



Addressing Civilian Harm in Afghanistan: Policies & Practices of International Forces

Executive Summary

Afghan civilians deserve amends from warring parties for deaths, injuries, and property losses—that is, some form of recognition and monetary compensation. Under international law and agreements signed with the Afghan government, the troop contributing nations (TCNs) of the International Security Assistance Force (ISAF) are not liable for damage to civilian property or civilian injury or death as a result of lawful operations. However, most ISAF members now offer payments when such losses occur. This is a marked improvement from the early days of the conflict when the US and its NATO allies declined to address civilian harm.

CIVIC’s research into the experiences of ISAF troops and Afghan civilians demonstrates that when international military forces provide payment (henceforth called “compensation” to indicate both monetary and in-kind help), especially combined with an apology for harm, civilian hostility toward international forces decreases. However, the effectiveness of these payments has been limited by the lack of uniform policies across ISAF nations, limited information gathering about civilian harm generally and, in many cases, insensitive requirements that civilians suffering losses take the initiative to file claims.

This report describes the policies and practices of major ISAF TCNs. It finds that soldiers as well as civilians view amends for harm favorably. The process of investigation, negotiation of payment, and offers of formal compensation are opportunities to strengthen relationships with local leaders and communities, to explain what happened, and acknowledge loss.

Though the Government of Afghanistan does implement various compensation programs, this report focuses on ISAF policies and practices. There is no evidence of systematic or regular payments to civilian victims by insurgents.

ISAF members have widely varying compensation policies and practices. Commanders often have significant discretion in investigations and determining how to address civilian losses. These variations in how forces address civilian harm result in many civilian victims being unhappy with international forces or not receiving expected help at all.

Based on its detailed country-by-country survey of several major TCNs, the report makes nine recommendations for changes in ISAF policies and practices, including:

- Adopt a uniform system for addressing civilian harm, including investigations and payment of compensation;
- Adopt an ISAF fund from which TCNs could draw compensation payments;

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- Adopt practical guidelines on how to appropriately address civilian harm for commanders;
- Proactively identify civilian victims in hostile and insecure areas;
- Ensure amends are provided to civilian victims without access to ISAF forces;
- Ensure civilians harmed by US Special Operations Forces are recognized and assisted;
- Adopt and standardize on-the-spot payments for small-scale property damage;
- Monitor compensation payments and identify best practices through the ISAF Civilian Casualty Tracking Cell (CCTC);
- Ensure greater training focus—whether in home countries or in theater—on practical skills necessary to appropriately compensate for civilian harm;
- Coordinate between TCNs, as well as with the Afghan Government and military, the United Nations Assistance Mission in Afghanistan (UNAMA), and human rights monitoring groups.

Introduction

In 2009, more Afghan civilians died as a result of conflict than in any other year since the US invasion, with many more suffering injury and property loss.¹ Afghans expect warring parties to make amends for the harm they cause—that is, to provide some form of compensation (whether monetary or in-kind) and recognition of their losses.²

Under international law and agreements signed with the Afghan government, ISAF troop contributing nations are not liable for damage to civilian property or civilian injury or death as a result of their operations.³ Yet most ISAF members offer “ex-gratia” (out of kindness) payments to civilians. ISAF members are explicit that these payments do not represent acceptance of responsibility or liability. Instead they are considered expressions of sympathy—a tangible symbol of condolence to persons harmed in the midst of war.

ISAF sees this kind of assistance to civilian victims as a strategic imperative. As is evident from Gen. Stanley McChrystal’s Initial Afghanistan Report, as well as recent tactical directives on the use of airpower and night raids, senior military leaders recognize the strategic importance of positive interaction with the civilian population, including providing protection and amends for harm.⁴ CIVIC’s research into the experiences of ISAF soldiers and Afghan civilians documents that when international military forces have provided payment, especially combined with an apology, civilians expressed satisfaction and reduced anger toward international forces.⁵

Unfortunately, the strategic effectiveness of these payments as well as their positive impact in the lives of civilian victims have been limited by several factors.

Instead of actively following up on incidents that may have caused civilian harm, numerous

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1 United Nations Assistance Mission to Afghanistan, *Annual Report on Protection of Civilians in Armed Conflict – 2009*, 2009, <http://unama.unmissions.org/Default.aspx?ctl=Details&tabid=1741&mid=1882&ItemID=7260> (UNAMA Report).

2 CIVIC, *Losing the People: Cost and Consequences of Civilian Suffering in Afghanistan*, 2009, http://www.civicworldwide.org/afghan_report (CIVIC Report). CIVIC believes warring parties should “make amends” to the civilians they harm. “Making amends” means offering assistance to help victims recover from losses as well as recognition and acknowledgment of such losses through investigations, explanations, apologies, and other dignifying gestures.

3 ISAF, *Military Technical Agreement*, <http://www.operations.mod.uk/fingal/isafmta.pdf>; NATO Legal Gazette, 2008, <http://www.marshallcenter.org/mcpublicweb/MCDOcs/files/College/LGE16.pdf>. These payments generally only compensate for damage to private civilian property, not public.

4 Commander, NATO ISAF, Afghanistan, US Forces, *COMISAF’s Initial Assessment*, August 30, 2009, http://media.washingtonpost.com/wp-srv/politics/documents/Assessment_Redacted_092109.pdf; HQ ISAF, *Tactical Directive*, July 6, 2009, http://www.nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf; ISAF Public Information Office, “ISAF Issues Guidance on Nightraids in Afghanistan”, 5 March 2010, <http://www.centcom.mil/en/press-releases/isaf-issues-guidance-on-night-raids-in-afghanistan.html>.

5 CIVIC Report.

countries rely on civilians themselves to raise claims. Many Afghans cannot reach bases, do not know about condolence payment programs or fear retaliation for “cooperating” with ISAF and thus are left without help, their losses ignored.⁶ Even when countries make an effort to actively investigate incidents and provide help, their ability to gather information and access victims is minimal in the hostile areas where many civilian victims reside.

