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Introduction

Over the course of 2008, I lived in Afghanistan as a fellow for the Campaign for Innocent Victims of Conflict (CIVIC), documenting the concerns of Afghan civilians in the most deadly year yet for Afghan communities. The overriding message that I and my CIVIC colleagues learned from interviewing more than 143 Afghan victims of conflict is that recognition, compensation, or other assistance is both desperately needed and possible in Afghanistan.

There are mechanisms working on the ground to provide this assistance – notably the Congressionally funded Afghan Civilian Assistance Program (ACAP) that will be the focus of this testimony. Whereas compensation and cash condolences by the Afghan government and international military forces were generally ad hoc, inequitable, and under-resourced, the ACAP program's mandate to seek out and help families affected from 2001 onward did much to address the inequities and disparities in victim assistance. Because it provides in-kind, tailored livelihood assistance, it also did a much better job of addressing lingering medical, livelihood and other humanitarian needs necessary to help families get back on their feet.

Compensation and victim assistance is both a strategic and moral imperative for the international community, and particularly the US government, in Afghanistan. I would like to share with you some of what will then offer a sample of the needs and issues that Afghan victims of conflict raised in conversations with CIVIC, and how well the ACAP program succeeded in meeting these needs. Finally I will offer some concluding thoughts and recommendations on the overall system of victim assistance and compensation in Afghanistan.

Civilian Compensation and Redress: A Strategic and Moral Imperative

Since the initial U.S. invasion in 2001, the lack of a clear, coordinated strategy to address civilian losses has been a leading source of anger and resentment toward military forces. Twenty billion USD of military expenditures each month and billions more in support operations and humanitarian aid still leaves the many civilians harmed by international troops with nothing. As recently as 2006, 83 percent of Afghans said they had a favorable view of US military forces.¹ Two years later that favorable view has turned into scenes of frequent, widespread and sometimes violent protests over civilian deaths and what they perceive as a lack of concern by international forces.

Avoiding harm to civilians altogether is the goal. When harm nonetheless occurs, the imperative becomes easing the suffering of any civilian suffering losses. Afghans expect recognition and compensation, and they ask for it when their families or communities are harmed. There is now acknowledgement at the highest levels that NATO mission's failure to address these concerns is sapping public support. In his visit to Afghanistan in September 2008, US Secretary of Defense Robert Gates said, "I think the key for us is, on those rare occasions when we do make a mistake,

¹ The poll was developed by the Program on International Policy Attitudes and fielded by ACSOR/D3 Systems, Inc. from November 27 to December 4, 2005, with a sample of 2,089 Afghan adults.

when there is an error, to apologize quickly, to compensate the victims quickly, and then carry out the investigation.”

This recognition has already come too late, and unless it is fully reflected in the new Afghanistan strategy, civilian casualties and the failure to acknowledge and redress them will be NATO’s Achilles heel in Afghanistan. Over US\$40 billion is spent each year by foreign military forces, including huge amounts on “soft power” counterinsurgency initiatives. Yet a single incident in which military forces harm civilians, without any acknowledgement, apology or compensation can turn a community away from the international effort and the Afghan government.

Victim assistance is equally critical on humanitarian grounds. In 2007 and 2008, an estimated 3,641 civilians were killed by parties to the conflict in Afghanistan.² For every civilian killed, as many or more are injured, lose their homes or livelihoods. For countless Afghan families living on the margins, the loss of a breadwinner, high medical or funeral costs, or the financial burden of supporting disabled or dependent relatives can make even basic survival difficult. For each family struggling to recover from losses, there are multiplying ripple effects on Afghanistan’s continuing development and stabilization.

No amount of compensation or assistance can bring back a loved one. Yet the killing of a family member can often be an invitation for generational revenge, made worse by ignoring that loss. Providing specific relief to Afghan victims of conflict is both a strategic and a humanitarian imperative for international forces.

