

Sahr Muhammedally, Senior Legal Advisor, Center for Civilians in Conflict (CIVIC), Talking points, OPC/ISAF Format, July 3, 2014

Thank you, Ambassador Evans, for inviting me to participate in these important discussions on lessons learned from Afghanistan on civilian protection and harm mitigation and what needs to be done on inculcating these policies within Afghan security forces. My organization has long had a collaborative relationship with NATO and ISAF on Afghanistan as well as on Libya—which is an example of how civil society and militaries can work together. Over the past decade we have met with senior ISAF and NATO leadership and raised concerns about civilian harm both on an operational and strategic level offering practical recommendations for mitigating civilian harm.

We know that during any armed conflict civilians suffer in myriad ways including the loss of lives, limb, and property. For civilians who have been harmed in an air strike or during a night raid it does not matter that the harm was incidental and within the lawful parameters of the laws of war or a force's ROEs—their lives are forever changed. Military forces often examine such incidents and determine that the loss was regrettable, but permissible and move on, as international forces did many times during the first half of the conflict in Afghanistan.

However ISAF leadership changed course operationally and undertook serious strategic and tactical measures to minimize harm to civilians and to make amends to those harmed. NATO and ISAF has shown that it can be done and has set an example for armed forces around the world to step up their game to do more to protect civilians and respond to civilian harm.

But this change evolved slowly. Civil society, UNAMA, ICRC, and the Afghan government raised concerns with ISAF about civilian casualties and ISAF leadership began recognizing not only the regrettable loss of human life, but also the detrimental impact it had on the mission. They took action.

Following certain civilian casualty incidents in 2007, Gen. McNeil issues the first tactical directive in June 2007 recommending changes to use of aerial and indirect fire. Then in the summer of 2008, following the Azizabad airstrikes which killed over 90 people, Gen. McKiernan ordered the creation of Civilian Casualty Tracking Cell—to track civilian harm and order further directives on air strikes. It was the first such cell ever created to gather information about the operational impact on the civilian population.

COMISAFs then began creating what we at CIVIC call 'a protection mindset' within ISAF. Outside analysts were commissioned to study the root causes of harm during kinetic operations and to make tactical recommendations. COMISAF's McChrystal, Petraus, and Allen issued additional directives on prioritizing civilian protection, on air strikes, night raids, and escalation of force that were later adopted and implemented by ISAF commanders on the ground.

In 2011, the tracking cell became the more robust Civilian Casualty Mitigation Team, which tracked and analyzed data and made recommendations that fed into pre-deployment and in mission tactical training, strengthened investigations, and solidified consequence management after an incident.

NATO civilian leadership similarly emphasized civilian protection and particularly supported appropriate responses to harm in Afghanistan. In 2010, the North Atlantic Council adopted non-binding guidelines to make amends to those civilian incidentally harmed in Afghanistan—noting the importance of assisting those harmed even though not legally obligated to do so. As you know some TCNs were already making amends to those harmed as a result of their operations but these guidelines aimed at ensuring that all civilians were treated fairly regardless of which TCN harmed them.

The result of all of this work was a decrease in civilian casualties as reflected in the annual UNAMA POC reports civilian losses were recognized and civilians harmed received assistance.

To accomplish this it took dedicated civilian and military leadership, including from the operations staff from NATO and ISAF.

But as international forces depart Afghanistan in December 2014 and we look to the future there are a few key points that I want to make. First, at NATO HQ:

- The hard lessons identified on civilian protection and response risk being lost unless they are institutionalized as policy and doctrine and disseminated to NATO member states. One way to do this is to create an Office of Civilian Protection and Harm Mitigation to coordinate all such policies, strategies and practices. These tools should immediately be incorporated in any future OPlans Annex and tailored to different conflict situations when NATO is called to act in the near future.
- NATO members voluntarily incorporate these progressive policies and tactical tools on civilian protection in the training of their armed forces so soldiers have a deeper knowledge on how to minimize civilian harm before they ever step foot in another conflict.

And now, with your Afghan counterparts:

- ISAF and NATO must work to harness resources and focus on inculcating civilian protection and harm mitigation policies and practices within the Afghan security forces. ISAF has made strides in training and strengthening C-IED capabilities of the ANSF, which is commendable as IEDs are the leading causing of civilian harm in Afghanistan. Brig Rawlins has more operational knowledge on this than I so I leave it to him to elaborate.
- But critically ANSF must be shown how to minimize harm caused by its security operations since ANSF caused civilian casualties is on the rise as they took the lead role in security.
- NATO's Resolute Support Mission post 2014 must prioritize the development of ANSF's capabilities to understand and indeed recognize the impact of their own operations on their citizens. Presently, the Afghan government tracks all civilian casualties, but there is no assessment of the causes of ANSF civilian

harm and no process to change tactics to reduce future harm and to appropriately respond to civilian harm. Based on my organization's research, ANSF caused harm is also under-reported in the government database. ISAF sees this as a priority and we welcome the support from ISAF to assist the Afghans develop this capability, which will take time to inculcate and train on and should be fully funded and supported by NATO post 2014.

I hope the incoming Afghan government prioritizes minimizing civilian harm. Just as I hope that NATO will continue to show leadership as they work with their Afghan counterparts to implement progressive protection policies post 2014.

ISAF and NATO can leave a lasting positive legacy in the war-torn country if Afghans soldiers are shown how not to harm their own citizens. To do this, Afghans, must adopt and implement the same progressive strategies as their ISAF counterparts. We aren't there yet, but ANSF could and should be a leader in the region, showing its neighbors how it is done.

In closing, I commend the development of best practices on civilian harm mitigation by ISAF. This is indeed ground breaking work and I have no doubt—none at all—that the hard work done by NATO and ISAF has saved Afghan lives. But to stop here risks leaving the job unfinished. NATO support to Afghanistan must strive to inculcate these lessons into Afghan mindsets and NATO must adopt standing policies to ensure the hard lessons learned in Afghanistan do not become lessons lost.