



United Nations Assistance Mission to Afghanistan, Human Rights Unit

A F G H A N I S T A N

Annual Report on Protection of Civilians in Armed Conflict, 2008



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UNAMA, HUMAN RIGHTS

Map of Afghanistan



Source: UN Cartographic Centre, NY.

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Executive Summary

1. This Report on the protection of civilians in armed conflict in Afghanistan in 2008 is compiled in pursuance of the United Nations Assistance Mission in Afghanistan (UNAMA) mandate under United Nations Security Council Resolution 1806 (2008). UNAMA conducts independent and impartial monitoring of incidents involving loss of life or injury to civilians as well as damage or destruction of civilian infrastructure and conducts activities geared to mitigating the impact of the armed conflict on civilians. UNAMA's Human Rights Officers (national and international), deployed in all of UNAMA's regional offices and some provincial offices, utilize a broad range of techniques to gather information on specific cases irrespective of location or who may be responsible. Such information is cross-checked and analysed, with a range of diverse sources, for credibility and reliability to the satisfaction of the Human Rights Officer conducting the investigation, before details are recorded in a dedicated data base. However, due to limitations arising from the operating environment, such as the joint nature of some operations and the inability of primary sources in most instances to precisely identify or distinguish between diverse military actors/insurgents, UNAMA does not break down responsibility for particular incidents other than attributing them to "pro-government forces" or "anti-government elements". UNAMA does not claim that the statistics presented in this report are complete; it may be the case that, given the limitations in the operating environment, UNAMA is under-reporting civilian casualties. In January 2009, UNAMA introduced a new electronic database which is designed to facilitate the collection and analysis of information, including disaggregation by age and gender.
2. In compliance with its mandate granted under UN Security Council Resolution 1806 (2008), paragraph (g), the Human Rights Unit of UNAMA (UNAMA Human Rights) undertakes a range of activities aimed at minimizing the impact of the conflict on civilians, including reporting through the UN Secretary General to the Security Council, the Special Representative of the Secretary General (SRSG) UNAMA, the UN Emergency Relief Coordinator, Office of the UN High Commissioner for Human Rights, and other UN mechanisms as appropriate. UNAMA Human Rights advocates with a range of actors including Afghan authorities, international military forces (IMF), and others with a view to strengthening compliance with international humanitarian and human rights law. It also undertakes a range of activities on issues relating to the armed conflict and protection of civilians with the Afghan Independent Human Rights Commission (AIHRC), the humanitarian community, and members of civil society.
3. The armed conflict intensified significantly throughout Afghanistan in 2007 and 2008, with a corresponding rise in civilian casualties and a significant erosion of humanitarian space. In addition to fatalities as a direct result of armed hostilities, civilians have suffered from injury, loss of livelihood, displacement, destruction of property, as well as disruption of access to education, healthcare and other essential services.
4. UNAMA Human Rights recorded a total of 2118 civilian casualties between 01 January and 31 December 2008. This figure represents an increase of almost 40% on the 1523 civilian deaths recorded in the year of 2007. The 2008 civilian death toll is thus the highest of any year since the end of major hostilities which resulted in the demise of the Taliban regime at the end of 2001. Of the 2118 casualties reported in 2008, 1160 (55%) were attributed to anti-government elements (AGEs) and 828 (39%) to pro-government forces. The remaining 130 (6%) could not be attributed to any of the conflicting parties since, for example, some

civilians died as a result of cross-fire or were killed by unexploded ordinance. The majority of civilian casualties, namely 41%, occurred in the south of Afghanistan, which saw heavy fighting in several provinces. High casualty figures have also been reported in the south-east (20%), east (13%), central (13%) and western (9%) regions.

