

*The Open Society Institute's
Regional Policy Initiative on Afghanistan and Pakistan*

Strangers at the Door

Night Raids by International Forces Lose Hearts and Minds of Afghans



A case study by the Open Society Institute and The Liaison Office

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**Strangers at the Door:
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Executive Summary

Afghan civilians have increasingly borne the brunt of the war in Afghanistan. Though insurgents have been responsible for most of the harm, the Afghan public has largely directed their frustration and anger at international forces. International forces have made significant efforts to address this anger by improving their conduct, in particular reducing civilian deaths due to airstrikes. One practice, however, that has changed little is the search and seizure operations known as night raids.

Research conducted by the Open Society Institute (OSI) and the Afghan nongovernmental organization, The Liaison Office (TLO), shows that these raids are widely associated with abuse and impunity. Night raids cause tremendous trauma within Afghan communities, often alienating the very people whom international forces are supposedly trying to protect. During night raids, international and Afghan soldiers force entry into local homes and search the premises after dark, often detaining many, if not all, of the men present.

Given the international community's commitment to stabilizing Afghanistan by winning local trust and cooperation, night raids present a serious stumbling block. Afghans' negative perceptions of international military actors will not change as long as abuses associated with night raids continue.

From September to December 2009, OSI and TLO conducted a study in the conflict-prone southeastern provinces of Paktia and Khost to understand how Afghan communities viewed international forces and whether they considered new military policy reforms to be effective. Though the study focused on two provinces, similar responses have been documented in other regions of Afghanistan, suggesting a widespread, consistent problem.

While conducting night searches may provide an element of surprise and an advantage to pro-government forces, it terrorizes local communities and increases the risk of indiscriminate harm to civilians in the area during these raids. Death, injury, property damage, and emotional stress commonly accompanying night raids erode public confidence and limit progress to protect the population.

Night raids also compound problems stemming from a lack of due process guarantees. These raids are often based on misinformation or bad tips, leading to the detention of innocent people. These people are then frequently jailed for extended periods with inadequate means to challenge their resulting detention. This further discredits the justice system, alienates the population, and undermines efforts to strengthen the rule of law.

While detention may be necessary in the context of the conflict in Afghanistan, greater efforts should be made to ensure that night raids and other search and seizure operations do not undermine the broader policy aims of the international community to increase stability, improve rule of law and due process, and protect the population.

1. Find alternatives to night raids whenever possible.

These alternatives should recognize community concerns and be more in line with regular due process procedures.

2. Coordinate night raids with local International Security Assistance Force commanders.

Keep local commanders informed of any night raids in their area and involve them in authorization, targeting, and execution whenever possible, if not before than after an operation.

3. Guard against misinformation.

More rigorous triangulation of information with a broader and more diverse body of local sources, including the Afghan government, would help prevent raids from mistakenly targeting innocent civilians.

4. Ensure that greater Afghan involvement is not a blank check for abuse.

Most Afghans consider international forces guilty by association if they do not prevent accompanying Afghan forces from behaving poorly or breaking the law.

5. Avoid working with unregulated irregular militias.

These groups are difficult to hold to account and have a reputation for abuse.

6. Restore confidence through greater accountability.

Mechanisms that respond to complaints regarding night raids and can meaningfully address them within the military chain of command are essential.

The report was written by Erica Gaston and Jonathan Horowitz on behalf of the Open Society Institute (OSI) and Susanne Schmeidl from The Liaison Office (TLO). Research was carried out jointly between OSI and TLO.

The brief is part of a regional policy initiative by OSI to examine key issues in Afghanistan and Pakistan, including civilian casualties and conflict-related detentions. OSI is a non-governmental organization that works to build vibrant and tolerant democracies whose governments are accountable to their citizens. On a local level, OSI implements a range of initiatives to advance justice, education, public health, and independent media.

TLO is an Afghan non-governmental organization aiming at improving local governance, peace and security in Afghanistan through systematic and institutionalized engagement with traditional and modern civil society structures, through research, dialogue and programming.

