Muslim occupation force.<sup>53</sup> Although their accusations were often exaggerated or manufactured, and despite the fact that the Taliban bore some responsibility where they had engaged in civilian shielding, civilian casualty incidents were sufficiently frequent and widespread to lend credibility to Taliban propaganda.

### **Undermining the Legitimacy of the Afghan Government and the U.S. Mission**

Civilian harm posed twin challenges for legitimacy. It severely undermined the legitimacy of the international mission and as its partner and ally, the legitimacy of the Afghan government. “We were losing the moral high ground. It starts undermining support for or creating intolerance of the international military presence,” was how former under-secretary of defense for policy Michèle A. Flournoy described the political cost.<sup>54</sup> “If you’re there ostensibly to support a government that’s meant to be legitimate, but lots of civilians are dying on the government’s behalf you start undermining the government’s effectiveness.”

Lieutenant General Dave Barno, commander of 2003 Combined Forces Command-Afghanistan (predecessor command to ISAF), reflected that the United States was “really alienating the population” with its use of airpower. Recalling one incident while he was in command, Barno compared American and Afghan perspectives. From the American view, “We conducted a raid to seize a compound, and after receiving enemy fire and taking casualties, we used precision bombs to destroy the corner of

the compound that killed the enemy and inadvertently killed one, two, or three civilians.” An Afghan view: “Americans bombed a village, burned our crops, and bombed and destroyed cars and set them on fire.” Both views are accurate, Barno noted, but from a different lens.<sup>55</sup>

According to an ABC News/BBC/ARD/Washington Post poll, opposition to U.S. military presence increased from 21 percent in 2006 to 36 percent by January 2009. Lack of confidence in foreign forces rose from 31 percent to 56 percent. Support in communities for foreign forces dropped from 67 percent in 2006 to 37 percent by January 2009. A full 77 percent of respondents to the poll reported opposition to airstrikes due to civilian harm concerns. Unfavorable views of the United States more than doubled from 25 percent to 52 percent.<sup>56</sup> A majority of respondents (56 percent) said they have some level of sympathy with the motivations of armed opposition groups; a belief that attacks on foreign forces was justified climbed from 13 percent in 2006 to 25 percent in January 2009.<sup>57</sup>

The cost to U.S. and Afghan government legitimacy was exacerbated by abusive, U.S.-backed, Afghan actors in the security forces and militias that preyed upon and harmed civilians. The harm caused by predatory militias in the early years damaged Afghan support for the government and for the international mission.<sup>58</sup>

By 2005, predatory behavior by Afghan officials had already become entrenched, creating “a reinforcing dynamic between human rights abuses visited on population, and the insurgency... it became apparent to everyone that the behavior pattern of NDS and local police cruelty became too much for the people,” recalled a long-serving senior UN official deeply involved in Afghanistan. “The Afghan people saw that it wasn’t a necessary evil to tolerate for initial period. They had elections in 2004, and then asked why are people still doing that? It delegitimized the system a great deal.”<sup>59</sup>

As discussed above, anecdotal evidence and academic studies have indicated that as perceived outsiders, U.S. and international forces were more likely to bear greater responsibility for civilian harm in the eyes of local Afghans. “Propaganda that the United States was killing civilians, doing night raids—that became a big issue regarding who is [seen to be] on the legitimate side of the war,” said Minister of Defense Masoom Stanekzai.<sup>60</sup> General Petraeus underscored the point, “[civilian casualties were] undermining the perception of the coalition’s commitment [to] secure and serve the people... If you are killing civilians, then you are obviously not protecting them.”<sup>61</sup>

When confronted with allegations of civilian harm, U.S. officials would often point to the far higher rate of civilian casualties caused by the Taliban and wonder why Afghans were holding international forces to a higher standard. Anecdotal evidence suggests that many Afghans assumed American technology was capable of extraordinary precision, so for many the explanations of civilian harm lacked credibility. This lent further power to Taliban propaganda, bolstered conspiracy theories, and sewed suspicion of international forces.<sup>62</sup> “You can tell the color of the head of a

pin from a satellite,” remarked one Afghan elder who was present at a wedding party bombing that was brought about by manipulated intelligence, “Why can’t you tell the difference between a woman or child and a Taliban?”<sup>63</sup>

Civilian harm also cost existing or potential sources of intelligence, information, and local cooperation—all critical to counter-terrorism and counter-insurgency.<sup>64</sup> As analyst Matt Waldman described, “People were unwilling to side with the government and Americans. So they won’t inform, or warn the coalition of Taliban presence.”<sup>65</sup>

Intelligence and aid efforts could also send mixed messages. “You have USAID trying to do economic development and governance work in an area and establish legitimacy, meanwhile you have intelligence paying off really corrupt and nasty people for information,” as former under-secretary of defense Michèle Flournoy put it. “We separate it but the population doesn’t. It’s all the United States to them. It certainly undermined aspects of our development and governance efforts.”<sup>66</sup>

#### **Damage to U.S.-Afghan Relations**

Civilian casualties were a significant reason U.S.-Afghan government relations soured.<sup>67</sup> Later, General Petraeus claimed that civilian harm was a strategic issue precisely because of its impact on the relationship with the Afghan government.<sup>68</sup> These frictions impeded the ability of the United States, the coalition, and the Afghan government to advance their strategic objectives.<sup>69</sup>

Many interviewees acknowledged that civilian harm became a central issue for President Karzai, an issue on which he felt substantial personal and political pressure, and which he used as a cudgel against the United States. President Karzai was especially critical of what he saw as a failure by the United States to take seriously claims of civilian harm, and to respond appropriately.<sup>70</sup>

According to General Petraeus:

These events had accumulated for President Karzai... A succession of commanders—sometimes even extending to the Secretary of Defense or other senior officials—would apologize and profess that it would never happen again. But then another tragic incident would take place. The presumption on the U.S. side, at least initially in many cases, was that those killed were bad guys. Thus the commanders pushed back, sometimes quite vigorously, sometimes publicly. And probably in a majority of cases, after a few days, it started to emerge that that this was yet another civilian casualty incident... Those [commanders] who had not been there from the start like [President Karzai] probably did not appreciate, to the extent necessary, just how much this enormous frustration and very damaging accumulation had affected him.<sup>71</sup>

David Sedney explains that the United States’ reluctance to address civilian harm undermined trust with President Karzai. “When he came to us and asked why, we said our intelligence was excellent

and actions irreproachable. Then when information came out calling that into question, we'd dig our heels in even more. This didn't just happen once or twice it happened repeatedly. He was right—there was a gap between what we said and what we did. We talked about human rights but in that first year of his presidency we killed more and more Afghans.”<sup>72</sup>

For President Karzai, personal trust and honesty was paramount. “General McChrystal was very cooperative when an incident took place. He would call and let me know and be honest about that. That reduced the hurt, the pain to people. It doesn't relieve the pain of the people, and it's not as if they don't hurt, but where you admit the mistake, I respect that... It wasn't that it didn't happen anymore but he was honest and admitted it.”<sup>73</sup>

Mutual suspicions between President Karzai and the Obama Administration grew substantially worse over time. By late 2010, crisis management was perpetual, from civilian harm incidents to major disagreements over issues such as detentions, corruption, reconciliation, and the bi-lateral security agreement. Although the Obama administration began with the intent to put the war on a proper footing, the United States and the Afghan government never managed to develop a common strategy for the war, an amazing failure over the course of 15 years. This major omission undermined the prospects of success against a determined insurgency.

## IV.

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# Reforms: Adoption, Implementation, and Impact

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*“We’re going to lose this fucking war  
if we don’t stop killing civilians.”*

— General Stanley A. McChrystal, Former Commander ISAF

## IV.

# Reforms: Adoption, Implementation, and Impact

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### ISAF Leaders Take Action

From 2007 onwards, ISAF began to take steps to reduce civilian casualties. A series of important tactical directives were adopted from 2007 to 2011 by ISAF commanders in an attempt to prevent and reduce civilian harm. In 2007 and 2008, tactical directives from Generals McNeill and McKiernan, respectively, introduced more stringent rules for airstrikes and for entering Afghan homes and mosques (for a list of key directives, see Annex). In 2008, a civilian tracking cell was introduced, which gradually improved the visibility of civilian harm. ISAF started to be more open to hearing civil society concerns on civilian harm.

By mid-2009, however, none of these changes appeared to be making an appreciable impact in reducing civilian harm. The new ISAF commander General Stanley A. McChrystal recognized the strategic impact outlined above. Civilian harm, he concluded, had “severely damaged ISAF’s legitimacy in the eyes of the Afghan people” and was undermining the mission.<sup>74</sup> ISAF and U.S. forces adopted a series of important reforms that led to significant improvements in civilian protection.<sup>75</sup>

McChrystal’s 2009 tactical directive went a little further, restricting the use of airstrikes and indirect fires on residential compounds except in self-defense or under limited and prescribed conditions.<sup>76</sup> McChrystal’s tactical directive also added emphasis on thinking through the wider tactical picture. Critically, he reinforced the message in trainings, guidance, and a series of “town hall” meetings where he met with soldiers across ISAF. General McChrystal also made this issue a top priority in building his relationship with Afghan President Hamid Karzai. General Petraeus’s 2010 directive placed greater emphasis on self-defense, while also raising the standards of civilian protection (see more below), and in 2011, issued a tactical directive expanding the CCTC into the Civilian Casualty Mitigation Team (CCMT) to better analyze data, make recommendations to ISAF, and liaise with civil society.<sup>77</sup> Both generals’ reforms and tactical directives on night raids and special operations, which were major sources of grievances, as discussed above, encouraged the use of “soft knocks,” or call-outs and joint operations with Afghan forces and authorities to reduce the risk to civilians. These directives were further strengthened by General Allen. The last ISAF commander, General Dunford, sustained these procedures (see Annex A for full list of key tactical directives).

The tactical directives were important, necessary reforms, but not sufficient. *Leadership* and *training*, supported by systematic *data collection and analysis*, together with greater *openness to*

*civil society inputs* improved battlefield performance and reduced civilian harm while sustaining force protection. *Post-harm response* helped ameliorate the consequences of incidents. We assess with high confidence that the combination of these reforms with the tactical directives led to significant reductions in civilian harm while not undermining force protection or offering the Taliban a systematic advantage.

*Leadership:* ISAF senior leadership was cited by multiple interviewees as the most critical factor. Generals McChrystal and Petraeus recognized the need to change the operating culture of the command. They reinforced the message continuously in command briefings, counterinsurgency guidance, and discussions across the force. Civilian harm was added to morning briefings. After action reviews following incidents reinforced learning and accountability. Generals John Allen and Joseph Dunford improved upon these changes through the end of the ISAF mission.<sup>78</sup>

ISAF commanders also requested that troop contributing nations *improve pre-deployment training*.<sup>79</sup> These measures included incorporating the new tactical directive and counterinsurgency guidance into training events, improving scenario-based training to hone the judgment of commanders and soldiers, and enhancing escalation of force procedures that relied less on written warnings (which many Afghans could not read) and more on commonly understood visual signals. As a result, even as troop numbers and operational tempo increased, civilian casualties declined.