There is a lack of coordination among military and civilian actors, and diverse payment schemes and procedures across ISAF TCNs. There is no single ISAF fund for addressing civilian harm, and no ISAF policy or set of guidelines for determining when or how TCNs should provide amends to civilians. Each ISAF member’s compensation program is different, determined by national laws, military protocol and, sometimes, the particular circumstances of the incident. Commanders’ discretion in dealing with the local population is often necessary in a counterinsurgency; however, wide discretion of local commanders in paying compensation has created enough variation within national contingents and across Afghanistan to cause anger and resentment. The diversity creates confusion for civilians and makes payments seem arbitrary. Payments are often not coupled with proper investigations or adequate engagement with victims.

Reform is urgently needed to address gaps, improve practices, and standardize how ISAF addresses civilian harm. This report describes in detail the policies and practices of major ISAF TCNs, and focuses on ISAF members with significant numbers of troops in conflict-prone provinces. While most ISAF members responded to CIVIC’s requests for information, several declined to provide information or to comment on how they address civilian casualties or property destruction caused by their operations. A summary of our findings is followed by our country by country survey and recommendations for immediate policy changes.

Findings

Civilians and soldiers view payments positively. Payments help civilians recover from losses and are appreciated as expressions of regret and acknowledgement of the harm caused. For soldiers, payments help to mitigate civilian anger over losses as well as build trust and confidence among the population, which may in turn keep troops safer and bring a swifter end to hostilities.

The process of payment is an opportunity to explain what happened, express regret, and acknowledge loss. Investigating incidents and negotiating payments offer ISAF forces the opportunity to provide victims with an explanation for what happened. This is particularly important in the case of serious injury or death. More than money, many victims often want to know why they were harmed and whether it was an accident or intentional. The process of payment itself offers an opportunity to provide victims with answers.

Investigations and negotiations of payment are an opportunity to strengthen relationships with local leaders and the community. Some ISAF forces rely on local leaders to provide information, facilitate investigations, assess credibility of claims, and mediate interactions with victims. Offering help for harm builds trust and confidence between ISAF forces and local leaders, and enhances the perceived legitimacy of local leaders, payments, and investigations.

ISAF members have widely varying policies and practices with respect to payments. ISAF members provide different amounts for harm, some with more standardization than others. Forces also gather information regarding incidents in different ways. Some engage directly with local leaders after incidents, while others rely on civilian victims themselves to approach bases.

⁶ Recent reports have documented the targeting of Afghans receiving compensation following the Operation Mushtarak in Marjah. See Richard Opiel, “Violence Helps Taliban Undue Afghan Gains,” *New York Times*, April 3, 2010, <http://www.nytimes.com/2010/04/04/world/asia/04marja.html>. However, the targeting of recipients is related to the inability of ISAF and the Afghan Government to protect the population. The problem is security, not compensation, which addresses civilian harm and dignifies losses.

In some contingents, legal advisors play a central role in adjudicating claims, while in others local commanders are the primary actors. Some ISAF members will only pay when it is certain its forces caused the harm, while others are less stringent and sometimes pay even when it is unlikely its forces were responsible.

Commanders often have significant discretion in investigating incidents, assessing credibility, and determining payments. Commander discretion enables forces to more easily and readily adapt to varying environments and circumstances. In the case of compensating for civilian harm, discretion helps commanders to tailor their responses to fit complex situations and compensate in instances even where their forces were not responsible for causing harm if it suits their strategic needs. However, such discretion also results in significant variation not only between ISAF members but within national contingents. This variation is exacerbated by turnover among commanders and their staffs, which means the practice of offering payments may change even within the same locale as commanders rotate in and out.

Significant gaps in TCN practice exist and many civilian victims do not receive assistance. Where ISAF forces rely on civilians approaching military bases, many civilians may forgo explanations, apologies, and payments because they are unable to reach bases or are unaware of compensation possibilities. Others are fearful of attack for communicating with ISAF—a problem of security, not compensation. Where ISAF forces rely on local elders and government officials to provide information, civilians without these connections may lack access to assistance.

In addition, many civilian casualties inevitably occur in areas where there is significant militant presence. However, the hostile nature of such areas means ISAF lacks the access and relationships with local leaders that it depends on to gather information and provide amends. In particular, there are serious problems in acknowledging losses and paying compensation where US Special Forces cause civilian casualties due to the opaque nature of their operations.

Troops are concerned with preventing fraudulent claims and inflated damage estimates. Providing payment for fraudulent claims undermines the legitimacy of the system and encourages others to submit fraudulent claims. Many TCNs conduct investigations, document damage, and require civilians to submit evidence in order to prevent fraud. However, the concern over fraudulent claims must be balanced with the need to maintain an efficient and responsive system. More stringent evidentiary requirements may delay payments and prevent some victims from receiving assistance.

In the case of inflated damage estimates, soldiers often have to engage in bargaining and negotiation with Afghans over the value of damaged or destroyed property. The traditional role of bargaining in Afghan society, as well as expectations regarding the monetary resources of ISAF, mean Afghans' initial claims are often higher than the actual value of the property. However, bargaining does not fit well with the Western legal-style claims systems and soldiers are often unfamiliar with Afghan bargaining customs. Given variation and complexity of local economies, many ISAF forces consult locals to determine reasonable amounts for compensation.

There is insufficient information sharing and coordination between TCNs and the Afghan government and military, the United Nations and human rights groups that monitor civilian harm. While there is some evidence that ISAF TCNs forward cases to each other, many do not know the compensation policies and practices of other TCNs. There is also little evidence that ISAF forces share information with or consult entities such as the ANA (Afghan National Army), UNAMA (United Nations Assistance Mission to Afghanistan), and the AIHRC (Afghan Independent Human Rights Commission). All can be key sources of information on civilian harm.

About CIVIC

Campaign for Innocent Victims in Conflict works on behalf of war victims by advocating that warring parties recognize and help the civilians they harm. CIVIC supports the principle that it is never acceptable for a warring party to ignore civilian suffering.

In 2005, CIVIC's founder Marla Ruzicka was killed in Iraq by a suicide bomb while advocating for families of victims. CIVIC honors her legacy and strives to sustain her vision.