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I. Introduction

Afghan civilians bear the brunt of war. Though international forces have made significant improvements toward better population protection—particularly by reducing civilian casualties linked to airstrikes—many Afghans still view them as equally or sometimes even more dangerous than insurgents. One of the main reasons for this is the continuing practice of night raids.

Interviews with local communities suggest that the number of night raids has not noticeably decreased since new tactical changes were put in place in July 2009, and are now occurring in previously unaffected areas, such as Kunduz.¹ Narratives collected from Khost, Paktia, and elsewhere also indicate that negative perceptions of international military actors will not change as long as the abuses associated with night raids continue.

In addition to fuelling anti-foreign sentiments, conduct during these raids and subsequent detention practices raise questions of compliance with international law, undermines progress in strengthening Afghan rule of law and stability, and negates many of the positive effects gained by other population-centric steps taken by international actors and the Afghan government.

While attacking homes at night, rather than daytime, may add an element of surprise and reduce the risk to pro-government forces, it dramatically increases the chances of indiscriminate use of force against innocent women, children, and men in the house. In doing so, it increases animosity in local communities, thereby undermining the larger strategic goal of winning support from local populations. As the newly appointed commander of the U.S. and NATO missions in Afghanistan, General Stanley McChrystal, himself noted: “[W]e run the risk of strategic defeat by pursuing tactical wins that cause civilian casualties or unnecessary collateral damage. The insurgents cannot defeat us militarily; but we can defeat ourselves.”²

Further, there is evidence that many of these raids are triggered by misinformation, leading to mistaken detentions, and that even those who are justifiably apprehended may be set free because of corrupt Afghan institutions. Both these factors make the relative value of this practice unclear.

Taken as a whole, the costs of night raids, as they are currently conceived and conducted, likely outweigh the benefits.

II. Background: Policy Changes in 2009 and the New Counterinsurgency Focus

The number of civilian casualties rose dramatically in 2008, increasing 40 percent from 2007. Though insurgents were responsible for most of the harm, the public directed their anger at international forces. Protests erupted nationwide over the high death toll from international forces’ airstrikes and reports of offensive and abusive treatment during night raids and detentions.³ Many Afghans called on international troops to withdraw. International military began to realize that civilian casualties and conflict-related detentions might be pushing the population toward the insurgency.

To reverse these trends, General McChrystal announced a new military strategy premised on counterinsurgency theory: the number of insurgents killed mattered less for overall victory than denying insurgents the support of Afghan communities. Critical elements of this new strategy included the need to limit harm to Afghan civilians, demonstrate respect for local customs, and improve the accountability of international forces and the Afghan government.⁴ McChrystal also rightly flagged the need to dramatically improve the Afghan law enforcement and justice systems, which are plagued by high levels of corruption, frequent detainee abuse, and widespread skill and resource shortages.

The most significant step to implement this new strategy was a new tactical directive issued by McChrystal in July 2009. The tactical directive restricted activities, such as airstrikes, likely to result in civilian casualties, and urged troops to act with greater sensitivity to Afghan cultural and religious concerns. It mandated greater Afghan involvement in the practice of night raids: “Any entry into an Afghan house should always be accomplished by Afghan National Security Forces (ANSF), with the support of local authorities...”⁵ This tactical directive applied to both operating missions in Afghanistan: the NATO-led International Security Assistance Force (ISAF) and U.S. Forces–Afghanistan (USFOR-A).

Furthermore, the U.S. government drew up new detention procedures to grant detainees in U.S. custody in Afghanistan greater rights. The United States also opened a new detention facility to replace the Bagram Theatre Internment Facility, which had been fraught with allegations of detainee abuse and substandard detention conditions.⁶

III. Community Impressions of Night Raids

From September to December 2009, the Open Society Institute (OSI) and the Afghan nongovernmental organization, The Liaison Office (TLO), conducted a study in the conflict-prone southeastern provinces of Paktia and Khost to understand how Afghan communities viewed international forces and whether they considered new military policy reforms to be effective. The study consisted of 20 focus group discussions (one with women), which recorded the views of over 150 participants, including local notables, elders, and shura members. The study also conducted more than 25 in-depth interviews with individuals (seven of whom were women) who participated in the discussion groups. Though the study focused on two provinces, similar responses have been documented by researchers in other regions, suggesting that the views presented here occur across many other areas of Afghanistan.⁷