*Systematic analysis and feedback* helped commanders better isolate and address persistent problems. The Civilian Casualty Tracking Cell (CCTC) in 2008 and later the Civilian Casualty Mitigation Team (CCMT) teamed with the Afghan Assessment Group at ISAF HQ and the Joint Incident Assessment Team (2009) to provide consistent data tracking and analysis.<sup>80</sup> The data collection supported a series of in-depth studies, several of which were conducted by the Joint and Coalition Operational Analysis (JCOA) division of the Joint Staff J7.<sup>81</sup> This process helped commanders understand the root causes of civilian harm and quickly adapt tactics and procedures.<sup>82</sup> Improvements in intelligence collection also aided targeting and detention operations, including through a surge in intelligence analysts and ISR capabilities (though significant gaps remained with respect to intelligence collection and analysis of wider civilian harm and social-political dynamics).<sup>83</sup>

A new openness to external information was an important part of this expanded monitoring and analytical capacity. This included greater transparency and pro-active engagement with the UN and ICRC, as well as a number of other credible NGOs that were documenting civilian casualties and making concrete policy recommendations.<sup>84</sup> President Karzai remained relentless in calling attention to civilian casualties.

Improving *post-incident harm response*, specifically through improvements in investigations, greater transparency, and the provision of amends reduced the penalties in public support when incidents did occur. ISAF developed common guidance for compensation and harm mitigation designed to

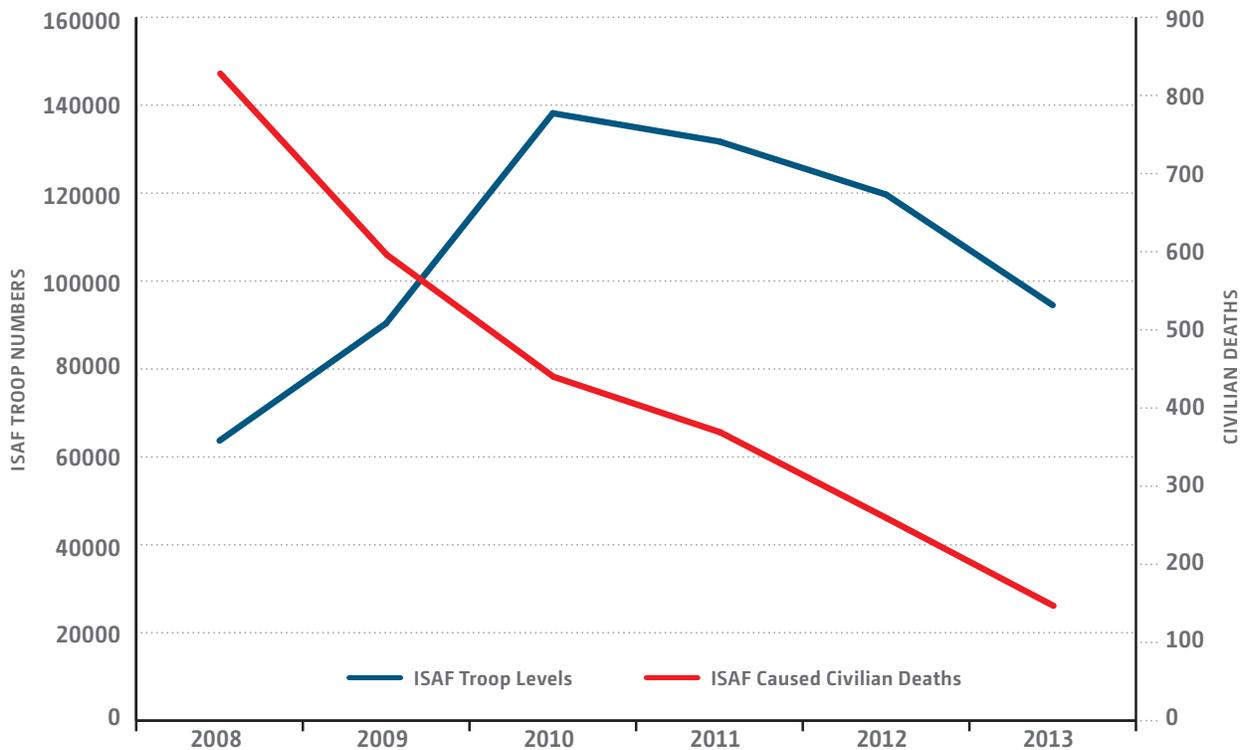
acknowledge the incident and to provide common standards for ameliorating the suffering of those affected.<sup>85</sup> “It’s not just the willingness to acknowledge and apologize, but the speed in doing so” as former AIHRC commissioner Nader Nadery put it. Acknowledging and making amends for civilian harm was appreciated by those affected, and has been shown to mitigate the normal penalties in local support.<sup>86</sup> Unfortunately, post-harm amends efforts still did not occur in many cases, often due to inaccessibility, while some assistance channeled through Afghan officials reportedly never reached the victims.<sup>87</sup>

## Impact of Reforms

These reforms significantly reduced ISAF-caused civilian harm. This drop came despite the intensifying nature of the conflict over the same period. UNAMA data reveals the significant impact of ISAF reforms, as do two separate reports by ISAF and NATO.<sup>88</sup>

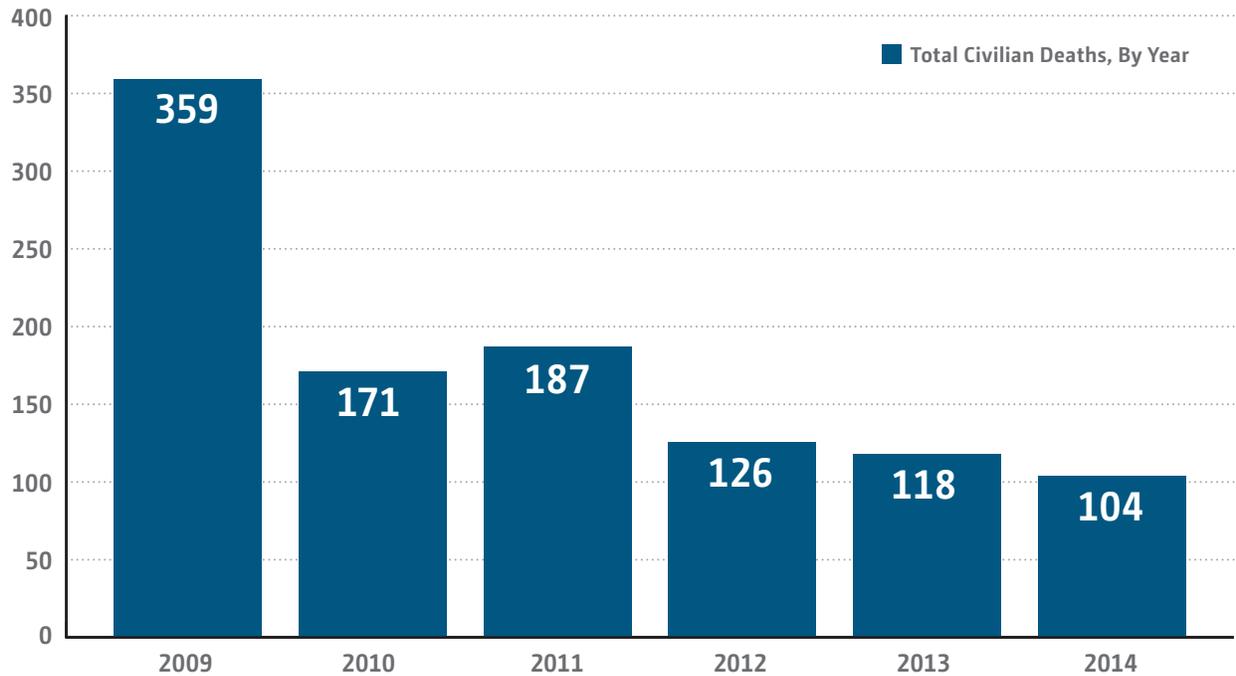
*ISAF-caused civilian casualties decreased significantly.* From 2008 to 2013, UNAMA registered a roughly 60 percent decrease attributable to all pro-government forces (including ANSF).<sup>89</sup> Whereas ISAF and pro-government forces were responsible for 39 percent of civilian deaths in 2008, by 2012 that figure had shrunk to 9 percent.<sup>90</sup> NATO’s analysis of ISAF and UNAMA data from 2008 to 2014 suggests that the probability of an ISAF-caused civilian casualty incident occurring during a ground engagement when ISAF was present was reduced by approximately 80 percent.<sup>91</sup>

### ISAF Troop Levels and Civilian Deaths<sup>92</sup>



Reduction in civilian harm from aerial operations was significant. Year-to-year progress has been steady, with fatalities dropping from 552 in 2008 to 104 in 2014 based on UNAMA data (see graph below). From 2008-2014, civilian deaths from aerial operations were reduced by roughly 80 percent (based on ISAF data).<sup>93</sup>

### Civilian Deaths From Aerial Operations by ISAF 2009-2014



The rate of civilian casualties per airstrike decreased nearly three-fold from 2009-2010, and remained steady throughout the height of ISAF operations. Civilian fatalities per incident, according to UNAMA data, declined from 5.52 to 2.19 from 2009-2013.

### Number of Strikes per One Civilian Death<sup>94</sup>

| Year | Sorties with at least one weapon | Civilian Deaths | Strikes/ One Civilian Death |
|------|----------------------------------|-----------------|-----------------------------|
| 2009 | 2050                             | 359             | 5.71                        |
| 2010 | 2517                             | 171             | 14.72                       |
| 2011 | 2678                             | 187             | 14.32                       |
| 2012 | 1975                             | 126             | 15.67                       |
| 2013 | 1407                             | 118             | 11.92                       |
| 2014 | 1136                             | 104             | 10.92                       |

We assess with low confidence that the focus of ISAF and many other actors on civilian protection affected Taliban statements and behavior. Antigovernment elements, of which the Taliban are the most significant, have caused the vast majority of civilian harm. They have employed and continue to use attacks designed to maximize human suffering. Nonetheless, the Taliban began to issue directives and make public statements about avoiding civilian casualties, to include their Eid messages since 2009 and Code of Conduct.<sup>95</sup> Some experts interviewed for this report stated that the Taliban enacted measures to reduce civilian harm.<sup>96</sup> More rigorous research is needed. Although the Taliban repeatedly deny, and even condemn, suicide bombings that target civilians, their conduct in the field does not match their messaging on civilian protection.<sup>97</sup>

## Did ISAF Reforms Increase the Risk to Troops or Give Advantage to the Taliban?

ISAF's reforms and emphasis on civilian protection meant a shift in the operating culture of a military force in the midst of combat. Such an adjustment naturally had its detractors as well as advocates. ISAF efforts on civilian protection triggered two main criticisms. First, was that troops were being placed at greater risk. Second, critics charged that the measures "handcuffed" the military and gave the Taliban a free pass to escape to villages to avoid targeting.

After reviewing the available information, we assess with high confidence that the reforms *did not undermine force protection or give the Taliban a significant military advantage*.

### Case Study: Ganjgal 2009

The first major incident to trigger these criticisms and complaints occurred on September 8, 2009, when a patrol of U.S. troops mentoring Afghan Border Patrol forces was ambushed near Ganjgal in Kunar Province, along the Pakistani border. Over two hours, repeated calls by U.S. forces for support went unheeded. Five U.S. service members, eight Afghan troops, and an interpreter were killed. Members of the patrol calling for fire believed their requests were denied, in part, because of the new rules of engagement.<sup>98</sup>

However, the U.S. Army's official investigation cited poor planning and coordination, inadequate leadership in the command post, and confusion and bad reporting as among the primary reasons for failure to provide

timely support to the patrol. In planning, the Ganjgal operation was given a lower priority, and air support was assigned to another, higher priority operation. When the call for air support was received, the leaders in the Tactical Operations Center did not reassign those assets to forces in Ganjgal, failing to recognize the changing tactical situation.