5. In 2007 Afghan security forces and IMF supporting the Government in Afghanistan were responsible for 629 (or 41%) of the total civilian casualties recorded. At around 39% of total civilian casualties, the relative proportion of deaths attributed to pro-government forces remained relatively stable for 2008. However, at 828, the actual number of recorded non-combatant deaths caused by pro-government forces amounts to a 31% increase over the deaths recorded in 2007. This increase occurred notwithstanding various measures introduced by the IMF to reduce the impact of the war on civilians.
6. Air-strikes remain responsible for the largest percentage of civilian deaths attributed to pro-government forces. UNAMA recorded 552 civilian casualties of this nature in 2008. This constitutes 64% of the 828 non-combatant deaths attributed to actions by pro-government forces in 2008, and 26% of all civilians killed, as a result of armed conflict in 2008. Night-time raids, and “force protection incidents” which sometimes result in death and injury to civilians, are of continuing concern. Also of concern is the transparency and independence of procedures of inquiry into civilian casualties by the Afghan Government and the IMF; the issuance of *solutia* payments to victims (given that the different troop contributing countries have different conditions for such payments); and the placement of military bases in urban and other areas with high concentrations of civilians which have subsequently become targets of insurgent attacks.
7. In the reporting period, international military forces did attempt to address a number of significant concerns. This included streamlining and greater transparency of command structures between ISAF and Operation Enduring Freedom; the latter now, largely, operates under the Commander of ISAF who is simultaneously Commander of US Forces Afghanistan. However, some operators still remain outside his command. It is also noteworthy that refined tactical directives on “force protection”, air-strikes and night-time raids have been issued in the latter part of 2008. ISAF also introduced a centralised civilian casualties tracking cell that is mirrored within US Forces Afghanistan by a similar tracking cell, aimed at investigating all claims of civilian casualties attributed to ISAF/US Forces Afghanistan. International military forces showed themselves more willing than before to institute more regular and transparent inquiries into specific incidents (although the independence of these inquiries is still questionable).
8. AGEs remain responsible for the largest proportion of civilian casualties. Civilian deaths reportedly caused by AGEs rose from 700 in 2007 to 1,160 in 2008 – an increase of over 65%. While seasonal trends remained broadly consistent, in practically every month of 2008 the insurgent-caused death toll among civilians was higher than in the same month of 2007 and outstripped that resulting from the actions of pro-government forces. The vast majority of those killed by the armed opposition are victims of suicide and other IED attacks (725 killed) and of targeted assassinations (271 killed). Together, these tactics accounted for over 85% of the non-combatant deaths attributed to AGE actions. The remainder of AGE-inflicted fatalities resulted primarily from rocket attacks and from ground engagements in which civilians bystanders were directly affected.

9. Accounting for 725 non-combatant deaths, or 34% of the total civilian casualties in 2008, suicide and IED attacks killed more Afghan civilians than any other tactic used by the parties to the conflict. UNDSS recorded 146 suicide attacks and 1,297 detonated IEDs in 2008, with another 93 suicide attacks and 843 IEDs that were discovered before they could be detonated. Although the majority of such attacks have been directed primarily against military or government targets, attacks are frequently carried out in crowded civilian areas with apparent disregard for the extensive damage they cause to civilians. Throughout 2008, insurgents have shown an increasing disregard for the harm they may inflict on civilians in such attacks. There have been reports of insurgents using civilians as human shields during operations and of deliberately basing themselves in civilian areas heedless of the toll that may be inflicted on civilians. Insurgents have also increasingly targeted persons perceived to be associated or supportive of the Government and its allies, including teachers, students, doctors and health workers, tribal elders, civilian government employees, former police and military personnel, and labourers involved in public-interest construction work. UN and NGO staff members have also become victims of violence and have been killed, kidnapped or received death threats on numerous occasions. Schools, particularly those for girls, have come under increasing attack thereby depriving thousands of students, especially girls, of their right of access to education. According to UNICEF, attacks on schools and educational facilities rose by 24%, from 236 incidents reported in 2007 to 293 in 2008.¹
10. The deteriorating security situation and drastically reduced humanitarian access intensified the challenge for the humanitarian agencies to address the growing needs of vulnerable Afghans. By the end of 2008, “humanitarian space” had shrunk considerably. Large parts of the south, south-west, south-east, east, and central regions of Afghanistan are now classified by the UN Department of Safety and Security as an “extreme risk, hostile environment” for operations. In 2008, 38 aid workers (almost all from NGOs) were killed, double the number in 2007, and a further 147 abducted. UNDSS recorded over 198 other direct attacks, threats and intimidations targeting the aid community in 2008.
11. As the conflict intensifies, Afghans are suffering; in addition to the growing number of deaths and injuries, vulnerable groups are also suffering in terms of destruction of infrastructure, loss of income or earning opportunities, and deterioration of access to basic life-supporting services. UNAMA, concerned about the high cost to civilians, calls upon all parties to respect the relevant rules of international humanitarian law and human rights law and to do everything in their power to ensure that the impact of their actions has the least possible negative impact upon the civilian population.