Despite significant improvements in the conduct of international forces, Afghans remain critical of the behavior and lack of accountability of Afghan and international forces who engage in night raids, as well as their subsequent detention procedures. These concerns reinforce negative perceptions about international forces, eroding much of the strategic value of other positive policy changes related to civilian casualties and detention.

a) Preliminary Impact of Recent Policy Reforms

Approximately six months after the tactical directive and other policy reforms were issued, the changes have already had a significant impact on some key issues. While the Human Rights Unit of the United Nations Assistance Mission in Afghanistan (UNAMA) recorded the highest number of civilian casualties in 2009 since the fall of the Taliban regime in 2001,⁸ it also noted a significant decrease in civilian deaths attributed to Afghan National Security Forces (ANSF) and international military forces (a 28 percent drop from 2008).

While the new strategy is reducing civilian casualties caused by airstrikes, it has been less successful in addressing problems associated with night raids. The UNAMA report voiced concern over the “excessive use of force” often accompanying these raids, reporting that 98 civilians were killed during night raids in 2009. The report also flagged “allegations of ill-treatment, aggressive behaviour and cultural insensitivity, particularly towards women.”⁹

Consistent with UNAMA’s findings, few interviewees for this study were able to give examples of airstrikes that had happened in their province in the last six months since General McChrystal issued his July 2009 tactical directive, but many had fresh memories of night raids. Afghans described recent incidents in which international forces and/or Afghan forces engaged in abusive treatment, unnecessarily destroying property and disrespecting cultural norms during house searches. In some cases, people said they witnessed detainees being gun butted or kicked, sometimes while handcuffed.¹⁰

Former detainees and other witnesses to night raids reported international forces breaking dishes, destroying furniture, and setting vehicles on fire. Because many compounds house dozens of people, this property destruction was widely viewed as unnecessary and drew complaints from non-targeted residents in the house and their communities.

Not all observed trends were negative. Interviewees reported few recent examples of night raids that involved the desecration of holy texts and serious misconduct towards women, though they did note that these problems existed in the past and had not been (or could not be) forgiven. It is possible that the reduction of these incidents is due to the new tactical directive urging more respect for civilians’ religious and cultural concerns, and which particularly instructed soldiers to “account for the unique sensitivities toward local women.”¹¹

Though it is impossible to verify the facts of each incident, allegations of some abuses are consistent enough to raise a question as to whether international forces have violated international law as well as their own applicable domestic military rules. While it is permitted to search houses and detain suspected fighters during wartime, international law requires that detaining powers follow basic standards of treatment. For example, beating a man who is disarmed and handcuffed would almost certainly violate the Geneva Conventions.

In addition, night raids are subject to the principles of proportionality and distinction under international humanitarian law.¹² In other words, night raids must focus only on military targets, and any incidental harm they cause to civilians must be proportionate to the benefits of attacking the military target. Night raids that are accompanied by excessive force or result in significant harm to surrounding family members or properties raise serious concerns as to whether these principles are being properly respected.

The degree to which governments participating in internal armed conflicts should rely on the law enforcement standards implicit in peacetime human rights law, as opposed to international humanitarian law standards, is an evolving area of international law.¹³ While this issue is unsettled as a matter of law, the costs and benefits as a policy matter are clear. Law enforcement standards provide greater protections against accidental harm, address greater accountability concerns, allow for better evidence gathering to increase the chance of accurate convictions and acquittals, and would instill stronger rule of law standards in Afghanistan. Therefore, it is strongly advisable that, where possible, military or other government forces conduct raids that they deem unavoidable in accordance with law enforcement and international human rights standards.

b) Attacks on Medical Clinics and Other Humanitarian Organizations

Civilian homes were not the only targets of night raids. Nongovernmental organizations and medical clinics also reported having facilities raided by mixed groups of international and Afghan armed forces. In one particularly egregious example, international forces led a raid on a Swedish Committee of Afghanistan (SCA) clinic in Wardak Province in August 2009. According to SCA, the troops forced entry into several rooms, tied up local staff and some patients' family members, and ordered some patients out of their wards.¹⁴ International forces also reportedly ordered the clinic staff to report any patient suspected to be Taliban in the future.¹⁵ ISAF maintains that its forces sought permission before entering.