ISAF Member Policies and Practices⁷

United States⁸

US forces operate throughout Afghanistan. The US leads Regional Command East (RC-E) and also has a significant presence in the Southern Region.⁹

US forces can offer payments when they cause death, injury, or individual or community property losses as a result of their combat or non-combat activities. In practice, they may also provide payment when it is unclear they caused the harm or even when it is probable that harm was caused by militants.¹⁰ US military units have three mechanisms for providing ex-gratia payments: solatia, condolence, and battle damage payments.¹¹ Solatia are drawn from units' operation and maintenance funds, whereas condolences and battle damages are drawn from the Commander's Emergency Response Program (CERP). Since the more easily approved CERP funds were made available in Afghanistan, solatia payments have been disfavored and most payments are battle damage or condolences.¹² Though the formal purpose of these three payment mechanisms is different (for example, mitigating impact on civilians versus an expression of sympathy), there is little practical difference among the three.

Commanders in the field exercise significant control and discretion over payments. Field commanders may decide whether to follow up on claims, whether to provide payment, and how much to request, up to certain limits. Though military lawyers may be involved in the approval and vetting of claims, underlying credibility assessments often rest with local commanders because of their position in the field and their contact with civilians and local leaders.¹³

When the US invaded Afghanistan in 2001, the Department of Defense initially determined that these types of payments were not "culturally appropriate" and thus that civilians would not be compensated in any way for their losses. In October 2005, the US amended its position and authorized the use of such payments in Afghanistan. A range of factors are taken into account when determining payment, but the figures below are standard amounts, or "caps" on payments. Amounts may be higher if multiple types of property damage or losses occur in a given incident.

Harm	Solatia	Condolence/ Battle Damage
Death	2,000 USD	2,500 USD
Serious Injury	400 USD	1,600 USD
Non-serious Injury	200 USD	600 USD
Serious Property Damage	--	2,200 USD
Non-serious Property Damage	200 USD	200 USD

Information regarding civilian casualties or property damage is obtained through incident reports completed by combat units and battle damage assessments (BDAs), which must be conducted according to US rules after any indirect fire incident.¹⁴ US forces also depend on

7 Ordered according to troop contributions.

8 This section applies only to regular US forces. US Special Operations Forces (SOF) operate under a different command structure and are covered separately below. However, some regular US forces also compensate in cases where US SOF have caused harm.

9 ISAF, "ISAF Facts and Figures."

10 Interview with US LTC Matthew Smith, Commander TF Dahlonaga/Team Paktya, Paktya, February 22, 2010, PRT Paktya; Interview with US LTC Curtis Lee, Deputy G9 Civil Military Operations Taskforce Leatherneck, Marine Expeditionary Brigade, February, 27 2010, email; CIVIC Report.

11 General Accounting Office Report, *DOD's Use of Condolence and Solatia Payments in Iraq and Afghanistan*, 2007, <http://www.gao.gov/new.items/d07699.pdf>; CIVIC Report.

12 Interview with US Judge Advocates from RC-South, email from Erica Gaston, March 23, 2010.

13 Based on interviews and email exchanges with US commanders in the field.

14 Interview with US LTC Smith; Interview with Basir Hashimi, Director ISAF Civilian Casualty Tracking Cell, February 6, 2010, Kabul. Indirect fire includes artillery, bombs, mortars—not the use of fire arms.

local elders or government officials for information, who raise cases with US commanders and Provincial Reconstruction Team (PRT) officials.¹⁵ US forces report that engagement with local leaders is key to identifying civilian harm since they can provide information, verify credibility, and negotiate what amount—if any—will be paid. Supporting documentation is collected by units in the field, including testimonies, property records, and pictures of damage. However, such proactive investigation is more typical in major incidents, particularly those involving personal injury or death. Most claims relate to property damage. In addition, for most of these claims, many of which are non-combat related, US forces rely on claimants to approach bases, to submit claims and supporting documentation.¹⁶

In the more serious cases, local company commanders will often engage victims and local leaders to negotiate an appropriate payment amount, taking into account a range of factors such as family situation, severity of the harm, employment with ISAF, and local custom. The amounts paid vary province-to-province and depend on incident circumstances, but the figures above generally represent the upper limits of payments.¹⁷ Condolence claims up to 2,500 USD may be approved by a Lieutenant Colonel. Payments between 2,500 USD and 5,000 USD may be approved by a Colonel and higher payments of up to 10,000 USD require the Deputy Commanding General's approval.¹⁸ Payments above 2,500 USD are rare unless compensation is for multiple harms suffered in a single incident.¹⁹

Payments are typically provided within several weeks after an incident.²⁰ Company commanders submit the details of the claim and amount requested to their battalion, where requests are processed and funds disbursed. Civil Affairs Officers and Judge Advocates often coordinate and oversee the process. In cases of minor property damage, some commanders have reported using “fuel money”—or small petty cash amounts—to settle small claims on the spot.²¹

While authority to disperse condolence payments formally rests with a brigade or battalion commander, the company commander's determinations are critical in practice, particularly in more serious incidents. As company commanders oversee the gathering of supporting documents and information and interact with local leaders, their assessment of damage, harm, and credibility of a claim will often be decisive.²² In more serious cases of death or injury, the battalion-level commander and/or legal advisors may become involved. The more serious the incident in terms of political sensitivity, public visibility, and civilian loss, the more likely higher levels of command will assume control over the case and determine the outcome.

The significant discretion local company commanders have in investigating claims and paying out compensation indicates that practice can vary significantly. Other factors contribute to the lack of a standard, formal range of responses to civilian harm. Turnover among commanders means practice varies even within the same locale. Reliance on local leaders for information means civilians without political connections may be left unassisted or their claims considered not credible.