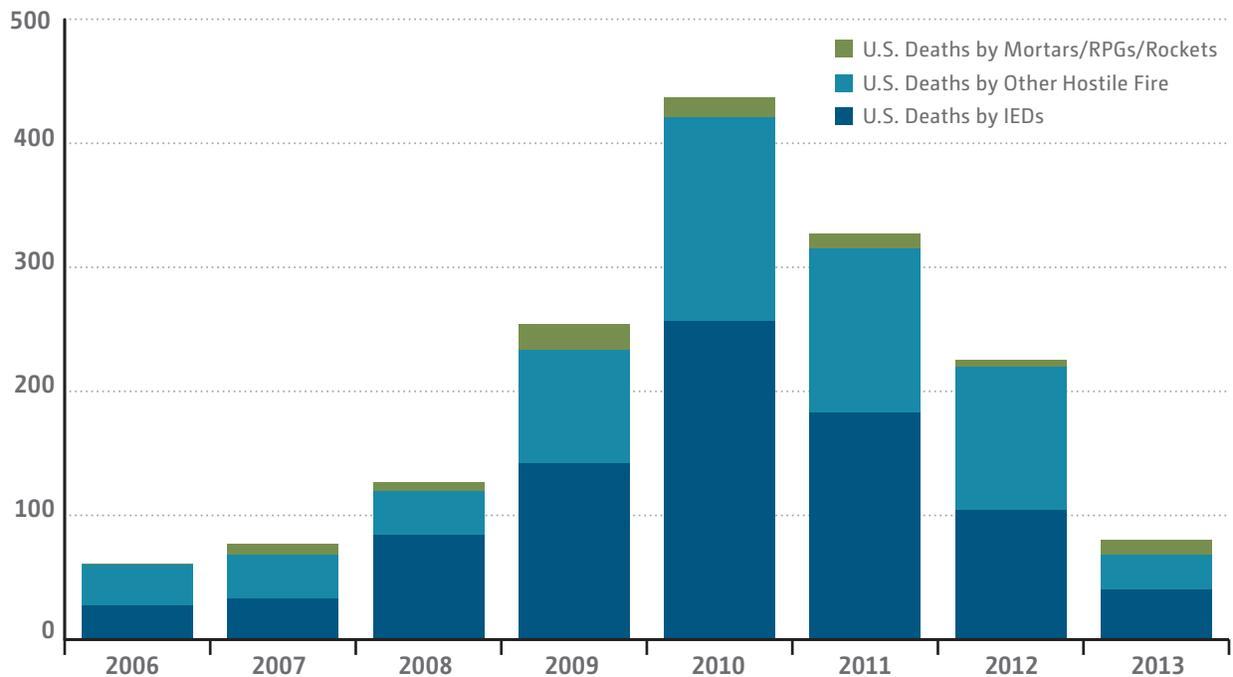
The Army investigation clearly showed that U.S. losses were not due to restrictive ROEs or new tactical directives. Yet the incident fueled accusations that the tactical directives were placing troops at greater risk. The incident highlights the importance of addressing such perceptions among U.S. troops who must implement and adapt to new guidance.<sup>99</sup>

*Did the reforms increase U.S. fatalities?* Some critics and analysts have argued that the tactical directives and McChrystal’s well-intentioned call for “courageous restraint” were responsible for increases in U.S. battlefield fatalities.<sup>100</sup> The data tells a different story.

U.S. hostile fire fatalities rose significantly over the period the reforms were implemented, but U.S. troop levels in Afghanistan roughly tripled 2008-2010.<sup>101</sup> Determining causality in such a complex environment is difficult, but U.S. casualty data shows that the spike in U.S. deaths was driven by a significant increase in improvised explosive device (IED) attacks. By 2010, 265 (60 percent) of American hostile fire fatalities were caused by IEDs or suicide bombings.<sup>102</sup> This grim total was nearly the amount for the previous three years combined.<sup>103</sup> The data shows that the normalized rate of non-IED fatalities actually *declined from 2008 onwards*, while fatalities during ground engagements remained consistent.<sup>104</sup> We assess with high confidence that the Taliban’s increased use of IEDs was the primary cause of the increase in U.S. fatalities during this period.<sup>105</sup>

The data on U.S. fatalities from *direct fire engagements*—engagements in which U.S. troops would be most likely to use airstrikes and artillery in self-defense—do not support the claims that reforms undermined force protection. The proportion of overall U.S. fatalities due to direct fire engagements actually declined between 2006/2007 and 2011 (see graph below).<sup>106</sup>

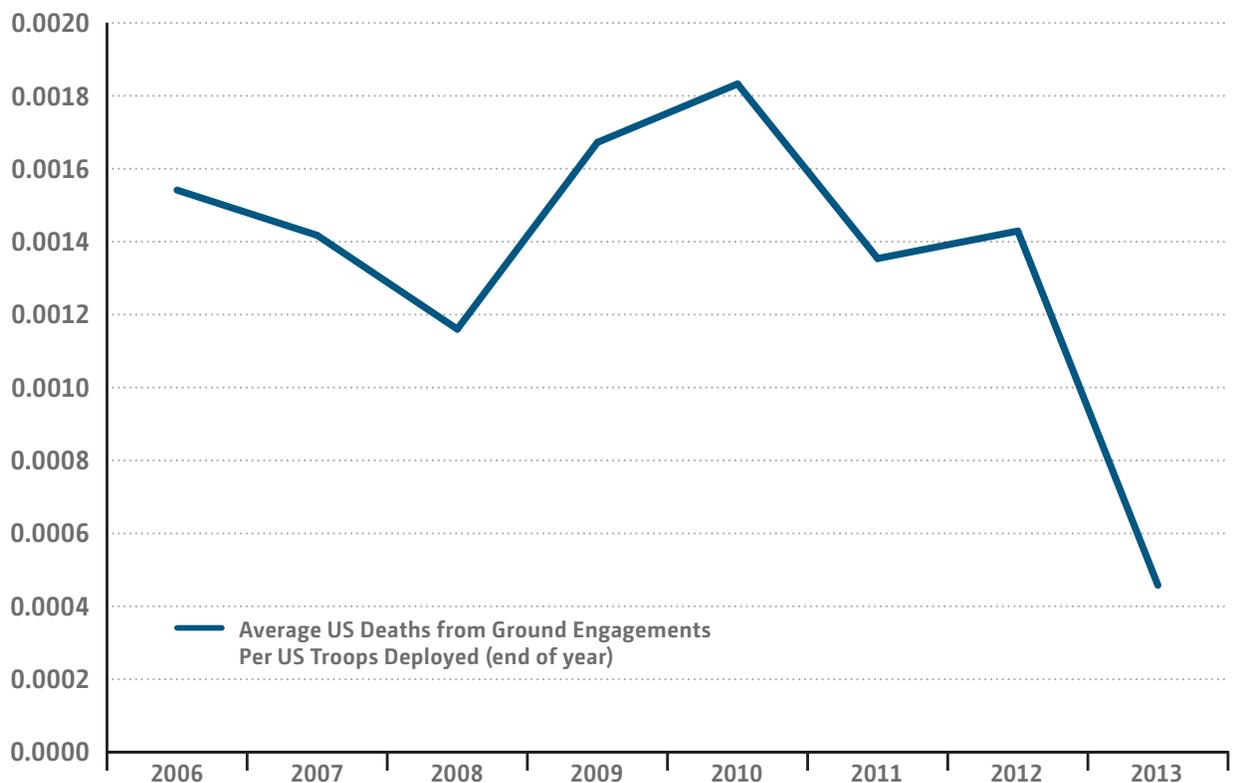
### U.S. Troop Fatalities, Afghanistan, 2006-2013



The normalized rate of troop fatalities during ground engagements actually *decreased* seven percent when comparing 2006 (before the first tactical directive in 2007) to 2012 (the last full year of ISAF-led combat operations).

As each tactical directive made clear, troops always had the right of self-defense. Sadly, fatality rates during ground engagements rose 19 percent from 2006 to their peak in 2010. These fatality rates increased in the 2009-10 surge as newly arrived U.S. forces fought their way into Taliban strongholds of Wardak, Helmand, and Kandahar (see graph below).<sup>107</sup> U.S. military fatalities during ground engagements *declined* 22 percent from 2010-2012. Civilian fatalities dropped 41 percent even as military operations intensified. The data suggests that U.S. forces were not suffering increased casualties from the kind of firefights where the use of airpower in self-defense would have played a role in force protection.

### Average US Deaths from Ground Engagements Per US Troops Deployed (end of year)



However, some troops, commanders, and analysts perceived that the right of self-defense was being compromised, and General Petraeus was grilled on the issue during his confirmation hearings in July 2010.<sup>108</sup> When he assumed command in July 2010, Petraeus conducted a review of the tactical directive and found that some subordinate commanders had been adding their own restrictions. These frustrated commanders on the ground, and particularly during dynamic targeting events when precious time elapsed as required approvals went up the chain of command and opportunities to strike were lost. In response, Petraeus issued a clarifying directive, which placed more explicit emphasis on the right to self-defense and forbade commanders from adding their own restrictions on top of the existing tactical directives.

Petraeus outlined his thought-process during an interview:

The layers of approval and second-guessing in some tactical units were excessive... This, of course, filtered back to Washington and I was questioned about it during my confirmation hearing [to be the ISAF commander]... What I sought to do [in revising the tactical directive] was to provide direction that would achieve a balance; a balance between the keen awareness of the need to avoid civilian casualties and an equally keen awareness of the imperative to do everything possible to take care of our troopers if they got in a tough spot. We had to aggressively pursue the enemy, but we also had to do it in a way that avoided death or serious injury to those we were seeking to safeguard.<sup>109</sup>

While removing restrictions, Petraeus actually raised the standards for civilian protection in his tactical directive, requiring verification of “no civilians present” to approve strikes outside of self-defense or pre-planned strikes.<sup>110</sup>

The new directive was effective, said Petraeus. “It reassured our troopers that we would have their back, and it reassured the American people that we would do everything necessary to protect their sons and daughters in harm’s way, all while also reassuring the Afghan President and people that we were keenly aware of our responsibility to reduce civilian casualties to the absolute minimum.”<sup>111</sup>

General Allen also acknowledged concerns from some commanders: “Some commanders raised concerns that the directive I was considering might tie their hands. I used data to show that the vast majority of ordnance we fired were in open areas away from the population—that was where the fighting was occurring. We were making mistakes in the far fewer cases in which we used ordnance in populated areas—and these incidents cost us support. In most circumstances, we had other tactical options to deal with the threat. As commanders understood the data and the analysis, they supported the change.”<sup>112</sup>

Finally, to fully assess the impact of reforms on force protection, it may be worth considering the impact on the mental health of soldiers. “Moral injury” is an emerging field that examines the effects on individuals who have witnessed or participated in acts of perceived moral transgression. According to psychologists who have worked closely with and analyzed veterans, soldiers who witnessed or participated in civilian casualty incidents, including unintentional civilian harm, may suffer from moral injury. As a result, they can be at a higher risk of post-traumatic stress and actions of self-harm, including suicide and substance abuse.<sup>113</sup> The relationship between civilian harm and moral injury deserves more study and attention.