Under international law, medical clinics, even if they admit and treat injured insurgency actors, are generally protected from attacks. UNAMA reported facts indicating that international forces exceeded what was permissible when they entered the medical facility in Wardak.

c) Perceptions of International Forces

The practices inherent in night raids—an intrusion into the home at night, interactions with women of the family—clash with fundamental notions of privacy. Afghans believe that women's quarters are sacrosanct and should not be touched by outsiders. Some women interviewed feared that they would be sent to hell for looking at the international forces or being seen by them during these raids.¹⁶

Because these operations are so offensive to Afghan communities, reports of misconduct during night raids are especially prone to exaggeration. During the discussion groups, interviewees gave accounts of international forces tearing or chopping the Holy Quran

with an ax, taking women away in helicopters and returning them dead, and shooting babies or children at point-blank range.

Even if some of these and other stories are due to insurgency propaganda, Afghans are ready to believe them. The perception is that forces willing to conduct night raids as a matter of standard protocol would also be willing to engage in other outrageous acts during these raids.

While many claims go unsubstantiated and others are simply false, international and Afghan military forces should not ignore that they are built upon a reality of abuse, and that even the “unbelievable” allegations shape the way Afghan communities understand the conflict. Whether propaganda, exaggeration, or fact, complaints about night raids spread rapidly through communities provoking extreme reactions. Following allegations that international forces violated the Holy Quran in a search operation in Wardak in October, 15 public demonstrations were organized countrywide.¹⁷

Furthermore, such experiences create (or add to the already) negative perceptions of international forces, sometimes pushing individuals toward outright support for insurgents. As one interviewee suggested, “If someone is handcuffed in front of women, he would see no other way left, but to head towards the mountains [to fight with the insurgents].”¹⁸ Each night raid that takes place reinforces these perceptions and gives fresh fodder to insurgent propaganda.

d) Lack of Accountability for Night Raids

Community anger over night raids is equally rooted in a lack of accountability. Afghans often find it difficult to identify which forces were involved in a given incident or to determine the location of a detainee soon after capture. In addition to Afghan government officials, local Provincial Reconstruction Teams (PRTs) or Forward Operation Bases (FOBs) are often the first point of contact a relative of a detainee will have with the military after a detention operation takes place. Several interviewees said that when they did try to seek information with international or Afghan forces they were ignored or threatened not to ask any more questions.

“They cannot approach the base. They do not allow them to enter,” one community representative explained. “A lot of people are simply afraid to go. They are afraid that if they go to ask about someone who is detained, they will also be attacked.”¹⁹

One respondent described an incident in July 2009 in Paktia province, in which a man appeared to have been deliberately killed during a night time raid. When the local elders went to the Afghan campaign forces, an irregular militia they believed was involved in the raid, to ask why the man had been killed they were told to drop the issue or they would be sent to prison in Guantanamo.²⁰

In May 2008, the UN Special Rapporteur on Extrajudicial Killings Philip Alston criticized international forces for their unwillingness or inability to identify which international units were involved in military operations:

Getting clarification from the international forces is like entering a maze. I experienced this maze myself. One ISAF commander explained that while he could confirm whether a particular operation was conducted by conventional ISAF troops and then clarify which national contingent they belonged to, he would have to pass the case up the chain of command to clarify whether it had been conducted by ISAF special forces, and that I would have to ask the commander in charge of Operation Enduring Freedom (OEF) to determine whether and which coalition forces were responsible.²¹