US forces are strongly supportive of these payments. Soldiers stated that payments help victims, build popular support, help them engage with local leaders, provide an opportunity to offer an explanation for harm, and show recognition and respect.²³ Coordination was cited as an issue, particularly with the Afghan National Army, which does not have a formal system to compen-

15 Interview with SGT Tyrone Sadler, Civil Affairs Team Leader, PRT Ghazni, February 28, 2010, email.

16 Interview with US Judge Advocates from RC-South, email from Erica Gaston, March 23, 2010.

17 Interview with US CPT Moran, Company Commander, Jaji District, Paktya Province, February 22, 2010, telephone.

18 Interview with LTC Lee; Multi-National Corps-Iraq, *Money as a Weapons System*, MAAWS, MNC-Iraq CJ8 Standard Operating Procedures, May 2008, http://www.acq.osd.mil/dpap/pacc/cc/jcchb/Contingency%20Model/Contract%20Actions/Funding%20Docs/MAAWS_May_2008.pdf.

19 Interview with LTC Lee.

20 Interview with LTC Smith; Interview with CPT Moran.

21 Interview with CPT Crane, Commander FOB Rushmore, February 22, 2010, telephone.

22 Interview with US LTC Robert Campbell, March 12, 2010, email.

23 Interviews with numerous US military personnel.

sate civilians harmed during its operations.²⁴

US Special Forces

US Special Operations Forces (SOF) operate throughout Afghanistan. Some forces are stationed at forward operating bases throughout the country while others conduct raids and missions in areas where they have no permanent presence.

When asked about SOF in their areas of responsibility (AORs), US commanders are hesitant to comment.²⁵ In theory, SOF can draw from CERP funds to make condolence and solatia payments. However, in practice, SOF often do not compensate and rely on local US forces or the Government of Afghanistan to investigate and provide payment.²⁶

Some local commanders have stated that the “battle space owning” force would step up and offer payment if civilians were killed or injured as a result of SOF operations, but there is no indication that this happens regularly in practice.²⁷ In some cases, local commanders or Judge Advocates will investigate SOF incidents. However, SOF often fail to share information and coordinate with local forces, delaying and hampering investigations.

Local non-US forces do not have the authority to compensate civilians or properly investigate incidents resulting from SOF operations. Polish Military officials confirm that US SOF operate in their AOR and cause civilian casualties for which Polish troops often bear the blame. In such cases Polish troops may engage with local elders and communities, but cannot offer compensation or assistance to victims because their operations did not cause the harm.²⁸ As Afghan civilians are unable to distinguish between US troops, other foreign troops, and special forces, the failure of one group of soldiers (US SOF) or one troop contributing nation (Poland) to provide amends is a detriment to the entire mission. A common ISAF fund and guidelines under which Poland could draw on that fund to make payments in their AOR would address this gap.

The lack of a clear US SOF policy on addressing civilian harm denies civilian victims the assistance they expect and deserve to recover, and places the blame and burden on the entire international mission or other nations’ forces. The secrecy surrounding US SOF also leaves victims without answers or acknowledgement of their losses.²⁹ The process of investigation and payment itself often acts as an opportunity to offer an explanation, express regret, and help families find closure. As US SOF do not often engage in this process or disclose their involvement in operations, Afghans harmed by their operations are more likely to be overlooked.³⁰

United Kingdom

Most UK military personnel are based in Helmand Province, though a smaller number operate

24 Interview with US Judge Advocates from RC-South, email from Eric Gaston, March 23, 2010.

25 Interview with LTC Smith; interview with CPT Crane.

26 Interview with LTC Smith. See also Jerome Starkey, “Karzai Offers Families ‘Blood Money’ for Sons Killed in Raid,” *London Times*, March 8, 2010, <http://www.timesonline.co.uk/tol/news/world/afghanistan/article7052982.ece>; Sangar Rahimi, “US Reigning in Special Operations Forces in Afghanistan,” *New York Times*, March 15, 2010, <http://www.nytimes.com/2010/03/16/world/asia/16afghan.html?pagewanted=2>; Matthew Rosenberg, “US Special Operations Forces Ordered Deadly Strikes,” *Wall Street Journal*, February 22, 2010, <http://online.wsj.com/article/SB10001424052748704057604575080640203691352.html>.

27 Interview with CPT Crane; Interview with US Judge Advocates from RC-South, email from Erica Gaston, March 23, 2010.

28 Interview with MAJ Monika Janikowska, Polish Legal Advisor, Taskforce White Eagle, Ghazni, March 8, 2010, email. Staff, “Poles Accused of Civilian Deaths in Afghanistan,” *Krakow Post*, March 11, 2010, <http://www.krakowpost.com/article/1941>.

29 Jerome Starkey, “Karzai Offers Families ‘Blood Money’ for Sons Killed in Raid,” *London Times*, March 8, 2010, <http://www.timesonline.co.uk/tol/news/world/afghanistan/article7052982.ece>; Open Society Institute and the Liaison Office, “Strangers at the Door: Nightraids by International Forces Lose Hearts and Minds of Afghans,” February 23, 2010, http://www.soros.org/initiatives/washington/articles_publications/publications/afghan-night-raids-20100222.

30 Combined Forces Special Operations Component Command-Afghanistan (CFSOCC-A), which commands all US SOF in Afghanistan, has not responded to numerous inquiries regarding this issue.

out of Kandahar. The UK currently heads Regional Command South (RC-S), headquartered in Kandahar.³¹

The UK provides ex-gratia payments for civilian property damage, injury, and death caused by its forces.³² The Ministry of Defense (MOD) offers compensation when it would be considered “legally liable” under UK law for damage or harm caused to civilians. Legal liability under UK law arises when a party causes harm as a result of its negligent actions.

In Afghanistan, this technically means that, although it has no actual legal liability under the Military Technical Agreement (MTA), the MOD provides compensation when UK forces cause civilian harm and when they do so as a result of acting negligently. The standard of care, or what counts as “negligence” in the context of UK operations in Afghanistan, is not clear.

The burden of proof in all cases is a balance of probabilities (>50%), meaning that it must be more likely than not that UK military action caused the harm. Proof of identification as civilian (in the case of death or injury) and proof of ownership (in the case of property damage) are key criteria.

The UK sometimes provides payment even when it is uncertain whether UK forces caused the harm or that they acted negligently. Payments may be made in such circumstances because of the difficulties associated with investigating claims and in order to strengthen popular support (to promote “civil effect”).