¹ UNICEF, School incident reports 2008, 12 January 2009.

Glossary

The following terminology and abbreviations are utilized in this Report:

ABP: Afghan Border Police.

AGEs: Anti-Government Elements. These encompass all individuals and groups currently involved in armed conflict against the Government of Afghanistan and/or IMF. They include those who identify as ‘Taliban’ as well as individuals and groups motivated by a range of objectives and assuming a variety of labels.

ANA: Afghan National Army.

ANP: Afghan National Police.

ANSF: Afghan National Security Forces. A blanket term including ABP, ANA, ANP and NDS.

ASF: Afghan Special Forces. These are part of the ANA and are often called ANA Commandos; in some cases OGA (see below) paramilitaries have informally been referred to as ASF.

BBIED: Body-Borne Improvised Explosive Device; see IED.

Casualties: May be of two classifications:

- **Direct:** casualties resulting directly from armed conflict – including those arising from military operations conducted by pro-government forces (Afghan Government Forces and/or International Military Forces) such as force protection incidents; air raids, search and arrest events, counter insurgency or “Global War on Terror” operations. It also includes casualties arising from the activities of AGEs, such as targeted killings, IEDs, VBIEDs, and BBIEDs, or direct engagement with pro-government forces, etc.
- **Other:** casualties resulting indirectly from the conflict, including casualties caused by explosive remnants of war (ERW), deaths in prison, deaths from probable underlying medical conditions that occurred during military operations, or where access to medical care was denied or was not forthcoming. It also includes deaths arising from incidents where responsibility cannot be determined with any degree of certainty, such as deaths or injuries arising from cross-fire. Finally, it includes casualties caused by inter/intra-tribal or ethnic conflict.

Civilian/Non-Combatant: Any person who is not taking an active part in hostilities. It includes all civilians as well as public servants who are not being utilised for a military purpose in terms of fighting the conflict, and encompasses teachers, health clinic workers and others involved in public service delivery, as well as political figures or office holders. It also includes soldiers or any person who are *hors de combat*, whether from injury or because they have surrendered or because they have ceased to take an active part in hostilities for any reason. It includes persons who may be civilian police personnel or members of the military who are not being utilized in counter insurgency operations, including when they are off-duty.

Children: According to the *Convention on the Rights of the Child*, a ‘child’ is defined as any person under the age of 18 (0-17 inclusive). Injury figures for children are likely to be under-

reported due to the fact that age information for injured individuals is often not readily available or reported.

COM-ISAF: The Commander of ISAF; see ISAF.

ERW: Explosive Remnants of War. This can include land mines, un-detonated or unexploded ordinances, shells, rockets, etc.

Force protection incidents: situations where civilians fail to heed warnings from military personnel when approaching or overtaking military convoys or failing to follow instructions at check points. Force protection incidents can also occur when individuals are perceived as too close to military bases or installations and there is a failure to follow warnings from military personnel.