This moral dimension is important to bear in mind at a time when some would argue that violations by an enemy force justify the United States abandoning its own legal and moral commitments. As Lieutenant Gen H.R. McMaster has argued; “[b]ecause our enemy is

unscrupulous, some argue for a relaxation of ethical and moral standards and the use of force with less discrimination, because the ends—the defeat of the enemy—justify the means employed. To think this way would be a grave mistake. The war in which we are engaged demands that we retain the moral high ground despite the depravity of our enemies.”<sup>114</sup>

*A second criticism argues that U.S. forces were “handcuffed” by these reforms and gave the Taliban a significant military advantage. Several military experts and commentators voiced concern that ISAF reforms were hamstringing U.S. forces’ ability to conduct offensive operations against the Taliban. As retired air force lieutenant general Thomas McInerney complained, “We handcuffed our troops in combat needlessly. This was very harmful to our men and has never been done in U.S. combat operations that I know of.”*<sup>115</sup>

Overall, the data tells a different story. During the implementation of the McChrystal and Petraeus tactical directives, U.S. and ISAF operations against the Taliban were increasing dramatically. The number of night raids, in particular, increased five-fold from February 2009 to December 2010. Close air support sorties grew by 114 percent from 2007-2010.<sup>116</sup> According to one Taliban expert, the night raids took a significant toll and forced Taliban leaders to take onerous force protection measures.<sup>117</sup>

The pace and scale of the night raid effort remained intense, even as it outpaced the number of available important targets. Increasingly, the raids seemed to target lower level individuals. According to four former senior DoD officials, the percentage of night raids that resulted in the capture or kill of a district level commander or Taliban official (so-called mid-level leadership) or above was insignificant.<sup>118</sup> The strategic cost of casting this wide of a net has not yet been assessed. Even some members of the Special Operations community began to wonder why the world’s most highly trained raiding forces were putting their lives on the line to go after “street thugs.”<sup>119</sup>

With respect to civilian harm beyond casualties, the picture is mixed. Fear of encountering international forces registered at 76 percent and 78 percent respectively for 2011 and 2012. On the more positive side of the ledger, reports of being victims of violence by foreign forces rose from 5 percent in 2007 to 9 percent in 2009, then down to 6 percent in 2010, despite the threefold increase in foreign forces since 2008.<sup>120</sup> Overall, the Afghan perceptions of security and protection moved in a positive direction, despite major increases in violence.

A related criticism is that the Taliban gained increased tactical advantage by fighting in populated areas, or civilian shielding.<sup>121</sup> No doubt such examples exist. But according to ISAF, the number of enemy initiated attacks taking place within 1km of populated areas actually decreased significantly from January 2010 to October 2012.<sup>122</sup> Despite restrictions on U.S. airpower in populated areas, other strategic and tactical considerations seem to have led local Taliban commanders to increasingly choose to fight ISAF in rural areas.

Recalling an example from 2001, Lieutenant General David A. Deptula, former director of the Combined Air Operations Center for Afghanistan, says an opportunity to “eliminate” Mullah Omar and other senior Taliban leaders was passed up: “We had it within our power but the commander elected not to because of a legal fear of collateral damage. This is a risk aversion driven by the excess concern of the commander.”<sup>123</sup> Later, there were reportedly a number of real or perceived lost opportunities to strike Taliban leaders and fighters due to the additional restrictions some commanders put in place prior to Petraeus forbidding them. Such restrictions may have been counterproductive, especially as intelligence capabilities increased and pre-deployment training improved tactics and battlefield judgment. After Petraeus lifted restrictions, civilian casualties by ISAF continued to decline. Overall, ISAF experienced security gains while improving civilian protection and protecting the force.

V.

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## Transferring Lessons to ANSF

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*“We’re going to lose this fucking war  
if we don’t stop killing civilians.”*

— General Stanley A. McChrystal, Former Commander ISAF

## V.

# Transferring Lessons to ANSF

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U.S. and ISAF efforts to introduce civilian protection to the ANSF were undertaken too late and were not prioritized, which has led to insufficient emphasis and a heightened risk of strategic penalties. At this point in the conflict, where the Afghan security forces are under immense pressure, inculcating protection of civilians will be difficult.

The U.S. has largely taken a “train and equip” approach to ANSF development, with comparably less focus on developing soldier and leader tactical judgment, or on educating leaders about why civilian protection is important for military success. Military lawyers and human rights advocates have provided important training and guidance to rank and file ANSF on law of armed conflict and human rights. But without ownership and emphasis by ANSF leaders, including emphasis of the strategic value of civilian protection, it is unlikely that such training will have much impact.<sup>124</sup>

Senior Afghan officials have made encouraging statements about the need to protect civilians, and a national policy on protection of civilians is in the pipeline for 2016 (as well as a revised policy for the Ministry of Defense). However, it’s not clear that ANSF leadership is making the connection between civilian protection and success in war, observed a former deputy commander of ISAF.<sup>125</sup> “At the leadership level it’s taken seriously, but it’s not been absorbed or understood at the tactical level as much as we’d like just yet,” said Carlo Salter, CIVCAS Mitigation staff officer for NATO/Resolute Support HQ. “Changing the mindset is the key, and that’s going to take a long time. Maybe in five years it will start to show.”<sup>126</sup>

As had been the case for ISAF, ANSF-caused civilian harm risks hardening support for the Taliban in contested areas and reducing cooperation with the Afghan government.<sup>127</sup> As the conflict has intensified, civilian casualties have reached unprecedented levels with over 10,000 civilian deaths and injuries in 2015. While antigovernment elements continue to be responsible for causing the most harm, there was a 51 percent increase in the number of pro-government caused civilian casualties between 2013 and 2014,<sup>128</sup> and a further 28 percent increase in 2015.<sup>129</sup> The biggest increase in civilian casualties occurred during ground engagements, primarily from ANSF use of explosive weapons such as mortars, rockets, and grenades, particularly in or around populated areas.<sup>130</sup> Afghanistan Air Force (AAF) airstrikes, however, have been a fast growing concern. Civilian casualties from AAF strikes increased almost eightfold in the first half of 2015, and threefold in the second half.<sup>131</sup>

The scale and impact of civilian harm is not being tracked by the Afghan government. It established a Civilian Casualties Tracking Team in the Presidential Information Coordination Center (PICCC), in May 2012, which has had close mentoring and advice from Resolute Support. However, there are significant gaps with the CCTT. Its assessment of civilian casualties caused by ANSF in 2015 was around 2,000, as opposed to around 12,000 documented by the UN.<sup>132</sup>

This enormous discrepancy has multiple causes. First and foremost, it relies on reports of civilian harm from security bodies and has no mechanism to receive complaints from individuals or organizations.<sup>133</sup> The CCTT has a tendency to assume that the responsibility for civilian harm lies with the Taliban when there's cross-fire in ground engagements, or when the ANSF engage in defensive operations. Reluctance to report ANSF-caused harm may lead to under-reporting and compromise the system's integrity. In addition, while Resolute Support's training and mentoring is welcome, Resolute Support has no independent capability to assess the accuracy of the CCTT's data.

Also missing from the CCTT is a capability to analyze and learn from civilian harm incidents.<sup>134</sup> As Georgette Gagnon, former director of UNAMA Human Rights has stressed, "Tracking and mitigation are not the same thing. [ANSF] are not doing mitigation, they're not trying to prevent."<sup>135</sup> On the positive side of the ledger, the Afghan National Security Council held the first Afghan-led Civilian Casualty Avoidance and Mitigation Board meeting in January 2016, involving all government stakeholders. These forums are an essential part of the accountability and learning feedback loop, both for the CCTT, and for responsible ministries.

Major incidents of potential violations of international humanitarian law (IHL) also remain unaddressed. For instance, a 2014 rocket attack by the ANA on a wedding party in Sangin, Helmand, resulted in 83 civilian casualties, including the deaths of 29 women and children. The incident was investigated, but an earlier admission of responsibility was reneged upon, and there were no prosecutions.<sup>136</sup> Incidents such as a recent ANSF raid on a hospital in Wardak, and the reported execution of captured insurgents, highlights the serious challenges in ensuring ANSF compliance with IHL.<sup>137</sup> While there have been several instances of accountability after Afghan National Army gross violations of human rights (which can trigger Leahy funding suspension if there is no remedy by the host nation), allegations of gross violations by the Afghan Police have not led to similar actions.<sup>138</sup>

While the Afghan Local Police (ALP) has improved security in some areas, it has also been associated with harm to civilians, from physical abuse to extortion.<sup>139</sup> Officials report some cases of accountability, mostly where a crime has been committed (such as murder resulting from a personal dispute), perhaps because of the financial support and training involvement of U.S. forces with the ALP.<sup>140</sup> However, many serious allegations have not resulted in independent investigations or prosecutions. In late 2015 the "People's Uprising Program" or "People's Support Program" was created by the Afghan government, with an ambitious *tashkeel* of 10,000, and at this writing, unclear rules of engagement and oversight.<sup>141</sup>

Detainee abuse in Afghan facilities has been persistent as well.<sup>142</sup> U.S. and ISAF forces transferred thousands of detainees to ANSF custody. In order to meet their international non-refoulement obligations, the U.S. and ISAF adopted “remedial measures,” which included a monitoring and certification regime, periodic suspension of transfers to problematic ANSF facilities, and training.<sup>143</sup> Many Afghans who were themselves detained, or whose family members or community leaders were picked up by U.S. forces and handed over to ANSF, held the United States partially responsible for the abuses and extortion they subsequently suffered, eroding trust and U.S. legitimacy.<sup>144</sup> Despite continued documentation of the widespread use of torture, there have been almost no instance of accountability.<sup>145</sup>

The U.S. military retains important influence where close relationships exist to enhance ANSF performance, learning and accountability. U.S. officials we interviewed noted the differences with Afghan National Army (ANA), where the U.S. has close working relationships, and strong influence owing to direct financial support, and the police, where it generally does not. U.S. forces seem to have had some success in noting that the Leahy Law can trigger halts in funding to Afghan security force units accused of grave human rights violations.<sup>146</sup> It is notable that there is a Resolute Support mentor working full time on protection of civilians with the Ministry of Defense but no equivalent in the Ministry of Interior.

The deadly October 3, 2015, attack on the Médecins Sans Frontières hospital in Kunduz, however, is an alarming reminder that without consistent leadership attention and training, hard-learned lessons can be lost relatively rapidly.<sup>147</sup> Now that U.S. forces rely so heavily on less reliable ANSF intelligence and information, there is even greater need for rigorous systems and procedures for verifying targets, ensuring proper precautions, and minimizing civilian harm.

President Obama and RS Commander General John Campbell issued apologies for the attack and loss of life. A subsequent U.S. military investigation found that the attack was “a direct result of avoidable human error compounded by process and equipment failures,” and that U.S. personnel failed to follow the rules of engagement. Sixteen U.S. military personnel received punishments included suspension and removal from command, letters of reprimand, formal counseling, and extensive retraining, though no criminal charges were filed.<sup>148</sup>

The U.S. military investigation found that the special operations forces commander on the ground “lacked the authority to direct the aircrew to engage the facility,” and it was found that “the U.S. commander relied primarily upon information provided by Afghan partners and was unable to adequately distinguish between the NDS headquarters building at the MSF Trauma Center.”<sup>149</sup>

The string of individual and systematic mistakes and the breakdown of checks identified by the U.S. military’s investigation suggest that employing force in ways that accomplish the mission while protecting the force and civilians is a perishable skill-set. With fewer U.S. forces on the ground and airpower being used less frequently, the risk of U.S. strikes causing civilian harm may increase, particularly in densely populated urban environments such as Kunduz City.