MOD’s Head of Common Law Claims and Policy (CLC&P Hd) delegates its authority to issue compensation to Area Claims Officers (ACOs) that operate in the field. ACOs are based in Lashkar Gah but periodically rotate through Musa Qaleh and Sangin as well as Kabul and Kandahar Air Field.

There are standard ranges of amounts for different types of harm, and the amount paid is dependent on a number of circumstances. ACOs are authorized to issue payments of up to £75,000 (approximately 115,000 USD) for injury or property damage (UK officials did not indicate whether there was an upper limit for deaths); higher amounts require authorization from CLC&P Hd. However, records indicate that payments are much lower than these limits, ranging from 25 USD to 14,500 USD with most between several hundred and several thousand dollars.³³ The amount paid in cases of death has varied widely as well, from 210 USD to 7,000 USD.

The UK claims database, provided by the MOD, does not indicate whether claims awarded were for single or multiple harms in a given incident, nor does it distinguish between civilian claimants that were harmed by UK forces and those that worked for UK forces.

The UK primarily relies on civilians to bring claims to the attention of military personnel by approaching bases. Formal clinics are held by ACOs at Forward Operating Areas and daily in Lashkar Gah. Though civilians can also approach UK military in the field directly, these units are not authorized to make payments and can only provide claimants with notes or documentation relating to incident or pass along the info themselves to ACOs. Because they must approach the base directly, civilian victims who are unable to safely reach bases, or are unaware of the program, or fear being attacked for communicating with ISAF may not have access to assistance. In mass casualty or other high profile incidents, senior representatives from Task Force Helmand liaise with local government officials and elders to gather information and expedite the ACOs’

31 ISAF, “ISAF Facts and Figures,” http://www.nato.int/isaf/docu/epub/pdf/placemat_archive/isaf_placemat_091001.pdf.

32 Information on UK policy and practice from interview with Ben Wilkinson, Press Officer Military Operations, UK Ministry of Defense, February 22, 2010, email; interview with Jim McBride, UK Civilian Deputy in Helmand, February 27, 2010, email.

33 UK Ministry of Defense Claims Database Feb-June 2009, in email from MOD. See also Mark Townsend, “NATO Draws up Pay Out Tariffs for Afghan Civilian Deaths,” *The Guardian*, February 28, 2010, <http://www.guardian.co.uk/world/2010/feb/28/coalition-payouts-afghan-civilian-casualties>.

response. It is unclear how the UK military provides payment outside of Helmand, such as in Kabul or Kandahar, where it also has small contingents of troops operating.

The UK reports that recent improvements have reduced delay in processing claims and cleared a four-month backlog.³⁴ Payment may now take two weeks if a claim is made through ACO clinics, but longer if more thorough investigation is needed. In such cases, investigations are often supported by Afghan authorities including the National Directorate of Security.

According to records released by the MOD, since 2007, 1,142 claims have been paid totaling more than 1.2 million USD. Of that, slightly less than 1 million USD was paid for property damage, nearly 100,000 USD for injuries and 150,000 USD for deaths.³⁵ The UK appears less willing to compensate for claims related to death or injury than for property loss.³⁶ Also, the wide variance in payouts for deaths—from 210 USD to 7,000 USD—raises concerns over the possible arbitrariness of the system.³⁷

Germany

Germany heads Regional Command North (RC-N). Most of its troops are stationed at a number of bases in the northern region, including in Mazar-e-Sharif, Kunduz, and Faizabad.

Germany has no policy or designated fund to provide assistance to civilians harmed as a result of its operations. Though German troops are generally not involved in combat operations, civilians have suffered death or injury as a result of German military actions. There have been isolated incidents of cash compensation in such cases.³⁸ For example, in August 2008, when Germans shot three civilians at a checkpoint in Northern Kunduz, they provided 20,000 USD in cash and a car worth 5,000 USD to the family, a sum they arrived at in consultation with family members and community leaders.³⁹

In September 2009, dozens of civilians were killed in a German air strike in Kunduz. The German government eventually agreed to help affected families and victims through short-term aid for the winter season and longer-term economic development aid.⁴⁰

German officials at the Kunduz PRT refused to comment on German policy or practice with respect to addressing civilian harm. The German military legal advisor in Kunduz also declined comment, and the German Ministry of Defense failed to reply to numerous inquiries. Germany and Italy are the only ISAF TCNs covered in this report that do not have designated funds or standard policy on compensation for civilian harm.

Italy

Italian troops operate in Herat province. Italy heads the Herat PRT as well as Regional Command West (RC-W), headquartered in Herat.

The Italian military rarely engages in combat except as a part of general ISAF RC-W operations. Neither the Italian military nor government has a designated program for assisting civilians harmed by Italian military operations. However, the Italian military has provided compensation

34 Interview with Jim McBride.

35 MOD Claims Database; Interview with Ben Wilkinson; Helen Pidd, "MOD Pays Out for Afghan Deaths," *The Guardian*, July 2, 2009, <http://www.guardian.co.uk/politics/2009/jul/02/mod-afghan-compensation-british-army>.

36 MOD Claims Database; Interview with Ben Wilkinson; Helen Pidd, "MOD Pays Out for Afghan Deaths," *The Guardian*, July 2, 2009, <http://www.guardian.co.uk/politics/2009/jul/02/mod-afghan-compensation-british-army>.

37 MOD Claims Database; Interview with Ben Wilkinson; Helen Pidd, "MOD Pays Out for Afghan Deaths," *The Guardian*, July 2, 2009, <http://www.guardian.co.uk/politics/2009/jul/02/mod-afghan-compensation-british-army>.

38 CIVIC Report.

39 Id.

40 Deutsche Welle, "German Compensation for Afghan Airstrike Victims Moves Forward," January 14, 2010, <http://www.dw-world.de/dw/article/0,,5127968,00.html>.

in isolated incidents. In 2006 and in 2008, the Italian military provided payment for children that had been hit by Italian military convoys.⁴¹ More recently, in May 2009, Italy compensated the family of a 14-year-old girl who was shot and killed at a traffic checkpoint in an escalation of force incident. The Italian PRT Commander visited the family's house, apologized for the incident, and provided €10,000 (approximately 13,500 USD) as a condolence payment.⁴² As mentioned previously, Italy and Germany are the only ISAF TCNs covered in this report that do not have designated funds or standard policy on compensation for civilian harm.