GoA: Government (of the Islamic Republic) of Afghanistan

Humanitarian space: The term ‘éspace humanitaire’ was coined by former Médecins Sans Frontières (MSF) president Rony Brauman, who described it in the mid-1990s as “a space of freedom in which we are free to evaluate needs, free to monitor the distribution and use of relief goods, and free to have a dialogue with the people”. The UN Office for the Coordination of Humanitarian Affairs (OCHA)’s *Glossary of Humanitarian Terms* has no specific entry for humanitarian space, but it does mention the term as a synonym for the ‘humanitarian operating environment’: “a key element for humanitarian agencies and organisations when they deploy, consists of establishing, and maintaining a conducive humanitarian operating environment”. The Glossary goes on to state that: “...adherence to the key operating principles of neutrality and impartiality in humanitarian operations represents the critical means, by which the prime objective of ensuring that suffering must be met wherever it is found, can be achieved. Consequently, maintaining a clear distinction between the role and function of humanitarian actors from that of the military is the determining factor in creating an operating environment in which humanitarian organisations can discharge their responsibilities both effectively and safely.” The authors of the OCHA/Department of Peacekeeping Operations (DPKO) report on integrated missions, published in 2005, also address the need to “preserve” humanitarian space, and focus on the distinction between civilian and military functions. Humanitarian space also encompasses the concept that civilians have a right to access life-saving or life-preserving assistance.

IDPs: Internally Displaced Persons

IED: Improvised Explosive Device. A bomb constructed and deployed in ways other than in conventional military action. IEDs can also take the form of suicide bombs, such as BBIEDs or Vehicle Borne (VBIEDs), etc.

Incidents: Events where civilian casualties resulted from armed conflict. Reports of casualties arising from criminal activities etc., are not included in UNAMA’s civilian casualty reports.

IMF: “International Military Forces” includes all foreign soldiers forming part of ISAF and US Forces Afghanistan (including OEF) who are under the command of Commander of ISAF (COM-ISAF). The term also encompasses those forces not operating under the Commander of ISAF, including certain Special Forces.

Injuries: Include physical injuries of differing severity. The degree of severity of injury is not recorded in UNAMA Human Rights' Database. Injuries do not include cases of shock or psychological trauma.

ISAF: International Security Assistance Force in Afghanistan. ISAF has a peace-enforcement mandate under Chapter VII of the UN Charter. However, it is not a UN force but a “coalition of the willing” deployed under the authority of the UN Security Council. In August 2003, upon the request of the UN and the Government of the Islamic Republic of Afghanistan, NATO took command of ISAF. The NATO force currently comprises some 55,000 troops (including National Support Elements) from 41 countries as well as 26 Provincial Reconstruction Teams (PRTs). Since November 2008, the Commander of ISAF serves also as the Commander of US Forces Afghanistan, although the chains of command remain separate.

NATO: North Atlantic Treaty Organisation. Members of NATO are the main troop contributing countries to ISAF; see ISAF.

NDS: National Directorate of Security. Afghanistan's State intelligence service.

OEF: “Operation Enduring Freedom” is the official name used by the US Government for its contribution to the War in Afghanistan under the umbrella of its Global War on Terror (GWOT). It should be noted that Operation Enduring Freedom - Afghanistan, which is a joint US and Afghan operation, is separate from ISAF, which is an operation of NATO nations including the USA and other troop contributing nations. Most US forces operating under OEF since October 2008 have been incorporated into “US Forces Afghanistan” (see below) under the command of General McKiernan, who is also ISAF Commander – although some special forces remain under separate command.

OGAs: Other Government Agencies. This is used to refer to certain security operatives who do not operate under regular military chains of command. Frequently who has command responsibility for such entities is unclear.

Pro-government forces (PGF):

- **Afghan Government Forces.** All forces who act in all military or paramilitary counter-insurgency operations and are directly or indirectly under the control of the Government of Afghanistan. These forces include, but are not limited to, the Afghan National Army (ANA), the Afghan National Police (ANP), the Afghan Border Police (ABP), the National Directorate of Security (NDS).
- **International Military Forces (IMF)** and OGA.