Almost two years later, Alston's critiques are still relevant. Those leading night raids are often Special Operations Forces (SOF) operating out of regional commands, rather than from the local ISAF base or PRTs. Though efforts have been made to better incorporate SOF into the chain of command in 2009, the local ISAF commanders are often still ignorant as to what raids occur in their area of operations, and which forces are conducting them. During a November 19, 2009 meeting between the Regional Command North and humanitarian and development actors in Kunduz, one of the ISAF military officials voiced his frustration with recent US military/special forces activities in the area for not sharing any details about their operation, adding "ISAF cannot influence anything the US Military/Special Forces do."²² Highlighting the concern about raids carried out by SOF, independent monitors in southern Kandahar and Helmand province noted that recently some raids have been carried out by ISAF rather than SOF, and that it is easier to raise concerns and track those who are accountable for these ISAF-led raids.²³

The lack of visibility over those conducting raids also weakens the potential for innocent families who are harmed to receive appropriate apologies or compensation, as was recommended in General McChrystal's assessment on the military strategy in Afghanistan.²⁴ So far, ISAF has failed to set up a comprehensive system of compensation in Afghanistan, and instead it is up to the discretion of individual troops involved in a given incident.²⁵ When those troops are not local to an area, or are not identifiable within the chain of command – as often happens in the case of night raids – there is almost no chance for affected civilians to receive an apology or to have their losses recognized or compensated.²⁶

There also appears to be insufficient accountability for and verification of the intelligence that led to many of these raids. Many people detained during night raids said they were targeted because their rivals or enemies deliberately passed misinformation to international forces. Though these allegations are hard to confirm, the fact that many detainees are soon released without charge, the frequency of wrongful aerial bombings, and the underlying local dynamics of many Afghan regions lend credibility to these claims. As one shopkeeper from Paktia described, "The Afghan National Army and the international forces have raided my house six times. Every time they searched my house,

they could not find anything and apologized after the search operation and told me that wrong intelligence had been given to them.”²⁷

Research in other insurgency and civil war contexts has found that the motivations for informants to pass tips to one side or the other are often personal.²⁸ Given this empirical research and the history of ethnic and tribal rivalries in Afghanistan, it is not surprising that many tips leading to night raids would be driven by personal motivations of the informant. While some tips are true, others are not. For this reason, stronger mechanisms for verifying information are imperative given the impact of these practices.

Afghans point to these raids and complain that international forces operate under a culture of impunity. These critiques are not surprising, given the lack of visibility over how raids are authorized and which forces conduct them, and the absence of a mechanism to refer and address complaints about conduct after the fact. The civilian and military strategies in Afghanistan both emphasize the importance of rule of law and stronger government accountability for long-term stability. Reports of abuse and concerns about the lack of accountability for these raids, reinforce, rather than correct, existing flaws in the Afghan detention and justice system. With the international community spending billions of dollars annually to improve rule of law, international forces are working at cross-purposes by not having in place a serious system for accountability that can respond to night raids that result in abuse, property destruction, wrongful detentions, and the denial of due process.

e) Conduct of Afghan National Security Forces, Irregular Militias, and Other Afghan Actors

One of the positive reforms made by the July 2009 tactical directive was to have the involvement of Afghan National Security Forces (ANSF) at all raids, a step that many Afghan communities requested.

Unfortunately, however, some of the benefits of this positive reform are undermined by allegations of abuse by Afghan forces or officials during the raids or afterwards during detention. When international forces detain individuals, they will often hand them over to Afghan institutions (Afghan National Police (ANP), Afghan National Army (ANA) or the National Directorate of Security (NDS)), which are plagued with corruption and allegations of torture or other mistreatment.²⁹ Those detained by international forces frequently reported having to pay a bribe worth several thousand U.S. dollars to secure their release.

Interviewees in particular complained about mistreatment by the ANP and by unaccountable irregular militias—often called “campaign” forces or “Armed Security Groups.” These campaign forces are especially problematic as they are not part of the Afghan National Security Forces, exacerbating concerns about the accountability of armed groups engaged in night raids side-by-side with international forces. As the UN Special Rapporteur on Extrajudicial Killings Philip Alston argued:

[I]t is absolutely unacceptable for heavily-armed internationals accompanied by heavily-armed Afghan forces to be wandering around conducting dangerous raids that too often result in killings without anyone taking responsibility for them.³⁰

Interviewees believed that these campaign forces, as well as other Afghans, intentionally provided international forces with misinformation to settle personal grievances or tribal rivalries. The vast majority of interviewees blamed wrongful detentions on deliberate misinformation. Nearly every person interviewed said that it was better that these raids or alternative detention practices be conducted by Afghan forces, so long as their involvement was accompanied by greater efforts to ensure accurate information and respectful and accountable conduct on the part of Afghan forces.