Civilian Suffering and Importance of Victims’ Assistance

In the past two years, security has deteriorated dramatically in Afghanistan and civilians have borne the brunt of increased violence. The year 2008 proved to be one of the deadliest years for civilians since the conflict began in 2001. The UN recorded 2,118 civilian casualties in 2008, an increase of 40 percent from the 1,523 recorded in 2007.³ No accurate estimates of civilian casualties since 2001 exist, although the number is likely well over 8,000, based on available data.⁴

In the last two years, fighting has spread geographically. As a result, more communities are suffering and governmental and humanitarian actors are finding it increasingly difficult to address their needs due to security concerns.⁵ According to UNAMA: “Large parts of the South, Southwest, Southeast, and Central regions of Afghanistan are now classified by the UN Department of Safety and Security (UNDSS) as ‘extreme risk, hostile environment’.”⁶ Staff from aid organizations are increasingly subject to direct attacks and threats. UNDSS recorded 30 humanitarian workers killed and another 92 abducted between January and August 2008.⁷

² United Nations Assistance Mission in Afghanistan, *Protection of Civilians*, United Nations, January 2009, 1.

³ United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties*, 1.

⁴ Campaign for Innocent Victims in Conflict, *Losing the People: The Costs and Consequences of Civilian Suffering in Afghanistan*, 8.

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

⁶ United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties*, 3-4.

⁷ *Ibid.*, 4.

As a result, the majority of families and communities caught in the conflict have been left to recover from their losses on their own. CIVIC spoke with many civilians who years after being harmed still experienced grief and psychological trauma from the incident. This lingering effect continued to prevent them from resuming a normal life.

Beyond significant emotional suffering, a single incident may have serious long-term economic and social repercussions. The Afghanistan National Development Strategy placed “war survivors” as one of two “priority groups” in terms of improved social protection.⁸ Civilians told CIVIC how losses from conflict severely damaged or destroyed their livelihoods and economic support bases. Medical costs and funeral expenses often forced civilians to spend their savings and/or take out loans that would take years to pay off. Communities struggled to absorb the impact when multiple families were hit, or when they lost a community leader or community infrastructure. Families and communities across Afghanistan, many already struggling, were forced to assume the additional burden of supporting dependents of the deceased, or relations whose homes or communities had been destroyed.

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

Loss of a Family Member

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

Many of the civilians killed in Afghanistan were adult men, the principal breadwinners for their families. When a breadwinner dies, it is customary in Afghanistan for other family members to provide for the surviving dependents. With resources and jobs in short supply, some survivors are now finding it impossible to feed all the people under their care. A survivor from the July 17, 2008 bombing of the Zerkoh village in Shindand lost both his brothers in the air-strike. He must now support not only his own family but the family of his two brothers – a total of 25 people – despite having lost much of his property in the bombing.² Similarly, an elderly man, Said told CIVIC how he became the sole income-provider for a family of twelve after his son was shot by ISAF forces for approaching a cordoned-off security area. Said described how he worked as a daily wage earner but “I can’t find enough money for my family. I’m in trouble.”

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

⁸ Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy, Social Protection Sector Strategy*, (Kabul: Government of the Islamic Republic of Afghanistan, 2008), 125.

dropped out of school and started work full-time so they could support their family of seven brothers and two sisters.

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

According to an October 2008 report by the Food and Agriculture Organization (FAO), “widows, especially in rural areas, remain one of the most vulnerable groups in the country.”⁹ Women are excluded from most types of employment in Afghan society.¹⁰ Typically, the only way for widows to support their families is to be taken in by other members and/or marry one of the deceased husband’s brothers. One widow, Samira, managed to find some employment after her taxi-driver husband was killed in a US aerial bombardment in 2001. Her income, however, was insufficient to support the family and she was forced to rely on the generosity of various relatives. She told us how it was difficult to support all her children and that she started washing clothes, housekeeping and taking any other small job to earn money. Eventually, she could not survive alone because “our family could no longer afford a home of our own and [so] we were passed from one relative to another.” Samira described how the economic situation is causing her children to suffer: “If my husband was alive my children would have everything like other girls and boys. They ask me sometimes for things... normal things that all children ask for... a son would ask his father for a bicycle, a computer, a daughter for pretty things. Everyone has a wish. I wish my husband was alive so they could have all these normal things. So they could have a normal childhood.”