*The Netherlands*⁴³

Dutch troops serve as part of Task Force Uruzgan (TFU), based in Uruzgan province, where they operate out of a PRT and several bases.

The Netherlands has a standardized system for providing ex-gratia payments, but only for damage to civilian property caused by its forces. If property damage is below 500 USD, it can be settled in the field; above that amount it must be settled on the base. Physical injury or death are not covered by this system and are handled on a case-by-case basis.

In order to speed payment for property damage, commanders on the scene are authorized to settle property claims up to 500 USD. Units are encouraged, when possible, to stop at the site of an incident to provide medical assistance, talk to the claimant, and gather information and documentation. For claims above this amount and for claims that cannot be settled in the field, the Dutch TFU Legal Advisor (LEGAD TFU) acts as the claims officer and is authorized to make payments up to 1,500 USD. For payments above 1,500 USD, the TFU Commander's authorization is required. Though the LEGAD acts as the claims officer, the PRT is the main point of contact for civilians.

When a claim for property damage is unable to be settled in the field, either because of security concerns or because it is above 500 USD, units issue a claims card which directs claimants to provide appropriate documentation and contact information and submit their claim at the PRT entrance. In all cases, Dutch units are instructed to report incidents directly to the operations room and complete an Investigation Report, which records details of the incident and is signed by the unit commander and claims officer.

The Netherlands has extensive financial guidelines for ex-gratia payments for property damage.⁴⁴ These guidelines provide guidance on payment amounts for a wide range of animals, agricultural property, infrastructure, labor costs, and vehicles.

For personal injury, death, or other instances in which the ex-gratia payment system does not apply, the claims officer gathers relevant information including documents, photos of damage, and witness testimony. The claims officer informs the National Contingent Commander Legal Advisor (LEGAD NCC), who may authorize payment. Large claims, including those related to death or injury, are settled in close coordination with the Netherlands Claims Division and the Legal Advisor for Operations (LEGAD DOPS). There are no standardized amounts or clear guidelines for providing payment for death or injury; however, the range of factors considered include disability, family situation, and amount requested.

The burden of proof is relatively high, establishing beyond doubt that Dutch forces caused the harm. However, Dutch forces take measures to gather the necessary evidence, such as cross-checking claims with the presence of Dutch or other ISAF forces on the date in question. In

41 CIVIC Report.

42 Interview with Dr. Hashimi, AIHRC Special Investigations Team, February 14, 2010, Kabul.

43 Interview with MAJ Jurgen Knol, Legal Advisor TFU, February 25, 2010, email. See also Standard Operating Procedures, Task Force Uruzgan, April 2009, sent via email by MAJ Jurgen Knol, Legal Advisor TFU.

44 Task Force Uruzgan, "Financial Guidelines on Ex-Gratia Payments TFU," sent via email by MAJ Knol.

some cases, the Dutch send patrols to the site of the incident or lend claimants digital cameras to document damage.

Records obtained from the Dutch Government under right to information laws show that the Dutch have paid €350,000 (approximately 475,000 USD) for civilian losses since 2006, and that Dutch forces were responsible for at least 80 deaths and 120 injuries.⁴⁵

*Canada*⁴⁶

Canadian forces are based in Kandahar province and lead the Kandahar PRT.⁴⁷

Canada provides ex-gratia payments for civilian property loss, injury or death caused by Canadian forces. In the case of damage to real property, Canadian forces accept documents attesting to ownership signed by local elders. There must also be evidence that Canadian forces caused the damage or harm. Payment will also be made in cases where harm was suffered during joint ANA-Canadian operations and it is unclear which force was responsible.

Full compensation is not the goal of the ex-gratia payments, though the Canadian forces claim they try to compensate for most of the losses suffered. There are no standardized amounts, but there are upper limits on what forces in the field are authorized to provide. Factors considered in cases of personal injury or loss include family situation and lost earnings. Canadian forces also rely on local monetary values to estimate appropriate amounts on a case-by-case basis. Canada has declined to disclose what the ranges or upper limits on payments are, however, the Canadian Legal Advisor in Kandahar is only authorized to approve payments up to 2,000 CAN (approximately 1,960 USD). Above that amount, approval from Ottawa is required, which can take weeks or months. In almost all cases of personal injury or death, because the amount claimed is above 2,000 CAN, approval will be delayed by the need to get approval from Ottawa.

Claimants generally must approach their local Operational Coordination Center District (OCC-D) to file a claim, and most claims are filed this way. Claim information usually includes documents and other evidence supplied by the claimant as well as patrol reports. Where clear damage has been caused, units in the field will often notify OCC-D. Patrols sometimes provide civilians with a written statement or “claims card” relating to the incident that they may use when filing their claim with the OCC-D. Information is also obtained through battle damage assessments (BDAs) conducted by Civil-Military Cooperation (CIMIC) personnel. When civilians report to units on patrol about damage or harm, that information is recorded but claimants are referred to their local OCC-D.

Once claims are filed with the OCC-D, legal advisors will determine whether and how payment is made. Legal advisors are authorized to issue ex-gratia payments only up to a specific amount; above that level, approval of the Deputy Minister of National Defense is required. Canada has declined to share the specific amounts legal advisors are authorized to disburse.

Payments are made in cash during claims days held weekly at Camp Nathan Smith in Kandahar City. The timeframe for providing payment varies from hours to months, depending on the documentation provided and whether there is supporting evidence in patrol reports and other military records. As is the case with the UK, Canadian reliance on civilians approaching military bases to submit claims risks excluding many civilians in need of assistance.

Australia

⁴⁵ Dutch News, “Most Afghan Civilian Deaths Caused by Dutch,” December 24, 2009, http://www.dutchnews.nl/news/archives/2009/12/majority_afghan_civilian_death.php.