IV. Conclusion

Afghans are victims of the growing violence between insurgents and international forces. For many Afghans living in contested areas, there is no neutral zone. Attempts by local communities to distance themselves from either international forces or insurgents inevitably leads to civilians being targeted by one side or the other.

A tribal elder from Khas Uruzgan explained:

There are now six governments—PRTs, Hazara Militias [i.e., campaign forces], ANA, ANP, district government, and the Taliban. We are caught in the middle of all of them. If you side with the government, then the Taliban will kill you. If you side with the Taliban, the government will take you or the bombs will fall.³¹

The conduct of night raids and the impunity of those participating in them are main contributors to Afghan complaints about international forces. These raids provide fuel for propaganda aimed against the Afghan government and the international presence in Afghanistan. These practices are counterproductive, keeping the international community from achieving primary goals such as establishing stability and garnering local trust and support.

From a strategic military perspective, these practices undermine many of the benefits gained by the positive reforms within the new counterinsurgency strategy. Despite reductions in the number of airstrikes and associated civilian deaths by international forces, narratives from Khost and Paktia, which are fairly representative of Afghans living in other contested areas, suggest that the dominant perception of international forces as either indifferent to, or even intentionally causing, Afghan suffering will not change as long as violent night raids and wrongful detentions continue.

V. Recommendations

1. Find alternatives to night raids whenever possible.

The practice of night raids should be reviewed with particular scrutiny of why and in what circumstances operations must be conducted during nighttime, and why traditional law enforcement safeguards for detaining suspects are not appropriate or possible. Though in some cases night raids may be the only means for detaining an individual, in many cases there are clearly less offensive alternatives that should or could be considered. Afghan communities rightfully ask why international forces cannot simply detain a suspect during the daytime, in a less violent manner that is more in-line with regular due process procedures.

2. Coordinate night raids with local International Security Assistance Force commanders.

Night raids can generate enormous hostility among local populations, in one stroke undoing months of counterinsurgency efforts by the local commander. Yet because so many night raids are carried out by Special Operations Forces, local commanders often complain that they do not even know when raids are conducted in their own area of operations. Better coordination will help to protect these gains and reduce the negative consequences of poorly planned raids. Keep local commanders informed of any night raids in their area and involve them in authorization, targeting, and execution whenever possible.

3. Guard against misinformation.

In a society as fragmented by ethnic and tribal lines as Afghanistan, it is paramount that military actors triangulate information more rigorously using a larger number and a more diverse body of local sources, including the Afghan government. It is equally important that international forces thoroughly record and collect evidence when conducting night raids or other search and seizure operations. Doing so will increase the accuracy and credibility of legal proceedings to which the detainee is ultimately subject.

4. Ensure that greater Afghan involvement is not a blank check.

While expanding Afghan involvement and leadership in the authorization and operation of night raids is a significant improvement, and one that communities generally endorse, it is not a panacea. For most Afghans, international forces are guilty by association if they do not prevent accompanying Afghan forces from behaving poorly or breaking the law. Thus, passing greater responsibilities on to Afghan forces does not mean avoiding blame for how night raids are conducted. It is therefore necessary that Afghan National Security Forces are held accountable for abuses and trained not to repeat the mistakes of international forces.

5. Avoid working with unregulated irregular militias.

Working with armed security groups or campaign forces that fall outside the official Afghan government security apparatus is a recipe for disaster. These groups are difficult to monitor and have a reputation for abuse. Research shows that Afghans prefer to encounter security forces that they can link to a government body that holds them

accountable, even if only marginally so.³² At least they know to whom to complain, or who should be accountable in theory.