The same major factors that helped ISAF reduce civilian harm without compromising force protection can help the ANSF: leadership, training, better data collection and analysis, and post-harm response. Both the United Nations and the Center for Civilians in Conflict (CIVIC) have developed useful recommendations to improve the ANSF's ability to protect civilians.<sup>150</sup> Persistent engagement at senior levels on these reforms can help improve ANSF battlefield performance. Only when ANSF front-line commanders genuinely appreciate and communicate the link between civilian protection, force protection and local stability, are soldiers likely to respond.

## VI.

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# U.S. Civilian Protection Practices in Other Conflicts: Yemen, Iraq, Syria, and Pakistan

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*“How we treat civilians is a force multiplier  
for us and a force-detractor for the enemy.”<sup>151</sup>*

— General John R. Allen, Former ISAF Commander

## VI.

# U.S. Civilian Protection Practices in Other Conflicts: Yemen, Iraq, Syria, and Pakistan

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The Department of Defense has demonstrated a deep commitment to civilian protection, even at times going further than the requirements of LOAC. In Yemen, Iraq, Syria, and Pakistan, U.S. forces are confronted with incredibly challenging targeting and operational environments, and have been taking considerable steps to protect civilians, while other parties to the conflict have at times displayed a callous disregard for civilian life, including egregious war crimes in Syria, in particular. By contrast, the United States has demonstrated a degree of restraint in its use of airpower that suggests sensitivity to the challenge of civilian protection, some of which reflects a mixed record on learning from Afghanistan. At the same time, U.S. forces are increasingly reliant on partner forces on the ground, whose performance on civilian harm also poses strategic risks to U.S. objectives. Despite undeniable U.S. progress, there remains significant potential for improvement in several strategic areas: working with partner forces, civilian casualty tracking, analysis, investigation, and amends.

## Yemen

Recent developments in Yemen provide a stark example of the risks that the behavior and actions of U.S.-supported partner forces pose to America's reputation and strategic objectives, as well as the potential for improvement in tracking and responding to U.S.-caused civilian harm.

The air campaign by the Saudi led coalition, supported by U.S. intelligence, logistics, and arms, has bombarded targets with no apparent military value, including hospitals, clinics, schools, and wedding parties, raising serious questions about violations of international humanitarian law.<sup>152</sup> Between March 2015 and March 2016, the UN recorded almost 9,000 civilian casualties, with 1 in 10 Yemenis forced to flee their homes after a year of escalating conflict. The UN estimates that the Saudi led coalition is responsible for twice as many casualties as all other warring parties, almost entirely a result of airstrikes.<sup>153</sup>

Throughout the Saudi campaign in Yemen, the United States has provided intelligence support, air-to-air refueling, and facilitated \$33 billion worth of weapons sales to the Gulf Cooperation Council (GCC), the bulk of which has gone to Saudi Arabia. In addition to the arms sales, the United States has provided hundreds of air-to-air refueling sorties.<sup>154</sup> Members of Congress have voiced concern that U.S. support for Saudi actions that constitute gross human rights violations may contravene U.S. law, and that continued U.S. arms sales are fueling conflict, and undermining U.S. strategic interests.<sup>155</sup> As the Saudi led campaign has focused the war effort on pushing Houthis out of the

capital and territory in the north, Al Qaeda in the Arabian Peninsula (AQAP) has seized territory in the south, seeking to expand support by leveraging new customs revenue and re-branding itself as a nationalist, pro-poor populist movement.<sup>156</sup>

Meanwhile, the United States has continued its own air campaign against Al Qaeda in the Arabian Peninsula (AQAP) in Yemen, which began in 2009.<sup>157</sup> In May 2013, the administration issued the Presidential Policy Guidance (PPG) on counter-terrorism operations outside areas of active hostilities, which raised the bar for the use of lethal force, including a “near-zero” standard for civilian harm.<sup>158</sup> The PPG did not apply in Pakistan, but did apply in Yemen, where its impact is hard to measure because of the transparency obstacles, but it clearly did not result in near-zero casualties.

However, the United States has failed to publicly acknowledge a single instance of civilian casualties over 120 strikes.<sup>159</sup> Several human rights and media organizations have documented credible claims of civilian harm.<sup>160</sup> Reported civilian casualties from U.S. strikes declined 2011-2012, though the reported rate of civilian casualties *per operation* actually rose 5 percent in 2013-2014.<sup>161</sup> U.S. officials have reportedly provided compensation to civilian victims, though not publicly.<sup>162</sup>

Victims and experts have questioned whether U.S. drone strikes, and subsequently its seemingly uncritical support to Saudi Arabia have also strengthened the hand of al-Qaeda, ISIL, and other militant groups, while undermining the credibility and interests of the United States.<sup>163</sup>

## Iraq and Syria: Operation Inherent Resolve

In Iraq and Syria, the United States has faced unenviable options in choosing allies and partners on the ground, where other opposing armed actors including the Syrian regime, Russia, and ISIS have been responsible for significant numbers of civilian casualties and egregious LOAC violations. The Russian intervention in Syria has already reportedly killed an estimated 1,982 civilians from September 2015 to March 2016, including attacks that reportedly may constitute war crimes.<sup>164</sup> This is a far higher rate than reports of civilian harm by U.S. forces and its partners. The United States is also clearly paying attention to the need to prevent, mitigate, and track civilian casualties from its own operations, though challenges remain. The United States moved with some speed toward setting up a civilian casualty tracking effort once Operation Inherent Resolve got underway. However, there is reason to believe it is still significantly underestimating the scale of harm, in part because of resource constraints and inaccurate or misleading partner reports, while further improvements in data and analysis of civilian harm would guard against the adoption of unnecessary restrictions.

### Difficult Partners

Civilian harm caused by partner forces poses strategic risks analogous to those confronted by the United States in Afghanistan. As Fred Kagan, resident scholar at the American Enterprise Institute

describes, “Civilian harm mitigation is not just a matter of controlling what we bomb and whom we shoot—it is a matter that must shape our entire approach to conflict. This issue requires particularly careful thought—strategic thought—in contexts in which we do not control the actions of other key actors with whom we are associated.”

Given its limited ground presence, the United States at times relies on observations and reporting from the Kurdish People’s Protection Units (YPG) and Peshmerga forces to assess potential and actual civilian harm.<sup>165</sup> The U.S. military experience in Afghanistan shows how dependency on intelligence from partners, particularly in unfamiliar social and political contexts, leaves U.S. forces vulnerable to misinformation, faulty intelligence, and manipulation by local actors. The United States is not insensitive to this: indeed, one interviewee ascribed caution about the reliability of partners’ intelligence or requests for air strikes as a primary reason for relative restraint in the use of airpower.<sup>166</sup> That necessary caution has come at a cost politically, particularly through the election campaign season, with some arguing that the United States should be using more air power.<sup>167</sup>

In Iraq and Syria, the historical conflict between Kurdish and Arab communities and political parties should raise questions about the reliability of YPG and Peshmerga forces’ reporting of civilian harm, particularly in Arab communities. As forces fighting ISIL on the ground and advancing into Arab-majority areas, YPG and Peshmerga forces could have strong incentives to maximize the capacity of U.S. airpower for their own force protection and, potentially, to motivate Arabs to move away. They may have relatively few incentives to investigate and assess claims of civilian harm, particularly when their forces were involved in providing intelligence or coordinates to U.S. forces. Some Shi’a militias in Iraq may operate under similar incentives when fighting in Sunni areas.

A recent investigation by Amnesty International suggested that Kurdish YPG fighters engage in collective punishment when “clearing” villages of ISIL suspects, including “deliberate displacement of thousands of civilians and the razing of entire villages... often in retaliation for residents’ perceived sympathies with, or ties to, members of IS or other armed groups.”<sup>168</sup> The lead investigator for the report said there is a tendency for YPG fighters to “conflate the male Arab population with ISIL.”<sup>169</sup> Similarly, an investigation by Human Rights Watch suggests that Peshmerga forces have discriminated against Arab civilians, imposing harsher treatment on them than Kurds.<sup>170</sup> These kinds of reports at least warrant extra scrutiny on information from partner forces, given the potential impact on U.S. strategic objectives.<sup>171</sup> In addition, a lack of uniform, interagency standards for credibility assessments, inadequate means of incorporating external NGO sources into assessments, and disparate access to intelligence and information are undermining the efficacy of the Leahy Law and other mechanisms that prevent U.S. security assistance to actors that commit gross violations of human rights.

A lack of local knowledge and short-sightedness about partnerships with abusive actors contributed to the erosion of U.S. strategic interests in Afghanistan. There’s a risk that similar dynamics could damage long-term objectives of U.S. operations in Iraq and Syria. Anand Gopal,

who has reported extensively in Afghanistan and Iraq, cited the example of the ISIS takeover of Hit, as exemplifying this problem. A key military center in Anbar Province, Hit has been riven by tribal feuds that were exacerbated by U.S. forces backing the Abu Nimr tribe to the exclusion of other groups.<sup>172</sup>

There's a lot that's very similar [to Afghanistan], especially when you look at what happened during the Iraq war and occupation period... the United States allied itself with the Abu Nimr tribe to the exclusion of other tribes... By the time they left, they left a complicated situation, put one tribe on top. The tribes that lost out saw them as oppressors, and bore all the police abuse. And then there was a tribal war, those excluded tribes allied with each other. The tribes were rising up at the same time as ISIS attacked, and so they didn't conquer it, but the town didn't as much fall as there was an uprising and the Abu Nimr had to flee.<sup>173</sup>

In addition, as Fred Kagan observes, without an understanding of the local context and political perceptions, the United States risks association with Syrian and Russian government actions:

The fact that the United States seems to many of Iraq's and Syria's Sunni to be bombing on behalf of 'Alawite and Shi'ite regimes into Sunni areas is much more damaging to our cause—even if we only ever hit real fighters—than the relatively small numbers (by any estimates) of civilian casualties we are causing. That is particularly true in an environment where regimes or affiliated militias and allies are causing many orders-of-magnitude more civilian casualties, including, in the Syrian case, through the use of chemical weapons, area bombardment, and starvation-as-a-weapon-of-war. We could actually get to totally precise, no-casualty attacks, and we would still be blamed for civilian deaths because we are seen to be allied with those causing them.<sup>174</sup>

## Civilian Casualty Tracking and Response

To date, CENTCOM has acknowledged 41 civilian deaths, plus 17 caused by coalition strikes,<sup>175</sup> out of 9,309 air strikes from the beginning of operations in August 2014 through May 10, 2016. That would mean a rate of 1 death for every 227 airstrikes.<sup>176</sup> By comparison, the rate in Afghanistan at the height of the surge in 2011 was 1 death for every 14 airstrikes.<sup>177</sup> Such a dramatic improvement is doubtful, particularly given U.S. forces' limited intelligence and forward observer capabilities in Iraq and Syria as compared to Afghanistan. As Ambassador Doug Lute points out:

Our experience in Iraq and Afghanistan should tell us that if there [in Afghanistan], with that density of troops, and a cooperative government, some media and civil society activity... and there we've had such problems with civilian harm, then in a setting like Syria, where there's no ground presence, an uncooperative government, very limited civil society and media presence, and we're doing it all from the air... our experience should tell us that we will cause civilian casualties, with unknown impact on the political and economic situation.