PRTs: Provincial Reconstruction Teams. These are small teams of civilian and military personnel operating within ISAF’s regional commands working in Afghanistan’s provinces to help reconstruction work. Their role is to assist the local authorities in the reconstruction and maintenance of security in the area.

UNDSS: United Nations Department of Safety and Security.

US Forces Afghanistan: or “USFOR-A” is the functioning command and control headquarters for US forces operating in Afghanistan. USFOR-A is commanded by General McKiernan, who also serves as the NATO/ISAF commander. Under this new arrangement, activated in October 2008, the approximately 20,000 US forces, operating as part of Operation Enduring Freedom, were placed

under the operational control of USFOR-A. The ISAF and OEF chains of command remain separate and distinct, and US Central Command continues to oversee US counterterrorism and detainee operations.

VBIED: Vehicle-Borne Improvised Explosive device; See IED.

Protection of Civilians in Armed Conflict: 2008

UNAMA's mandate in relation to protection of civilians

UNAMA Human Rights conducts activities aimed at promoting and protecting human rights in accordance with UN Security Council Resolution 1806 (2008), paragraph (g), which explicitly mandates UNAMA to monitor the situation of civilians, to coordinate efforts to ensure their protection and to assist in the full implementation of the fundamental freedoms and human rights provisions of the Afghan Constitution and international treaties to which Afghanistan is a State party. This Report has been compiled pursuant to this mandate.

Introduction

Armed conflict in Afghanistan, although sporadic after the ousting of the Taliban regime in 2001, never really abated in certain areas of the country. Since 2005 the security situation has deteriorated with insurgent/AGE attacks and operations by pro-government forces encroaching into more areas of the country. As the conflict has widened and deepened throughout 2007 and 2008, almost a third of the country is now directly affected by armed conflict, while pockets of armed conflict have started to occur in areas which were formerly relatively tranquil. Armed conflict is particularly prevalent in the south, south-east, east, central and western regions of the country, and is now spreading into the north, north-east and central highlands regions.

As the conflict has intensified, it is taking an increasingly heavy toll on civilians. AGE tactics have shifted, from frontal or ambush attacks on pro-government forces, to insurgent or guerrilla type activities, including asymmetric attacks such as IEDs, VBIEDs and BBIEDs and targeted assassinations. Operations are frequently undertaken regardless of the impact on civilians in terms of deaths and injuries or destruction of civilian infrastructure. The GoA and its allies, in attempting to quell the insurgency, are also undertaking more operations in areas where civilians reside; this has resulted in a rising toll on civilians and destruction of civilian infrastructure.

AGEs' attacks on humanitarian workers and government employees (including medical and educational staff) have increasingly impaired access by Afghans to humanitarian assistance, in particular to life-saving medicine, food, and education. This has a particularly detrimental impact on women and children living in conflict affected areas. Large parts of the south, south-west, south-east, east, and central regions of Afghanistan are now classified as 'extreme risk, hostile environment' further inhibiting access by humanitarian agencies in direct service delivery.

Operations carried out by pro-government forces also result in high numbers of civilian casualties, notwithstanding efforts to implement policies and procedures to minimize the impact of their operations on civilians. Air-strikes remain responsible for the largest percentage of civilian deaths attributed to pro-government forces. Practices regarding search and seizure operations (including night time raids) are also of concern, and there have been reports of a number of joint Afghan and IMF operations in which excessive use of force has allegedly resulted in civilian deaths. There have been a number of "force protection incidents" whereby civilians have been killed after they failed to follow instructions when perceived as being too close to military convoys or military installations, or while approaching check points.