6. Restore confidence through greater accountability.

After eight years of night raids, Afghan communities are understandably mistrustful of international forces' promises to improve their practices. Rebuilding this lost trust will be difficult, particularly if night raids continue to be used regularly. Even when conduct does improve, the very fact that night raids continue can slow recognition of progress. International forces will have to do more to restore lost confidence and regain the trust of Afghan communities.

Improving accountability would be a key confidence-building measure. Specific changes might include: being more transparent about night raids, at least after the fact if not before; holding Afghan counterparts accountable; and communicating to affected communities when and how any misconduct is addressed. Providing apologies and, where appropriate, compensation to innocent families who are mistakenly targeted may also mitigate community anger after an incident, and improve the perception of accountability.

To facilitate this, international forces should establish a mechanism to receive and respond to complaints and inquiries regarding night raids and to enforce remedies where valid. For it to be effective, the mechanism should have access to all relevant information about the night raid, including a pre-raid written explanation as to why it needed to be conducted at night instead of during the day. For purposes of accountability, each raid should also be approved in writing by an appropriate ISAF or US military official in the chain of command.

This mechanism must be accessible to Afghan communities and should be allowed to provide relevant information about the operations in question. A civilian casualty tracking cell was established in 2008; however, as UNAMA noted, this cell has not been particularly responsive and is not capable of “engaging on substantive issues with any authority.”³³ Real accountability will mean not only being able to receive complaints and communicate standard positions but also having the authority to respond to concerns with meaningful action.

¹ See, for example, Susanne Schmeidl, 2009, “Until you get the wrong Ahmad...” Afghanistan Analysts Network, <http://aan-afghanistan.com/index.asp?id=508> (accessed January 25, 2010); and Jonathan Horowitz, “Former Bagram Detainee Describes ‘Completely Wild’ Arrest, Interrogation By US Troops,” Huffington Post, July 28, 2009, http://www.huffingtonpost.com/jonathan-horowitz/former-bagram-detainee-de_b_275795.html (accessed January 26, 2010).

² “COMISAF Initial Assessment (Unclassified) -- Searchable Document,” August 30, 2009, <http://www.washingtonpost.com/wp-dyn/content/article/2009/09/21/AR2009092100110.html> (accessed January 25, 2010) [hereinafter “COMISAF Assessment”].