The impact of U.S.-caused civilian harm in Iraq and Syria is unlikely to have the same degree of negative consequences as in Afghanistan—it is a more complex conflict, with egregious violations and potential war crimes being committed by several actors, including ISIL, the Syrian government, Russia, and the Iraqi government and militias. The egregious levels of harm caused by Syrian barrel bombs and Russian airstrikes heightens the need for the U.S. and coalition operations to be transparent and easily distinguished from the tactics and scale of Russian and Syrian caused harm.<sup>179</sup> Civilians on the ground often cannot tell whose bombs were responsible. Poor tracking and response increases the risk the United States will be blamed for Russian and Syrian regime—inflicted harm.

In addition, as with Afghanistan, there are risks in the limitations of U.S. intelligence, and of an overly enemy-centric focus. “In Iraq and Syria, we’re repeating the same mistakes as in Afghanistan on intelligence,” as one senior UN official put it. “It’s a deeply flawed intel picture...combined with not understanding the local context.”<sup>180</sup>

The deaths so far acknowledged result from 16 out of 27 cases that have been investigated. As of April 14, 2016, CENTCOM had received 159 allegations, 112 of which were deemed not to have involved coalition-caused civilian casualties, with 20 allegations remaining open (first a credibility assessment is carried out, to determine if an investigation is required).<sup>181</sup> Asked about how well its policies and procedures for tracking civilian harm are working, CENTCOM itself acknowledges these challenges in Iraq and Syria, and the difficulties it faces verifying information: “It’s important to note that the current environment on the ground in Iraq and Syria makes investigating allegations extremely challenging. Traditional investigation methods, such as interviewing witnesses and examining the site, are not typically available. In some cases, no assessment is made until additional information can be obtained; however, such allegations continue to be tracked.”<sup>182</sup>

Civil society accounts raise questions about the accuracy of U.S. estimates. Airwars, an NGO focused on coalition airstrikes in Iraq and Syria, reports that as of April 2016 open source data suggests civilian deaths from U.S. and coalition strikes in Iraq and Syria are over 1,000.<sup>183</sup> The organization acknowledges the challenge of verifying civilian harm, and draws this number from public sources on over 150 incidents with a minimum of two sources and where there are confirmed coalition strikes in the area.<sup>184</sup> National and regional NGOs also put civilian harm estimates in the hundreds.<sup>185</sup>

Challenges in verifying information and differences in methodology and definitions of non-combatant inevitably will account for some discrepancies between sources, and delays in reporting. But the wide gap between U.S. and civil society estimates of civilian harm in Iraq and Syria should raise concerns that the U.S. military is likely underestimating civilian harm. As long as this is the case, the United States will be missing opportunities to reduce and mitigate civilian casualties, and to better understand the longer-term, strategic impact of civilian harm in Syria and Iraq. At the same time, improving data and analysis of civilian harm will help guard against the imposition of unnecessary restrictions on U.S. forces.

Several factors could be contributing to underestimation of civilian harm.

**Reliance on Air Video/ISR:** With minimal ground presence, U.S. and coalition forces are heavily reliant on air video for Battle Damage Assessments (BDAs) in their investigations into claims of civilian harm. Air BDAs are certainly capable of identifying civilian harm, and have identified incidents of civilian casualties that were previously unknown to NGOs tracking civilian casualties in Iraq and Syria.<sup>186</sup> But experience in Afghanistan suggests that air BDAs can have substantial blind spots, particularly in the absence of other sources of intelligence and on-the-ground information, and may not be reliable on their own as a means of assessing civilian harm. According to one study in Afghanistan, initial air BDAs failed to identify civilian casualties in *19 out of 21 cases* subsequently confirmed by ground force investigations.<sup>187</sup> More systematic investigation is required to better assess the accuracy and vulnerabilities of air BDA-based civilian harm assessments, and determine how other sources of information can be better utilized to prevent the overreliance on air BDAs, and improve the overall accuracy of assessments. (For instance, it does not appear to be routine to compare estimates of collateral damage pre-incident with post incident assessments, in order to constantly hone such estimates).

This problem is exacerbated by the fact that current resourcing of aerial intelligence, surveillance, and reconnaissance (ISR) is at a relatively low level compared to Afghanistan.<sup>188</sup> In February 2016, the number of ISR missions conducted in Afghanistan was twice that conducted in Iraq/Syria.<sup>189</sup> As Lieutenant General John Hesterman commander of Combined Joint Task Force-Operation Inherent Resolve acknowledged, Iraq is “the most complex area of battle that I’ve seen in 32 years. [It’s] never been more difficult to identify friend or foe as it is right now in Iraq.”<sup>190</sup>

**Limited utilization of open source data:** Research for this report suggests that there are limits to the capacity of CENTCOM and State to absorb and analyze open source data. Open source data from Iraq and Syria contains significant information about conditions on the battlefield including the impact and aftermath of attacks, as well as broader political and social conflict related harm. While methodological challenges exist, such information can be invaluable in identifying previously unknown cases of civilian casualties and assessing existing claims. It can also help the United States better understand the tactical and strategic impact of broader harms to which it may be contributing. The State Department gathers some open source data of possible civilian casualty incidents, which it relays to CENTCOM, but State’s capacity is limited, with no capacity to monitor open sources in Arabic.<sup>191</sup> Arabic sources are particularly important in Iraq, where English language reporting and sources are very limited.

The State Department monitors open source and civilian data on potential civilian casualty incidents, and shares the information with CENTCOM, though its policy is still in development, and capacity within State remains very limited. In addition, lack of uniform, inter-agency standards for credibility assessments, inadequate means of incorporating external NGO sources into assessments and disparate access to intelligence and information are undermining accuracy, preventing timely follow-up, and frustrating strategic communications.

Recognizing the significant challenges on the ground, CENTCOM maintains that it does its best to use all available data to assess allegations of civilian harm: “Every allegation—ranging from those referenced on Twitter to those which are self-reported—is looked into. While it is difficult to perform battle damage assessment without a presence on the battlefield, we do make full use of all available assets to review and report as accurately as possible the effects of air strikes. This does include reviewing open source information in numerous languages, employing the regional language skills resident within our command.”<sup>192</sup>

However, signs of weaknesses in the CENTCOM CIVCAS Tracking Cell’s methodology were exposed in a recently declassified CENTCOM document concerning preliminary inquiries of civilian harm. The document shows that the Coalition conducted preliminary inquiries into 45 allegations of civilian harm between September 14 and April 30, 2015. Of these, most were dismissed as “not credible” within 48 hours. Analysis of the tracking cell document suggests that preliminary inquiries appeared somewhat cursory, often dismissing claims due to “insufficient information to determine CIVCAS.”<sup>193</sup> This raises concerns that important, corroborating information was either never identified or discounted with little justification, a concern confirmed by a comparison to an investigation by Airwars into one of the strikes involved, which demonstrates that open source data was overlooked.<sup>194</sup>

As a result of these apparent shortcomings, it is highly likely that there is a significant amount of information regarding civilian harm and its strategic impact that the United States simply does not know. As in Afghanistan, improving data collection could provide U.S. policymakers and commanders with better tools for analysis and more informed decision-making. Over time, learning and positive feedback loops can enhance the accuracy of assessments, and provide responsive, data-based recommendations to improve civilian protection going forward and mitigate strategic effects. In this regard, such efforts could also help U.S. forces do more to respond to civilian victims of U.S. operations. Though CENTCOM has indicated that “under the appropriate circumstances” the United States could provide condolence payments to victims, it has not done so to date, adding that “there have been no requests from family members of the deceased resulting from these incidents.”<sup>195</sup>

## Pakistan

In Pakistan, despite conducting over 400 strikes, the United States has not acknowledged a single, specific case of Pakistani civilian death or injury. Thus far it has publicly acknowledged only the deaths of one American and one Italian hostage in a drone strike in 2015. Human rights and media organizations have documented a significant number of credible claims of civilian harm, corroborated by leaked internal Pakistani government documents.<sup>196</sup>

U.S. policies and practice in Pakistan stand in stark contrast to its efforts to improve transparency and accountability for civilian harm across the border in Afghanistan. Drone strikes in Pakistan are conducted by the CIA and are classified as Title 50 covert actions, which legally restricts the

government from providing information. By contrast, DoD operations, including drone strikes conducted in Iraq, Syria, Afghanistan and Yemen are guided by Title 10 "armed forces" operations and subject to publicly available military doctrine.<sup>197</sup> This split in authority, and the constraints on CIA operations, is a significant obstacle to achieving the same kind of improved transparency and accountability that U.S. and ISAF forces provided in Afghanistan.

The secrecy associated with CIA control has been compounded by the complicated U.S.-Pakistan bilateral relationship. "Core" al Qaeda leadership may have been severely diminished, but the United States has paid a high political price as a result, arguably undermining its longer-term interests and strategic objectives in Pakistan. Domestic observers have raised concerns that the space for rational domestic debate around counter-terrorism and conflict resolution has shrunk beneath the dominant anti-U.S., anti-drone narrative, which has been capitalized on by religious conservatives.<sup>198</sup>

Even where the United States is engaged in direct action to meet our counterterrorism objectives, we're often also engaged in indirect action to support a partner government's counterinsurgency objectives," as former deputy assistant secretary of defense for special operations and combating terrorism William F. Wechsler explains: "In these cases, we need to remember that while our direct actions are typically a necessary line of operation, our indirect actions to support our partner are typically the decisive line of operation. Therefore, in designing our campaigns, we always need to balance the short-term gains we receive from disruptive counterterrorism strikes with the risk that those direct actions might undermine the wider counterinsurgency efforts of our partners, and therefore our own strategic objectives."<sup>199</sup>

Even without this secrecy, there are huge challenges to accurate assessments and reporting, to include a lack of ground forces, which inhibits the ability to conduct investigations.

In terms of civilian casualty mitigation, there is evidence that the United States was able to reduce the incidence of civilian casualties in Pakistan. The campaign in Pakistan peaked in 2010 with 122 strikes, killing an estimated five civilians per incident 2009-2011. Civilian harm per strike decreased significantly, down to one per incident in 2012, and less than one per incident in 2013-15.<sup>200</sup>

Without additional public information, it is difficult to identify what caused those declines in Pakistan. However, statements by U.S. officials and media reports indicate that stricter targeting rules and a reduction in the use of signature strikes likely contributed to this reduction.<sup>201</sup> Evidence from Yemen paints a more mixed picture.

In Afghanistan, the U.S. military recognized that pro-active tracking, investigations, analysis, and amends were critical to understanding and mitigating the harmful strategic effects of civilian casualties. By contrast, our preliminary look at the experience in Pakistan, Syria, Iraq, and Yemen suggest weaknesses in U.S. civilian harm tracking and analysis, and limited ability to evaluate broader potential strategic costs, particularly where there is a reliance on partner forces.