The effects of the armed conflict on civilians has been documented in reports by the UN Secretary General to the Security Council, the Under-Secretary General for Humanitarian Affairs, and in missions undertaken by the Representative of the UN Secretary General on the Human Rights of Internally Displaced Persons (August 2007), the High Commissioner for Human Rights (November

2007), the UN Special Rapporteur on Extrajudicial Arbitrary or Summary Executions (May 2008), and the Secretary General's Special Representative for Children and Armed Conflict (July 2008). The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston, concluding a 12 day visit to Afghanistan in May 2008, found that "Afghanistan continues to suffer from a large number of avoidable killings of civilians."² He raised concerns regarding the high number of unlawful killings by the Afghan police and the impunity that exists in such cases; the "wanton and brutal killing of civilians" by insurgents, including targeted executions and civilians being killed in suicide and IED attacks; and the existence of special national and international armed units apparently not accountable to any conventional military command or civilian Government authority. The Under-Secretary General for Humanitarian Affairs at the Security Council Open Debate on the Protection of Civilians in Armed Conflict, 27 May 2008, in reference to Afghanistan, stated that he remained concerned by civilian casualties resulting from air-strikes and search operations conducted by national and multi-national forces, as well as the number of force protection incidents.

UNAMA, often in collaboration with members of the humanitarian community, has undertaken activities geared to the reduction of civilian casualties arising from the armed conflict. Initiatives have included the investigation of alleged incidents involving civilian casualties or destruction of civilian infrastructure, advocacy aimed at securing compliance with international humanitarian law and international human rights norms, collection and analysis of information regarding the impact of the armed conflict on civilians, design and implementation of an electronic database to compile statistics and reports, and the compilation of reports within the UN system and publicly. UNAMA Human Rights also participates in the Protection Cluster as co-chair, and has undertaken advocacy along with other humanitarian and civil society actors with Government authorities, Afghan National Army and international military forces concerning the impact of the armed conflict on civilians and the necessity of compliance with applicable international humanitarian and human rights law.

UNAMA remains concerned at the high level of civilian casualties from the ongoing armed conflict in Afghanistan and believes more has to be done by all parties to the conflict to reduce the impact on civilians. While certain pro-government forces have been responsive to the issue of civilian casualties arising from their operations, civilian deaths caused by air-strikes is still a serious concern. AGEs continue to undertake asymmetric attacks and conduct operations in civilian areas, particularly suicide bombings, heedless of the toll on civilians.

Legal responsibilities of the parties to the armed conflict

The current situation in Afghanistan is quite complex, involving armed hostilities between the Government of Afghanistan and its supporters (including IMF) on the one side, and insurgents encompassing individuals and groups of diverse backgrounds, motivations, and command structures, including those characterised as Taliban on the other.

Common Article 3 to the four Geneva Conventions establishes the minimum standards that parties to an armed conflict should observe concerning the treatment of civilians in non-international armed conflict.³ Common Article 3 thus extends the reach of humanitarian law into situations occurring within the territory of a sovereign State and bind not only State actors but also non-State actors involved in the conflict.

² Press Statement, Professor Philip Alston, Special Rapporteur of the United Nations Human Rights Council on extrajudicial, summary or arbitrary executions (Kabul, 15 May 2008).

³ Uhler et al., *The Geneva Conventions of 12 August 1949 - Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* , p.35.

Customary rules of international humanitarian law are also applicable to the parties in the armed conflict in Afghanistan. In this respect, international judicial bodies have indicated that a number of norms contained in the Geneva Conventions and the Additional Protocols are now part of customary international law.⁴ This has been further reaffirmed by the International Committee of the Red Cross (ICRC), which has concluded that a number of the rules of the four Geneva Conventions and Additional Protocol I have now acquired the force of customary international law, and that many of these rules are equally applicable in international as well as non-international armed conflict.⁵ Among the most important of these are the principles of distinction and proportionality, as well as other rules limiting the means and methods of warfare.

Concerning the question of accountability nothing precludes insurgents, once they are *hors de combat*, from being prosecuted under the criminal laws of the country concerned. In any case, international human rights standards to which the State is a party or which form part of customary international law continue to apply in situations of armed conflict.⁶ Members of the pro-government military forces are also accountable for violations of international humanitarian law and international human rights norms.