Orphans in Afghanistan find themselves in a desperate situation. United Nations Joint Programme on HIV/AIDS (UNAIDS) estimated that, through 2007, 2.1 million children had lost a father, a mother or both.¹¹ There are likely even more now, given increasing rates of civilian casualties. These children are extremely vulnerable members of society and, when they do not have extended family members to provide for them, they frequently end up in orphanages or on the street. CIVIC spoke with children in Jalalabad orphaned by the July 2008 air-strike by International Military Forces (hereinafter “IMF”) that hit a wedding party. One eight-year-old boy called Rafullah lost both his parents in the same air-strike and now lives in social services. His three sisters are also in care.

The burden of funeral and remarriage expenses was mentioned by a number of individuals interviewed by CIVIC. While it might seem callous to talk about the expense of remarriage in

⁹ Internal Displacement Monitoring Center, *Afghanistan: Increasing hardship and limited support for growing displaced population*, Norwegian Refugee Council, October 28, 2008, 77.

¹⁰ *Ibid.*, 61 (noting that the “economic exclusion” of widows and their children together with their “social marginalization” complicated the reintegration of IDP and returnee widows); Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy, Social Protection Sector Strategy*, (Kabul: Government of the Islamic Republic of Afghanistan, 2008), 27.

¹¹ United Nations Children’s Fund, *Best estimates of social indicators for children in Afghanistan, 1990-2005, Islamic Republic of Afghanistan*, (Kabul: United Nations Children’s Fund, May 2006, 68.

the wake of tragedy, this is the reality for many men given the Afghan social structure. For them, remaining unmarried was unthinkable, particularly if they had small children needing care.

Injury of a Family Member

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

Families suffer significant financial burdens when a primary breadwinner is injured such that he (and occasionally she) is no longer able to earn a wage or contribute to the family livelihood. One farmer, the sole provider for his family, told us how he was injured in a suicide attack and could no longer work as effectively in the fields. His family felt the impact, as he brought far less produce home.

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

Many injured civilians become dependent on the full-time care and support of their families. This naturally puts financial and emotional pressure on the family member-turned-caretaker. One man who lost sixteen members of his family in an air-strike in Kandahar described the long-term care now required for both his brother and sister, injured in the same attack: "My sister cannot eat by herself anymore. And my brother lost one leg and is paralyzed in the other leg. He is in a wheelchair."

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

The overall weakness of the health system offers few opportunities for follow-up treatment after an injury – including operations, prosthetic limbs or physical therapy. A very small minority of Afghan families can afford to send their relatives abroad, so individuals live with crippling injuries that in other countries could be entirely overcome. Many organizations and hospitals in Afghanistan seek resources to provide free or subsidized treatment for injured survivors, but the overwhelming need and widespread poverty mean their limited resources cannot keep up with the immediate treatment and long-term care civilians require due to the conflict.

Loss of Property

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

Air-strikes are one of the most prominent causes of home destruction. In particular, Human Rights Watch found that responsive air-strikes called in to support ground troops are less accurate and increase the risk to civilian property.¹² Insurgent tactics of firing from homes or villages and then fleeing before IMF air retaliation has led to the destruction of many homes, particularly in the south. When homes are destroyed, civilians must either find large sums of money to rebuild or they become refugees or internationally displaced persons (IDPs). Moreover, when a house is destroyed gone too are all the family's personal possessions, livestock and vehicles. Many families told us they had to start again from scratch, with just the clothes on their back.

CIVIC interviewed one family in Herat whose house was destroyed in an air-strike that also killed the father: The house was completely destroyed and burned. ... After the incident, we lost everything: our two cows were killed, the motorbike was blown up, our six turkeys were killed. We were only able to bring out half of two carpets. Then, after the incident, we moved to our aunt's house in another village in Herat province. When we came to [our] aunt's house, there was just one small room. We started from zero."

The economic consequences can be equally dire when family businesses or other livelihood support is destroyed. Civilians who lost their livelihoods repeatedly told CIVIC that without a means of income they could not support any injured or dependents of the deceased or otherwise rebuild their lives. Haji Mullah in Kandahar owned a nursery where he grew and sold potted plants. In April 2007, a suicide bomb exploded outside his shop: My nursery shop was damaged and about 800 flower pots were destroyed at a cost of around \$3,200. This was my whole budget. I was selling them and getting money to feed my family. But now although I have started the business again, I have had to borrow money to do it and I became poorer.