⁴⁶ All information from interview with MAJ Michael McCarthy, Canadian Legal Advisor Kandahar, March 11, 2010, email.

⁴⁷ Canadian Expeditionary Force Command, *Joint Task Force Afghanistan*, <http://www.cefc.com.forces.gc.ca/pa-ap/ops/fs-fr/jtfa-foia-eng.asp>.

Australian troops, including special forces, operate primarily in Uruzgan Province.⁴⁸

Australia provides “honour” or “acts of grace” payments when its forces cause civilian harm or property damage.

In July 2009, the Australian government changed its policy on compensation. Under the previous system, approval was required from the Ministry of Finance in Canberra, causing significant delays in payment.⁴⁹ New procedures, termed a “tactical payment scheme,” authorize commanders in the field with the rank of lieutenant colonel or higher to issue payments of up to 250,000 USD.⁵⁰

It is unclear what impact the recent change in policy has had on the ground. Though reports describe the payments as “immediate” or “on-the-spot,” there is no indication that units actually carry large sums of cash or that payments are actually provided by units in the field, as Dutch forces do in cases of minor property damage.⁵¹ Australian officials have not responded to CIVIC’s inquiries regarding how its new policy has worked in practice.

Under the previous policy, Australia paid out very little in compensation. Cumbersome approval procedures often led Australia to rely on the Dutch compensation mechanism when its troops were also involved in the operation.⁵² From 2001 through May 2009, total Australian compensation for property, injury, or death amounted to 120,000 USD, and covered only four incidents, each involving one or more deaths or injuries.⁵³

Poland

Polish troops operate in the province of Ghazni and head the PRT.

Poland provides ex-gratia payments for civilian harm caused by its forces.⁵⁴ The Claims Commission operates within the Polish military contingent and handles all compensation claims. The Claims Commission receives claims, initiates investigations, and determines whether and how much is paid. It contacts claimants, collects the relevant information and documentation, and invites claimants to the PRT base to participate in the adjudication of claims.

Information regarding claims is typically obtained through units operating in the field, which report damage or harm caused to civilians. Polish troops also issue accident forms to civilians after an incident and if possible, attempt to document the harm or damage caused at the time of the incident. This information is then relayed to the Claims Commission.

When determining the amount it will pay, Poland consults other nations, particularly the US and its claims officers. In cases of property damage, Polish troops also rely on local interpreters to gather information and assess credibility of damage estimates. In cases of death or injury, Polish troops negotiate an amount with the affected family as well as local elders. Payments of up to 2,500 USD are authorized, mirroring the US limit. Most claims are processed within four weeks.

Poland will provide payment for force protection reasons, even if its troops are not at fault

48 Australia Department of Defense, “Operation Slipper Fact Sheet,” <http://www.defence.gov.au/opEx/global/opslipper/info/factSheet.htm>.

49 CIVIC Report.

50 Emily Bourke, “Troops Speed Up ‘Acts of Grace’ Payments to Afghan Civilians,” *The World Today*, July 2, 2009, <http://www.abc.net.au/worldtoday/content/2009/s2614822.htm>; Cynthia Banham, “Troops Give Cash to Afghan Victims,” *Sydney Morning Herald*, July 2, 2009, <http://www.smh.com.au/national/troops-give-cash-to-afghan-victims-20090701-d593.html>.

51 Id.

52 CIVIC Report.

53 ABC News, “Defence Pays 120k Compensation to Afghan Civilians,” May 29, 2009, <http://www.abc.net.au/news/stories/2009/05/29/2583880.htm>.

54 Interview with MAJ Monika Janikowska, Polish Legal Advisor, Taskforce White Eagle, Ghazni, March 8, 2010, email.

or are only tangentially involved. For example, if incidents lead to public demonstrations or significant dissatisfaction amongst locals, payments may be provided, in consultation with the Military Command in Poland.

Norway

Norway has a battalion-size Quick Reaction Force stationed in Mazar-e-Sharif and leads the PRT in Faryab Province.⁵⁵

Norway has designated funds and standard operating procedures for compensating civilians harmed by its operations.⁵⁶ Amounts are determined on a case-by-case basis and through negotiations with local shuras. In summer 2009, Norway made a payment of 8,000 USD to the family of a civilian killed by its forces.

Recommendations

This survey makes clear that ISAF members lack uniform policies and practices on how to address civilian harm in Afghanistan. Variations in practice result in many civilian victims not receiving assistance and others feeling that their losses were not properly recognized.

Adopt a Uniform System for Compensating Civilians

No single change could do more to improve response to civilian harm than the adoption of a uniform system. A uniform system of amends (ex-gratia payments) would facilitate coordination, improve transparency, expedite payment, and earn goodwill among civilians. Most importantly, it would ensure Afghan civilians are dignified and receive the help they deserve.

All ISAF members should provide compensation in similar, culturally appropriate ways that adequately dignify civilian losses. ISAF should ensure adequate funds are available, either provided by individual members or through a common fund. Payment ranges for various types of harm should be standardized, including the criteria by which payments are determined. ISAF members should also adopt standard burdens of proof and evidentiary requirements based on the reality for civilians living through armed conflict while protecting against fraud. The process by which civilian victims submit claims and the documentation required of them should be the same across all ISAF members.

Adopt Guidelines for Commanders

Despite differences between ISAF members' approaches, local commanders often have significant discretion in determining how claims are investigated, whether to provide payment, and how much is offered. While commander discretion enables forces to more easily and readily adapt to different circumstances, it also creates significant variation in practice, not only between ISAF members but also within national contingents. Turnover in commanders and other supporting personnel means practice may also vary even within the same locales. As a result, compensation can appear arbitrary to Afghans.

ISAF should adopt guidelines for commanders advising them on when and how to provide compensation. Guidelines would provide background on Afghan customs related to bargaining and compensation, specify burdens of proof and evidentiary requirements, and emphasize the importance of providing victims with explanations and expressing regret when providing payments. Guidelines would also encourage commanders to actively investigate incidents, reach out to local elders for information and evidence, and educate civilians about compensa-

⁵⁵ Norway in Afghanistan, "Norwegian Security Policy in Afghanistan," http://www.norway.org.af/News_and_events/Norway-in-Afghanistan/security/.