However, after years of public pressure, on March 7, 2016, the Obama Administration announced that it will finally provide public figures on noncombatant deaths from drone strikes outside zones of active hostilities.<sup>202</sup> A welcome development, this policy shift demonstrates that much greater transparency is indeed possible, and underscores the need for uniform policies and dedicated resources for civilian harm mitigation going forward.

VII.

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# Institutionalizing Lessons Learned

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## VII.

# Institutionalizing Lessons Learned

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The U.S. government has taken great strides to institutionalize civilian protection. After over 10 years of war in Afghanistan, the United States and NATO allies have learned invaluable lessons about the strategic cost of civilian harm in contemporary conflicts, and how military forces can better protect civilians without undermining force protection. The findings from this report suggest that the United States can take steps that are relatively low cost but high potential payoff to advance both civilian protection and strategic interests. These steps include:

- Develop a policy on civilian protection;
- Resource staff to provide oversight, planning, collection, and analysis capabilities;
- Sharpen learning and accountability;
- Improve decision-making tools;
- Enhance leader education and training at tactical and strategic levels; and
- Strengthen partner accountability.

The United States and NATO allies made significant reforms in the protection of civilians, which reduced the strategic and tactical penalties in Afghanistan. Many of these lessons are reflected in U.S. military reports, doctrine, and training materials.<sup>203</sup>

ATP (Army Techniques Publication) 3-7.06 Protection of Civilians defines protection of civilians as “efforts that reduce civilian risks from physical violence, secure their rights to access essential services and resources, and contribute to a secure, stable, and just environment for civilians over the long term. Protection of civilians is important for moral, political, legal, and military reasons and must be addressed during unified land operations regardless of the primary mission.” The guide recognizes the complexity of working with host nation actors where there is a record of abuses against civilians.<sup>204</sup> It offers three reasons to support the protection of civilians, beyond moral and legal ones:

First, counterinsurgency and stabilization experiences highlight that the population is often the center of gravity for military operations, and the population’s support is partly related to providing protection from perpetrators or, in some cases, from rival identity

groups. Second, harming civilians undermines military efforts and becomes a divisive issue between multinational partners. Finally, during most operations, army units are concerned with civilian welfare while achieving the desired outcomes to a conflict or crisis... it may be unlikely that a peaceful political settlement can be achieved unless the protection of civilians is adequately addressed.<sup>205</sup>

This publication is an important step, but there are a number of obstacles to further institutionalizing lessons from Afghanistan. This army techniques publication (ATP) risks getting lost among hundreds of other publications because civilian protection lacks clear institutional ownership. Some officials raised concerns over limited resources. Others suggest civilian protection was an issue unique to Afghanistan. Fears around legal repercussions must be addressed. However, utilizing the institutional knowledge, policies, and methodologies honed in Afghanistan, creating the needed policy and institutional reforms will likely be less costly and easier to implement than many U.S. officials currently expect.

The most logical next step is to create a *DOD-wide Uniform Policy on Civilian Protection*. Such a policy should, at a minimum, establish institutional authorities and responsibilities; articulate staff requirements and resources; develop standards for civilian harm monitoring and mitigation efforts, and post incident response (including compensation); incorporate civilian protection into strategy and operational planning considerations; develop standards and expectations for training and education; and outline expectations for partner support and accountability.

Drawing on the success of the ISAF's CCTM in Afghanistan, the DoD should develop a *standing capability within the joint staff and theater commands* to support strategic and operational planning, and monitor, track, and analyze battlefield information on civilian harm. Such capabilities are probably best positioned in the J3 or J5. To ensure long-term learning, the staff should manage a central database which collects information about civilian protection, and have the analytic capacity to help commanders make decisions and improve battlefield performance. The joint staff cell could advance the findings in this report by drawing on battlefield reporting since 2001.

Better analytic capability will help *sharpen learning and accountability*. Retired lieutenant general Doug Lute noted that the U.S. military holds itself accountable in many areas, but has tended to fall short regarding civilian protection and battlefield performance.<sup>206</sup> ISAF was successful in using constructive forms of learning and accountability such as command-directed after action reviews, re-training, and lessons learned studies once it had a systematic analytic capability in place. Reports of a two-star general being reprimanded for the Kunduz airstrike may point to greater emphasis on senior leader accountability.

This analytic capability can also *improve decision-making tools*. The United States relies on Collateral Damage Estimates (CDE) to make determinations on discrimination and proportionality.<sup>207</sup> Within CDE, the United States normally establishes a non-combatant casualty cutoff value (NCV) to set

approval levels for strikes. The experience in Afghanistan and more recent conflicts suggests that these tools are necessary but not sufficient for sound decision-making. The CDE algorithms can benefit from a wider range of inputs, especially if civilian harm data is managed in a central database. The role of NCV is obscured by the classified ROEs it is embedded in, but the recent experience in Iraq and Syria suggests it can potentially be too absolute as a decision criterion. A tool that complements these factors with a wider strategic lens can reduce the probability of errors and lost opportunities.

Civilian protection should be incorporated into *leader education and training* at the tactical and strategic levels. Tactics that mitigate risk to civilians while protecting the force and accomplishing the mission are practiced and perishable. Realistic training that credibly replicates the penalties military forces would likely suffer for inflicting civilian harm remains a significant challenge. The challenge has only increased as training scenarios have returned to greater emphasis on force-on-force engagements. War colleges and staff colleges should include leader education and training that advances tactical judgment by utilizing the modeling of conflict zones, artificial intelligence, and books or articles that provide thoughtful scenarios and examples.<sup>208</sup>

Finally, *strengthening partner accountability* is critical. Civilian harm caused by U.S.-backed host nation security forces using “Made in the U.S.A.” weapons, equipment, and support can damage U.S. and partner credibility, frustrating U.S. strategic objectives. The United States is currently scaling back combat operations, and engaging in more train, advise and assist missions with foreign governments and security forces, particularly as part of expanding counterterrorism operations. Integrating and institutionalizing lessons on civilian harm mitigation into U.S. partnership efforts is urgently needed.

VIII.

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# Recommendations

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## VIII.

# Recommendations

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Our research demonstrates that significant damage to U.S. strategic interests can be caused by civilian harm, broadly defined to include major disruption of local political, social, and economic stability, as well as civilian casualties. These broader impacts also apply to counter-terrorism operations where they undermine the wider counterinsurgency efforts of partners, and therefore U.S. strategic objectives.

### A . To the Department of Defense

1. **Create a Uniform Policy on Civilian Protection** to establish institutional authorities and responsibilities; develop standards and methodology for tracking and monitoring civilian harm (as defined in the ATP 3-07.6 on Protection of Civilians), mitigation efforts, and post incident response, including amends; incorporate civilian protection into strategy and operational planning considerations; and outline expectations for partner support and accountability.
2. **Create Civilian Protection Cells in J3 or J5 of Joint Staff, Combatant Commands, and Operational Headquarters modeled after ISAF's Civilian Casualty Tracking Cell.** These cells should:
  - a) Monitor civilian harm and assess causes and strategic effects;
  - b) Help commanders improve battlefield decision making;
  - c) Communicate regularly with the State Department and relevant international organizations and civil society organizations;
  - d) Consider using the Joint Staff cell to collect and analyze data from all Civilian Protection Cells, and ensuring ongoing lessons learned;
  - e) Strengthen decision-making tools by complementing Collateral Damage Estimation with data and analysis of civilian harm and assessments of strategic impact.
3. As part of a **consistent post incident response policy and practice:**
  - a) Respond to civilian harm in ways that avoid premature denials, provide timely and clear communication of the outcomes of investigations and accountability measures to host nations, victims, and the public.

- b) Create permanent policies and mechanisms for reporting, verification, and provision of amends to civilian victims of U.S. operations, including civilians harmed in operations outside of areas of active hostilities and in areas inaccessible to U.S. ground forces.
  - c) Reflect in this policy the lesson learned in Afghanistan that a lower evidentiary bar for amends and ex gratia payments is more time efficient and cost effective long term.
  - d) Ensure that there is a robust and transparent investigation policy that incorporates civilian, NGO, and open source inputs, as well as a public, transparent means of communicating accountability.
  - e) While there will be some region-specific aspects to this policy, there should be openness to working through or with local government offices for information and delivery, and with international organizations and NGOs for information on harms caused.
4. In addition to threat reporting, **develop intelligence priorities to collect and analyze the political, economic, social, and cultural dynamics of host nations in conflict zones and their effects on U.S. policy and strategic aims.** Collection and analysis should include assessing the risk of U.S. military forces and resources being manipulated by local officials and elites and the strategic impact of civilian harm.
5. **Incorporate tactical and strategic effects of civilian harm and protection into all levels of professional military education.** Incorporate simulations and appropriate books and journals to give leaders intellectual experiences they can draw from before deploying to combat. Increase/target funding for combat training centers to improve pre-deployment training on civilian protection, including scenario realism and tactical judgment.
6. **Develop a strategic plan for strengthening civilian protection and harm mitigation in U.S. partner forces, in conjunction with the State Department.** Condition training, funding, and transfer of arms on clear benchmarks on partner forces' commitment and performance on civilian protection. Indicators should include host nation policy guidance, demonstrated political and military leadership commitment, professional military education and training, and accountability.

## B. To the State Department

1. **Work with the Department of Defense (DoD) in creating a standing, uniform U.S. government policy on civilian protection** including standard methodology, tracking, a centralized database and analysis unit, post-incident response, and civilian harm mitigation policy for partner forces.

2. **Develop, with the DoD, standard operating procedures for requesting, assessing, and sharing information on civilian harm from international organizations, NGOs, and other civil society sources.** Work with the DoD to ensure effective implementation of a consistent post-incident response policy, including amends.
3. **Support priorities for the intelligence community to collect and analyze the political, economic, social, and cultural dynamics of host nations** in conflict zones and effects on U.S. policy and strategic aims. Collection and analysis should include assessing the risk of U.S. military forces and resources being manipulated by local officials and elites, and the strategic impact of civilian harm.
4. **Refine existing security sector reform policies to ensure that work with partner forces reflects best practice on civilian harm assessment, mitigation, and response;** include civilian protection and civilian harm lessons learned into capacity building and senior leader development efforts.
5. **Develop metrics and information channels to independently assess civilian harm, and its strategic impact, including harm caused by and information received from partner forces.** Increase capacity within embassies in conflict zones to monitor and report on the political and social impact of U.S. and partner-caused civilian harm, consistent with the Leahy Law.
6. **Improve coordination with DOD and conditionality on foreign military assistance, including military sales,** in order to enhance the willingness and capacity of partner forces to protect civilians and mitigate risks that civilian harm undermines long-term stability.

### To the Intelligence Community

1. **Collect and analyze information and intelligence about the impact of U.S. military engagement on a host nation's political, economic, social, and cultural dynamics;** collection and analysis should include assessing the risk of U.S. military forces and resources being manipulated by local officials and elites, and the strategic impact of civilian harm.