In an agrarian society like Afghanistan, air-strikes damage agricultural land and livestock, not only destroying a family's livelihood but taking away their basic means of survival. One man named Abdul who fled from air-strikes in the Shindand valley of Herat told CIVIC how his farm and livestock were destroyed by an air-strike: I had cows, sheep, goats, they were all killed. Now I have nothing for my family. I could still manage to look after my family if only I had that."

Living as an Internally Displaced Person or Refugee

Persistent fighting and insecurity force many families to flee their homes and communities. With nowhere to live, they become refugees or (IDPs). According to the Norwegian Refugee Council

¹² Human Rights Watch, *Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan*, (New York: Human Rights Watch, September 2008), 3.

(NRC)'s Internal Displacement Monitoring Center, ongoing conflict has led to the displacement of tens of thousands of Afghans each year since 2006.¹³ An estimated 44,000 civilians were displaced in the first half of 2007 alone.¹⁴ They are now one of the most vulnerable groups in Afghan society for, as the NRC Secretary-General has explained, “[t]hey may not only have lost their homes, family members and livelihoods, but they are receiving practically no support. The tragedy for these people is that as their needs are rising, our ability to reach them is dramatically decreasing.”¹⁵

IDPs CIVIC interviewed told a common story: fleeing in response to immediate fighting or bombing, often grabbing what few possessions they had, and returning (if possible) to find everything destroyed or stolen. “We left that same night. Some of our family members left even their shoes.... After four days I went back to the site but when I went to see my house, it was destroyed and nothing was there.” The decision to flee, even for a few weeks, carries heavy economic and personal consequences. Away from their homes, communities, and their family’s source of income, many refugees and IDPs depend on handouts or day labor to survive.

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

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

Wider Community Impacts

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

Compounding physical or livelihood losses are the emotional and psychological burdens for a community trying to go about its ordinary, daily business. Nighttime searches by international forces or general intimidation tactics by AOG can create a climate of fear across an entire

¹³ Internal Displacement Monitoring Center, *Afghanistan: Increasing hardship and limited support for growing displaced population*, 9. (“The conflict is estimated to have displaced tens of thousands of people every year since 2006, but their number has been impossible to determine due to a lack of access to the conflict zones.”)

¹⁴ Ban Ki-Moon, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, United Nations, October 2007, 2.

¹⁵ Siri Elverland, “Press Release: Worsening Situation for IDPs,” Norwegian Refugee Council, October 28, 2008, <http://www.nrc.no/?did=9348233>.

community. Frequent bombings or ongoing fighting can leave even those without tangible losses with feelings of hopelessness, anger, and despair.

In November 2007, a suicide bomber targeting Italian troops killed nine civilians and injured many others. The most respected community elder, who had helped lead disarmament and peace negotiations among many tribes in the area, was also killed. His loss is irreplaceable, community leaders said. A local aid worker in the Western region of Afghanistan told CIVIC he was working on delivering aid to a community in the Shindand valley of Herat province for over a year. The only way to access the valley was under the protection of a local community leader. After that leader was killed in a US airstrike on July 17, 2008, the aid worker said it would be impossible to reach those affected communities.

Large-scale damage stretches community resources and affects the quality of life even for those not directly harmed by the incident, often for many years after the incident. CIVIC visited a community affected by a US air-strike in Herat city on October 22, 2001. The air-strike reportedly missed a military target and directly hit an area within the city, damaging or destroying the houses of forty-five families, killing twelve and injuring tens of others. According to the father of one family, everyone he was close to was affected: "One of the bombs landed in our yard. The other landed on my brother's house, the other my neighbor here, the other my neighbor there."

When CIVIC visited the area seven years later, the community was only just recovering. Even those who were spared direct harm complained about a general deterioration of their quality of life, and that they had received no help to recover. The strain of recovery can be more pronounced for communities isolated by security conditions. In February 2002, US air-strikes caused widespread damage to a small village called Shar-E-Cott in the southeastern province of Paktia. Multiple families were directly harmed; infrastructure damage to the town itself and to the surrounding roads impoverished the entire community. In part because of its isolated location and because of deteriorating security following the air-strikes, the community was cut off from almost all emergency relief or development aid. Although road access has recently improved through mass infrastructure projects, increased fighting and Taliban attacks still restrict the supplies that can reach the community.