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- ³ See for example, Afghanistan Independent Human Rights Commission, *From Hope to Fear: An Afghan Perspective on the Conduct of Pro-Government Forces*, December 2009.
- ⁴ COMISAF Assessment, *supra* note 2.
- ⁵ NATO/ISAF, “ISAF Tactical Directive,” Kabul, Afghanistan, July 2009, p. 2 [Hereinafter “ISAF Tactical Directive”].
- ⁶ Jonathan Horowitz, “The New Bagram: Has Anything Changed?” Huffington Post, November 20, 2009, http://www.huffingtonpost.com/jonathan-horowitz/the-new-bagram-has-anythi_b_365819.html (accessed February 18, 2010).
- ⁷ See, for example, United Nations Mission in Afghanistan, *Afghanistan: Annual Report on Protection of Civilians in Armed Conflict, 2009*, January 2010, <http://unama.unmissions.org/Portals/UNAMA/human%20rights/Protection%20of%20Civilian%202009%20report%20English.pdf> (accessed January 26, 2010) [Hereinafter “UNAMA Protection of Civilians 2009 report”]; and Susanne Schmeidl, Alexander D. Mundt, and Nick Miszak, *Beyond the Blanket: Towards more Effective Protection for Internally Displaced Persons in Southern Afghanistan, a Joint Report of the Brookings/Bern Project on Internal Displacement and The Liaison Office*, Washington D.C.: The Brookings Institution, 2009 [Hereinafter “Schmeidl, Mundt, & Miszak, Beyond the Blanket”].
- ⁸ UNAMA Protection of Civilians 2009 report, *supra* note 7.
- ⁹ UNAMA Protection of Civilians 2009 report, *supra* note 7.
- ¹⁰ Interview, Khost, October 24, 2009 and follow-up interview; and interview, Khost, October 15, 2009 and follow-up interview.
- ¹¹ ISAF Tactical Directive, p. 2, *supra* note 5.
- ¹² Additional Protocol I to the Geneva Conventions of 1949, and relating to the Protection of Victims of International Armed Conflicts, art. 51, June 8, 1977, 1125 U.N.T.S. 3. These principles also reflect customary international law, binding also non-parties to the Additional Protocol. Jean-Marie Henckaerts, *Study on Customary Rules of International Humanitarian Law*, Rules 1 – 14, 2005.
- ¹³ Mark Freeman, “International Law and Internal Armed Conflicts: Clarifying the Interplay between Human Rights and Humanitarian Protection”, *The Journal of Humanitarian Assistance*, July 24, 2007.
- ¹⁴ See, Swedish Committee for Afghanistan, “International military violently entered SCA Hospital in Wardak,” Press Release, September 6, 2009, <http://www.swedishcommittee.org/archive/articles/press/2009/wpoIMF/> (accessed February 1, 2010).
- ¹⁵ UNAMA Protection of Civilians 2009 report, *supra* note 7.
- ¹⁶ Author interview with woman in Gardez, Paktia, December 13, 2009.
- ¹⁷ UNAMA Protection of Civilians 2009 report, *supra* note 7.
- ¹⁸ Interview, Gardez, Paktia, December 9, 2009.
- ¹⁹ Interview, Gardez, Paktia, December 9, 2009.
- ²⁰ Interview, Gardez, Paktia, October 27, 2009. Despite this threat, no detainee has been sent to Guantanamo Bay since 2008 and it would appear highly unlikely that any further transfers would take place.
- ²¹ Press Statement of Professor Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions, Kabul, May 15, 2008, <http://www.extrajudicialexecutions.org/application/media/Statement,%2015%20May%202008,%20Kabul,%20Afghanistan%20%5BEnglish%5D.pdf> (accessed January 25, 2010), p.2 [Hereinafter “Alston Press Statement”].
- ²² RC North briefing with development and humanitarian actors, Kunduz, November 19, 2009.
- ²³ Interview with Afghanistan Independent Human Rights Commission officers, January 31, 2010.
- ²⁴ COMISAF Assessment, *supra* note 2.
- ²⁵ Campaign for Innocent Victims in Conflict, *Losing the People: the Costs and Consequences of Civilian Harm in Afghanistan*, February 2009, www.civicworldwide.org/afghan_report (accessed February 7, 2010)[Hereinafter “CIVIC report”].
- ²⁶ CIVIC report, *supra* note 25.
- ²⁷ Interview, Zurmat, Paktia, November 3, 2009.
- ²⁸ Stathis N. Kalyvas, *The Logic of Violence in Civil War*, 2006.
- ²⁹ Human Rights Watch, “Canada/Afghanistan: Investigate Canadian Responsibility for Detainee Abuse,” Press Release, November 27, 2009, <http://www.hrw.org/en/news/2009/11/27/canadaafghanistan-investigate-canadian-responsibility-detainee-abuse> (accessed January 26, 2010). See also, Afghanistan

Independent Human Rights Commission,
http://www.aihrc.org.af/english/Eng_pages/Researches_eng/Research_cause_of_Torture_2009_April.pdf
(accessed February 1, 2010).

³⁰ Alston Press Statement, *supra* note 21, p. 2.

³¹ Schmeidl, Mundt, & Miszak, Beyond the Blanket, *supra* note 7.

³² Susanne Schmeidl, 2007, "Case Study Afghanistan – Who Guards the Guardians?," in *Private Security Companies and Local Populations. An exploratory study of Afghanistan and Angola*. Swisspeace report, November 2007, http://www.swisspeace.ch/typo3/fileadmin/user_upload/pdf/PSC_01.pdf (accessed February 1, 2010) pgs. 14 - 45.

³³ UNAMA Protection of Civilians 2009 report, *supra* note 7, p. 30.

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Photo caption: British troops passing through an Afghan town in Helmand province Afghanistan.

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