⁵⁶ Email from Erica Gaston, March 16, 2010, based on interview with Norwegian Military Commander, PRT Mymanah, Faryab Province.

tion programs and procedures. Guidelines for commanders will channel discretion, spread best practices, and reduce the uncertainty civilians face when pressing their claims.

Guidelines would have an even greater impact if coupled with a uniform ISAF compensation policy and common fund.

Proactively Identify Civilian Victims in Hostile and Insecure Areas

ISAF troops' information on civilian casualties often depends on access, security, and engagement with local leaders. However, because most civilian casualties occur in areas where ISAF troops have minimal control or no relationship with local leaders—areas in which there is more frequent fighting with militants—many civilian victims are left without recognition for their losses or amends. ISAF reliance on local leaders for information also means political or tribal biases may prevent some civilians from receiving compensation/condolences or having their claims processed. ISAF should cultivate and reach out to all of its sources in such areas to ensure civilian victims are identified and assisted.

Ensure Amends are Provided to Civilian Victims without Access to International Forces

For many civilians, approaching bases or military units directly may not be possible because of security reasons or fear of retaliation. ISAF should be as active as possible in investigating incidents in which civilians may have suffered harm and should reach out to local elders and other community leaders to ensure victims are identified and receive assistance.⁵⁷ In insecure areas, this may mean identifying safety challenges for the civilians and finding workable solutions that still allow their losses to be dignified. ISAF forces should ensure BDAs and reports from units in the field scrupulously take note of any civilian harm or damage and ensure that such reports are followed up on. Relationships with local leaders should be utilized to actively seek out information related to civilian harm or damage. In all instances, efforts should be made to facilitate the information flow from civilian victims to military personnel, recognizing the serious security risks that civilians who communicate with ISAF troops may face.

Ensure Civilians Harmed by US Special Operations Forces are Recognized and Assisted

Despite the significant numbers of civilians injured or killed as a result of US SOF operations, the US SOF do not often provide condolence or solatia payments. SOF also do not adequately coordinate with regular US forces to ensure civilians are compensated.

This is a serious gap in amends for civilian victims. SOF often do not have a permanent presence in the areas in which they operate; thus the blame falls on whatever ISAF troops regularly operate in that area. Where the local forces are from the US, commanders may choose not to compensate for harm caused by SOF or may lack information regarding incidents. Local non-US forces do not have the authority to compensate civilians or properly investigate incidents resulting from SOF operations.

If this gap is not filled, SOF and thus the larger international force will continue to appear unremorseful and unaccountable. Recent reports suggest that the Afghan Government or other US forces have stepped in to provide compensation where US SOF have caused civilian casualties.⁵⁸ This practice should continue so that families are not left without answers or assistance. At the same time, SOF should be better integrated into compensation programs implemented by regular US forces. SOF should share information, coordinate with local US and non-US forces, and ensure the harm they cause is properly addressed.

⁵⁷ Interview with CPT Moran. CPT Moran stated that some victims' families would not go to base or be seen speaking with ISAF forces.

⁵⁸ Jerome Starkey, "Karzai Offers Families 'Blood Money' for Sons Killed in Raid," *London Times*, March 8, 2010, <http://www.timesonline.co.uk/tol/news/world/afghanistan/article7052982.ece>.

Adopt and Standardize On-the-Spot Payments for Small-Scale Property Damage

All ISAF nations should authorize troops in the field to issue small, on-the-spot payments for minor damage, as some countries, including the Netherlands and the US, already do. This would reduce delay in submitting more formal claims, though records should still be properly maintained on when, where, and how compensation was offered to ensure accountability of the funding stream. Such payments would also eliminate the need for civilians to risk traveling to bases to submit claims. Immediate payment also enhances goodwill by mitigating the anger that comes from delay and confusion over compensation. ISAF should ensure that on-the-spot payments are provided only in cases of smaller scale damage and not used as a way of avoiding responsibility for serious damage, injury, or death. On-the-spot payments should be accompanied by appropriate expressions of sympathy, regret, and respect.

Monitor Compensation Payments and Identify Best Practices through the CCTC

HQ ISAF should improve the tracking of compensation payments made in civilian casualty incidents through its Civilian Casualty Tracking Cell (CCTC). Such information should be used to analyze ISAF TCNs' policies and practices on compensation. In this way, ISAF can identify best practices among TCNs that reduce the likelihood civilian victims are left unassisted.

Ensure Greater Training Focus on Practical Skills Necessary to Appropriately Compensate for Civilian Harm

Commanders and other military personnel involved in addressing civilian harm—including investigations and making payments—should receive training on how to manage such efforts. Training should cover the importance of dignifying losses, how to best provide payments in practice, and how to ensure proper distinction from and respect for humanitarian space. Training should focus on engaging with local leaders, cultural attitudes towards bargaining and valuation of damage and harm, gathering information about civilian casualties in the field, record keeping on harm and compensation, and expressing respect and regret as part of payment.

Coordinate Between TCNs as well as with ANA, UNAMA, and Human Rights Groups

While there is some evidence that ISAF TCNs forward cases to each other, many do not know what other TCNs' policies and practices on compensation are. There is little evidence that ISAF forces and commanders coordinate or cooperate with other entities in their investigations. ANA often has better access to communities and information. UNAMA, AIHRC, and several other human rights groups conduct investigations into civilian casualties and often have strong ties to local communities. ISAF forces should improve and formalize cooperation with these entities in ways that respect their boundaries as independent entities not tied to the military mission.

Campaign for Innocent Victims in Conflict works on behalf of war victims by advocating that warring parties recognize and help the civilians they harm. CIVIC supports the principle that it is never acceptable for a warring party to ignore civilian suffering. In 2005, CIVIC's founder Marla Ruzicka was killed in Iraq by a suicide bomb while advocating for families of victims. CIVIC honors her legacy and strives to sustain her vision.

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