Afghan Civilian Assistance Program

Some international military forces, and Afghan President Karzai, provide different amounts and types of compensation or cash "condolences" where the ongoing conflict has unintentionally harmed civilians. In the past though, these compensation and condolence mechanisms have been sporadic to non-existent in terms of their ability to reach the Afghan public. Although the civilian counterparts of IMF countries provide much foreign aid and development assistance in Afghanistan, my research with CIVIC identified only one program funded by the civilian branch of an IMF country that specifically addressed conflict-affected civilians: the Afghan Civilian Assistance Program (ACAP). Created by the United States Congress and implemented on the ground by the International Organization for Migration (IOM), ACAP's mission is to seek out and provide tailored, in-kind assistance to civilians harmed by IMF as far back as 2001.

ACAP was officially established by the US Congress in 2006, though its work had been operating under another similar mechanism several years before. It is funded by USAID and

implemented by IOM. In fiscal year 2008, the US Congress appropriated US\$20 million for the program.

According to the legislation, ACAP is “designed to assist Afghan families and communities that have suffered losses as a result of the military operations against the Taliban and insurgents.”¹⁶ Civilians eligible to receive ACAP assistance include families suffering losses due to US military activities since 2001 or any ISAF activities since 2006. This includes losses indirectly resulting from IMF actions, including suicide bombings or other attacks against IMF or support personnel for IMF. Eligible losses include the death of a family or community member, the severe injury of a family breadwinner, significant property loss and the loss of important community buildings or infrastructure.

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

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

CIVIC interviewed a widow, Bibi Merra, who was training to become a beauty technician. She lost her husband and her home in a US air-strike in 2001 and, seven years later, was still forced to rely on relatives to provide food and shelter for her children. She told us: “After I finish I will set up a beauty salon for this business. ... At first I could not imagine that I could learn to do it. ... [Now] I hope to have my own independent income and when I do this will take the pressure off of me a little bit.”

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

For many families, this livelihood assistance was not only a source of income but a way to reintegrate the disabled into their communities. Social stigmas in Afghanistan often prevent the disabled from receiving an education, finding employment or otherwise carrying on a normal life. CIVIC spoke with one young man whose arm was incapacitated when a suicide blast exploded near him in the central market of Gardez city. ACAP helped pay for an apprenticeship as a mechanic and purchased the equipment he needed to start his business. He pointed to his

¹⁶ United States Agency for International Development and International Organization for Migration, “Eligibility Criteria for ACAP Beneficiaries,” [Date not available], Copy on file with CIVIC.

partner, who was his teacher during the apprenticeship, “I was a student of this man [senior mechanic] but now I am better than he is!”

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

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

Other civilians also told CIVIC that while they had asked for help – sometimes for years – from IMF, from the government or from other agencies, ACAP staff were the only ones to follow through on promises of aid. Three friends in Kandahar city lost their carpentry businesses and nearly their lives to a suicide bomb. The men said they received no help from anyone despite extensive publicity surrounding the bombing. When ACAP identified them, medical expenses had put them into such dire economic straits they could barely feed their families. One of the carpenters explained the significance of the ACAP assistance: “Nowadays, if you get a piece of bread from someone, you are happy. So this aid is very important. It will help to expand my supplies and to expand business. It will bring positive effects to my family. With this business, we can pay off the loans that we owe to people.”

ACAP also provides community assistance, usually when an incident has affected the whole community or when security concerns prevent individual assistance. For example, a February 2002 US air-strike caused heavy losses for one village in southeastern Paktia province, but because of its remote location and high security risks, little aid or assistance by any humanitarian or government agency had been possible for years.

In 2008, ACAP was able to help the community by providing them the materials and cash-for-work payments to build a retaining wall.