### To the U.S. Congress

1. Support these recommendations with the necessary resources and accountability procedures.

# ANNEX 1

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## Key ISAF Policy Reforms

### Tactical Directives to Reduce Civilian Harm

**2003 Tactical Directive (Lieutenant General Barno):** Guidance on conduct during night raids.

**2007 Tactical Directive (General McNeill):** Focused on reducing harm by clarifying guidance on night raids, requiring formal collateral damage assessments (CDE) and pre-approval for preparatory fires, and discouraging use of *airstrikes* and *indirect fire* on civilian structures unless no other option available to *accomplish mission*.<sup>209</sup>

**December 2008 (General McKiernan):** Emphasized strategic importance of *reducing civilian harm*, prohibited airstrikes on homes, mosques, and sensitive sites unless necessary to protect the force; and emphasized the need for improved post incident reporting; to be *“first with the truth.”*<sup>210</sup>

**December 2008 (General McKiernan):** *New EOF procedures* and guidance to reduce civilian harm.<sup>211</sup>

**July 2009 (General McChrystal):** *Prohibited airstrikes and indirect fire on residential compounds* except in self-defense or prescribed conditions.<sup>212</sup>

**June 2010 (General Petraeus):** Clarified July 2009 directive, *prohibited additional restrictions*, required commanders to ensure no civilians present prior to strike approval.<sup>213</sup>

**January/December 2010 (Generals McChrystal/ Petraeus):** Guidance on *conduct of night raids*, requiring partnered operations with ANSF in the lead and respect for Afghan cultural norms.<sup>214</sup>

**November 2011 (General Allen):** Directs commanders to investigate all possible civilian casualty incidents, including ground BDAs where possible, manage consequences and express condolences, conduct regular reinforcement training on procedures to avoid civilian harm.<sup>215</sup>

**December 2011 (General Allen):** *Additional guidance on night raids*, encourage Afghan forces in the lead, use of “soft-knock” and coordination with civilian authorities.<sup>216</sup>

## ANNEX 1 *continued*

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### Monitoring, Tracking and Analysis

**August 2008 (General McKiernan):** Creation of Civilian Casualty Tracking Cell (CCTC) to collect and monitor data on ISAF-caused civilian casualties.<sup>217</sup>

**Mid-2011 (General Petraeus):** Expansion of CCTC into Civilian Casualty Mitigation Team (CCMT) to analyze data and make recommendations to COMISAF, *liaise with IOs, NGOs, and ANSF.*

Independent assessments in support of international forces (for example, Sarah Sewall and Lawrence Lewis’s “Joint Civilian Casualty Study,” August 2010) and related studies from the Joint and Coalition Operational Analysis (JCOA), Joint Staff J7.

### Investigations and Post-Incident Response

**October 2005:** U.S. forces authorized to provide amends for civilian harm through solatia and condolence payments, primarily through CERP funds.<sup>218</sup>

**2009:** Creation of Joint Incident Assessment Teams (JIATs) to conduct Afghan-ISAF investigations of alleged civilian casualty incidents.<sup>219</sup>

**August 2010:** NATO/ISAF common guidelines to reduce and respond to civilian harm.<sup>220</sup>

**December 2014:** ISAF/RSM establishes Civilian Casualty Credibility Review Board (CCARB). Made up of military and civilian subject matter experts that convenes within two hours of any alleged civilian casualty incident involving international forces.

## ENDNOTES

- 1 UNAMA, *Afghanistan—Protection of Civilians in Armed Conflict Annual Report 2008*, page ii, released January 2009. <http://www.ohchr.org/Documents/Countries/ProtectionCivilians2008.pdf>. The 2008 report recorded civilian fatalities. Subsequent reports included civilians injured or wounded in the overall civilian casualty total.
- 2 Christopher Paul, Colin P. Clarke, Beth Grill and Molly Dunigan, *Paths to Victory: Lessons from Modern Insurgencies*, Washington DC: RAND Corporation, 2013, p. xxii, xxiv, 130-132, [http://www.rand.org/pubs/research\\_reports/RR291z1.html](http://www.rand.org/pubs/research_reports/RR291z1.html); Martin C. Libicki, “Eighty-Nine Insurgencies: Outcomes and Endings,” in David C. Gompert, John Gordon IV, Adam Grissom, David R. Frelinger, Seth G. Jones, Martin C. Libicki, Edward O’Connell, Brooke K. Stearns, and Robert E. Hunter, *War by Other Means: Building Complete and Balanced Capabilities for Counterinsurgency*, Santa Monica, Calif.: RAND Corporation, 2008, pp. 373–396, <http://www.rand.org/pubs/monographs/MG595z2.html>; Jason Lyall, “Do Democracies Make Inferior Counterinsurgents? Reassessing Democracy’s Impact on War Outcomes and Duration,” *International Organization*, Vol. 64, No. 1, 2010, pp. 188-190; David Kilcullen, *The Accidental Guerilla: Fighting Small Wars in the Midst of a Big One*, New York: Oxford University Press, 2009. These studies consider international support to be more important than local support in sustaining the insurgency.
- 3 Ibid. UNAMA, *Annual Report 2008*, p. 16.
- 4 International Security Assistance Force (ISAF): *The ISAF Civilian Casualty Avoidance and Mitigation Framework: Sustaining Best Practices*, May 30, 2014, p. 38. On file with OSF.
- 5 Several military officials argue that the limited ground forces prior to the 2009–2010 surge may have increased reliance on airpower, while inadequate airborne surveillance and local intelligence might have led to more unexpected ground engagements. Interviews with David Richards, September 1, 2015, London; Nick Carter, September 21, 2015, London; Former Deputy Commander ISAF, August 25, 2015, London.
- 6 Human Rights Watch, *Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan*, September 8, 2008, [https://www.hrw.org/sites/default/files/reports/afghanistan0908web\\_0.pdf](https://www.hrw.org/sites/default/files/reports/afghanistan0908web_0.pdf). See also CIVIC, *Losing the People: The Costs and Consequences of Civilian Suffering in Afghanistan*, February 18, 2009, p. 11-12; Afghanistan Independent Human Rights Commission (AIHRC), *From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan*, December 2008, p. 8-19, [http://www.aihrc.org.af/media/files/Research%20Reports/english/Eng\\_Pro\\_G\\_2.pdf](http://www.aihrc.org.af/media/files/Research%20Reports/english/Eng_Pro_G_2.pdf).
- 7 There are multiple examples of civilian casualties from signature strikes; perhaps the most well know is that which killed aid worker and hostage Warren Weinstein and Giovanni Lo Porto in Pakistan in April 2015. See David Rhodes, “What the United States Owes Warren Weinstein—The American hostage died in a ‘signature’ Drone Strike. Those Strikes Should End,” *The Atlantic*, April 28, 2015, <http://www.theatlantic.com/international/archive/2015/04/warren-weinstein-drones/391655/>.
- 8 Interviews with Dr. Larry Lewis, July 15, 2016, September 30, 2015. The study is classified.
- 9 This finding is referenced in the 2013 JCOA study referenced above, citing the classified *Joint Civilian Casualty Study*, JCOA, August 2010.
- 10 Interview with General John Allen, May 10, 2016, Washington, D.C.
- 11 See Harvard Human Rights Program, *Tackling Tough Calls: Lessons from Recent Conflicts on Hostile Intent and Civilian Protection*, March 2016, <https://www.justsecurity.org/wp-content/uploads/2016/03/Tackling-Tough-Choices-Hostile-Intent-HLSIHRC-2016.pdf>. See also Dr. Larry Lewis, *Reducing and Mitigating Civilian Casualties: Enduring Lessons*, Joint and Coalition Operational Analysis (JCOA), April 12, 2013, p.10, <https://info.publicintelligence.net/JCOA-ReducingCIVCAS.pdf>
- 12 There are ongoing debates about the precise definition of the direct participation in hostilities by a civilian (DPH), however, the International Committee for the Red Cross and other international legal authorities have concluded that DPH requires acts that directly cause adverse military affects such as death, injury, or property destruction. “Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law (Adopted by the Assembly of the International Committee of the Red Cross on 26 February 2009),” *International Review of the Red Cross* No. 872. See also under Article 51(3) of Additional Protocol I, “Civilians shall enjoy the protection afforded by this Section unless and for such time as they take a direct part in hostilities.” Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 51(3); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non- International Armed Conflicts, 8 June 1977, Art. 13(3), <http://www.icrc.org/ihl.nsf/FULL/475>;
- 13 A recent difference between Resolute Support and UNAMA reflected just such a difference in determination.
- 14 Ibid. Open Society Foundations and The Liaison Office, *The Cost of Kill/Capture: Impact of Night Raids Surge on*

- Afghan Civilians*, September 19, 2011, <https://www.opensocietyfoundations.org/publications/cost-killcapture-impact-night-raid-surge-afghan-civilians>; Open Society Foundations, *Strangers at the Door: Night Raids by International Forces Lose Afghan Hearts and Minds*, February 23, 2010, <https://www.opensocietyfoundations.org/reports/strangers-door-night-raids-international-forces-lose-hearts-and-minds-afghans>.
- 15 Ibid. UNAMA, *Annual Report 2008*, pp. 16-18 (Force Protection: 41 deaths); UNAMA, *Annual Report 2009*, pp. 16-22 (Force Protection: 36 deaths); UNAMA, *Annual Report 2010*, pp. 21-28 (Force Protection: 45 deaths); UNAMA, *Annual Report 2011*, pp. 22-26 (Force Protection: 38 deaths); UNAMA, *Annual Report 2012*, p. 36 (Force Protection: 14 deaths); UNAMA, *Annual Report 2013*, p. 48 (Force Protection: 31 deaths). UNAMA defines force protection incidents as “situations where civilians do not pay attention to warnings from military personnel when in the proximity of, approaching or overtaking military convoys or do not follow instructions at check points.” UNAMA, *Annual Report 2013*, p. v. All UNAMA Protection of Civilian reports can be found here: <https://unama.unmissions.org/protection-of-civilians-reports>.
- 16 Ibid. UNAMA, *Annual Report 2008*, p. 16 (total civilian deaths caused by pro-government forces: 828); UNAMA, *Annual Report 2009*, p. 16 (Total civilian deaths caused by pro-government forces: 596); UNAMA, *Annual Report 2010*, p. 21 (Total civilian deaths caused by pro-government forces: 440); UNAMA, *Annual Report 2011*, p. 22 (Total civilian deaths caused by pro-government forces: 410); UNAMA, *Annual Report 2012*, p. 30 (Total civilian deaths caused by pro-government forces: 316); UNAMA, *Annual Report 2013*, p. 7 (Total civilian deaths caused by pro-government forces: 341).
- 17 UNAMA, *Annual Report 2012*, p. 36.
- 18 Ibid, p. 38. UNAMA, *Annual Report 2012*, p. 38.
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**Front cover:** United States Special Forces soldier with Afghan civilians and militia members standing behind him, Kwaja Bahuddine, Afghanistan, November 15, 2001. *Photo credit: Brennan Linsley/AFP/Getty Images*

**A new report by the Open Society Foundations and Christopher D. Kolenda, a former advisor to three ISAF commanders, details how the U.S. military dramatically reduced civilian harm in Afghanistan, and how the U.S. military can ensure those lessons are transferred to current and future operations and to partner forces.**

The report details the near-fatal strategic impact of civilian harm in Afghanistan, worsened by intelligence failures and abusive partners. It demonstrates how senior U.S. military leaders succeeded in improving civilian protection, without sacrificing force protection.

But a close look at U.S. operations and partner forces in Iraq, Syria, Yemen, and Pakistan reveals a failure to fully institutionalize these lessons, putting the U.S. military at risk of repeating costly mistakes made in Afghanistan.

The Open Society Foundations work to build vibrant and tolerant democracies whose governments are accountable to their citizens. Working with local communities in more than 100 countries, the Open Society Foundations support justice and human rights, freedom of expression, and access to public health and education.