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

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

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

Poor information sharing between independent monitoring agencies, the military and ACAP made it even more difficult for ACAP staff to overcome these issues. ACAP staff regularly reaches out to representatives of international organizations, military actors or others with knowledge of civilian losses, but such efforts did not always result in the type of information sharing or referrals that might help it identify and verify the eligibility of civilians more quickly. While energy is put into catching military commanders early in their rotation and information about ACAP is included in some briefings, no military representative CIVIC spoke to knew about the program.

Security issues get in the way of quick and effective implementation. USAID programming and other US government-funded programs have long been targeted by insurgents, so ACAP staff are not required to tell beneficiaries where their funding comes from, particularly where doing so might put anyone involved at risk. Now representatives of the international community in many areas across Afghanistan and regardless of their source of funding are being targeted. Afghan staff of ACAP face significant risk going into high-conflict areas to deliver assistance. One ACAP worker described how he was threatened by the Taliban in Kandahar: “I was taking a survey and I had cameras up there. The Taliban surrounded us with guns pointed at us. We were captured and we were taken to an area with 70 other Taliban, and fortunately I met someone up there who I knew and that person saved me.”

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

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

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

The family's inability to protect the observer means they have not received their second installment and cannot continue building their home. While ACAP is working to solve some of the issues noted above (for example, hiring more staff in order to speed delivery time), it should be noted that many of the problems ACAP encountered were due to the difficulty of implementing a program like this in Afghanistan rather than any weak or faulty program design. Many challenges are interrelated, making it difficult to address any one concern without creating other problems. For example, efforts to minimize the time it takes to deliver aid may involve trade-offs in minimizing corruption, ensuring equal and consistent aid distribution, or a level of personalization in approach.

While conflict-affected civilians may prefer more timely, plentiful and personalized support, or monetary compensation rather than in-kind aid, program administrators and donors must balance these concerns against institutional priorities of ensuring that aid is accountable, fairly and consistently delivered, and reasonably priced. The fact that ACAP has been able to overcome so many of problems inherent to the current environment of Afghanistan and reach so many civilians in such a specialized way is in itself a huge achievement and certainly a step above many of the other civilian assistance programs available in Afghanistan.

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

One man lost his father and niece in an escalation of force incident in Jalalabad. The shots from US forces left approximately 1,250 holes in his car. He said the assistance he received from ACAP was a big help but he still wanted accountability in a formal trial: "We want justice," he said. "Yes, there [have] been a lot of changes to my life since ACAP – but I still want justice."

Another man's son was killed by US troops in a road accident. He not only received ACAP assistance for a new business but also a direct apology and monetary support from the troops involved. When interviewed, he seemed to have found greater peace with the military payment and apology than with the ACAP assistance. He was enthusiastic in talking about the ACAP assistance he had received. But when he told CIVIC how the troops apologized directly to him and seemed genuinely remorseful, he said he forgave them and did not associate the same sentiments with the later ACAP assistance: "We appreciate the assistance. Nobody can give the price of the dead. Nobody can replace what you have lost. But this assistance that ACAP provided to us ... we are very happy with it."

As mentioned previously, ACAP assistance often comes long after the actual incident. The gap in time between the incident and the response may also help explain why the assistance is often not considered a direct response to the harm done.

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

Conclusion & Recommendations

I have focused my testimony on what I observed and learned about the Congressionally-funded ACAP program. The ACAP program has done a remarkable job in identifying and reaching out to civilian victims of conflict in an increasingly tough environment. It occupies a unique role in the web of victim assistance and redress in Afghanistan, and should continue to be supported. The tailored aid seemed better able to meet the variety of needs from which conflict-affected families suffer than other approaches like military compensation. In many cases, ACAP assistance was extremely effective in helping victims of conflict rebuild their lives and recover from an incident. Challenges include the slow delivery of aid and access limitations due to increasing and geographically shifting insecurity. More funding and coordination might address some of these problems. Greater funding for staff from the US Congress can speed delivery times, and greater coordination with other victim support or ex gratia mechanisms might help get around security hurdles to identifying beneficiaries.

The ACAP program is a remarkable achievement, and the only one of its kind by a foreign government. Yet, Congress can do so much more.

1. ***The US Government should initiate and spearhead the development of a unified, comprehensive, and coordinated mechanism for condolence payments in Afghanistan.*** As evidenced by the ACAP program and by the US military's early adoption of direct condolence payments to Afghan civilians, the United States has been a leader on the issue of compensation and victim assistance in Afghanistan.

Given our coalition commitments in Afghanistan, though, it is not enough to do it alone. There is no unified or systematic NATO mechanism for providing condolences for damage or loss caused by military operations. Rather, the processes for dispensing condolence payments are opaque, ad hoc, and vary from nation to nation. The amount paid in condolences to an individual family has ranged from US\$25,000 to a few hundred dollars to nothing, depending on the location and the countries involved.

Most of our NATO partners have funds available for victim assistance, and have provided compensation or victim assistance in the past where incidents have arisen. The foundations for doing this right is there, but so far the coordination has not been. As the leader on these issues, the United States should push for NATO to establish a centralized and unified condolence payments mechanism comprised of senior military staff, including from the Afghan National Security Forces (ANSF), and specialist civilians. In particular, NATO should:

- a. coordinate and liaise closely with all ISAF, OEF and ANSF units and the ISAF civilian casualty tracking cell;
 - b. ensure that staff working to address civilian losses are easily accessible in all conflict-affected areas and that communities are made fully aware of the claims process;
 - c. develop clear, consistent rules on eligibility for condolence payments; and
 - d. ensure that such payments are sufficient and appropriate for the harm suffered.
2. ***Congress should create a consistent, uniform claims system for non-combatants harmed as a result of US actions.*** In the absence of a viable civilian claims program, the current condolence program was pieced together in 2003 and remains ad hoc, inadequate, and poorly funded, often increasing resentment rather than fostering goodwill. Because existing condolence funds and claims systems have been developed as the need arose, the system is constantly reinvented with each military engagement, and sometimes with each new troop deployment. The result is a fractured, uneven, and sometimes unfair system that often does not serve the strategic or humanitarian aims for which these mechanisms were created. To address these problems, Congress should create a permanent, effective civilian claims system that would:
- a. create separate lines of funding, so that available condolence funds are not squeezed out by competing demands to reconstruction projects or other counterinsurgency demands under the Commander's Emergency Response Program (CERP) -- the fund from which most condolences are currently pulled;
 - b. establish uniform, theater-specific guidelines on standards of proof, valuation, recordkeeping and an appeals process;
 - c. value loss of life, limb or property on a case-by-case basis (with culturally appropriate guidance) with no artificial ceiling;
 - d. provide the JAs, who are already trained in adjudicating claims under the Foreign Claims Act for non-combat harm, with further practical guidance on standards of proof as well as appropriate ways to deal with civilian victims;
 - e. ensure that the current mechanism will be a permanent one, so that in the event of any new conflicts or military engagements, the US military will have a fair and functional claims system ready to go for civilians caught in war.
3. ***Congress should encourage Secretary of Defense Robert Gates to create a high-level position at the Pentagon to track, monitor, analyze and, in sum, decrease the human costs of war.*** The US government must respond to international outcry over civilian casualties wherever the US is militarily engaged. With every civilian harmed by US forces, anger grows. America's image abroad suffers. Minimizing civilian harm is not only the right thing to do, it's critical to achieve US military and political objectives. There is consensus on this at the highest policy levels, yet there is no office or senior person at the Pentagon responsible for carrying out these strategic imperatives. From our

counterinsurgency initiatives in Iraq to programs like ACAP or condolences in Afghanistan, the United States response has been ad hoc all the way from planning to execution. There is an urgent need for the US government to devote more focused resources and institutional attention to such a critical issue. In particular, an advisory position at the Pentagon would act as a nexus to:

- a. assess the potential human cost of war before any shots are fired;
- b. augment techniques to avoid civilians once the fighting starts;
- c. maintain proper investigative and statistical data on civilian casualties;
- d. ensure efficient compensation for unintentional civilian harm.

No amount of compensation or assistance can bring back a loved one, yet survivors can be properly supported and helped toward some semblance of recovery. For moral and strategic reasons, the billions of dollars spent to win, keep and rebuild Afghan communities must include specific outlays for recognition and assistance to civilians suffering losses due to the conflict.