While the primary responsibility for the protection of the civilian population during armed conflict lies with the Afghan Government, all parties to the armed conflict, including the IMF, have responsibilities under international law to protect civilians/non-combatants and to minimize the impact of their actions on the civilian population and civilian infrastructure.

All non-State parties involved in the conflict also have obligations under international humanitarian law. They also are liable for violations of the criminal and other laws of Afghanistan.

The Government of Afghanistan (GoA) has an obligation and a responsibility to ensure law and order throughout the territory of Afghanistan. This means that it has the right and the duty to enforce the laws of the country subject to norms of international law which it has accepted or which are binding on it. Given the prevailing security conditions and the nature of the conflict in many parts of the country, UNAMA recognizes the difficulties faced by the Afghan Government and international military forces in their efforts to ensure law and order. Law enforcement personnel are under attack by insurgency groups, which also carry out attacks through suicide/IED bombings, abductions and extrajudicial executions, and often fail to properly distinguish between civilian and military objectives, and between civilians and military objects in the conduct of their operations. Data on patterns of AGE activities suggests that insurgents deliberately base their operations inside civilian areas so as to use the local population as camouflage, or for the purpose of attracting a military response by pro-government military forces which might result in civilian casualties and destruction of property. This in turn is utilized by AGEs to undermine support for the Government and military forces (national and international) operating in support of it. Similarly, military forces (whether Government or IMF) have a duty to ensure that their military bases and facilities are positioned so as not to endanger civilians unnecessarily.

In contested areas, civilians are particularly vulnerable as they struggle to safeguard lives and livelihoods in an environment of decreasing access to essential services. The combination of fear and anger, associated with widespread intimidation and the high number of avoidable deaths, feeds a cycle of violence and lawlessness that further undermines respect for basic norms of humanity. There is now an urgent need for all key stakeholders to take stock of the growing civilian death toll and to pursue measures aimed at mitigating the impact of the conflict on civilians.

⁴ See for example ICTY, Case No. IT-95-16-T, para. 524.

⁵ ICRC, *Customary International Humanitarian Law*, ed. Jean-Marie Henckaerts and Louise Doswald-Beck (CUP/ICRC, Cambridge 2005)

⁶ International Court of Justice, *DRC v. Uganda* case, para. 216.

UNAMA Human Rights' strategy for Protection of Civilians

UNAMA Human Rights is focussed on the implementation of strategies and initiatives geared to mitigating the effect of the armed conflict on civilians. In achieving this goal, UNAMA Human Rights staff collect, monitor and analyze information relating to specific incidents of alleged civilian casualties, and develops advocacy strategies based on the information obtained. Such strategies include, *inter alia*, direct advocacy with pro-government military forces, Afghan Government officials, Afghan Parliamentarians and Ministers of State, Embassies and Diplomatic Missions, UN Agencies, and international and national NGOs. UNAMA Human Rights also undertakes a coordinating role, in conjunction with other units of UNAMA, UN agencies, and members of civil society through mechanisms such as the Afghanistan Protection Cluster.

In March 2008 the Humanitarian Country Team (HCT) agreed to scale-up humanitarian action including the establishment of a Protection Cluster. The Protection Cluster - an inter-agency committee chaired by UNHCR and co-chaired by the Norwegian Refugee Council (NRC) and the OHCHR/UNAMA - coordinates the efforts of NGOs, the Afghan Independent Human Rights Committee (AIHRC) and UN agencies for the protection of Afghans and, *inter alia*, to mitigate the effects of the armed conflict on them.

A workshop convened in Kabul in August 2007 by UN and various implementing partners on the protection of civilians revealed that civil society in Afghanistan wants UNAMA and the OHCHR to play a key role in providing public reports on civilian casualties in order to strengthen accountability and promote transparency in the follow-up to incidents where civilians are killed or injured.⁷ As part of its ongoing activities, UNAMA has supported the establishment of a Special Investigative Team within the AIHRC to monitor the impact of the conflict on civilians.

Overall, the purpose of UNAMA Human Rights monitoring and reporting on the impact of armed conflict on civilians is to:

- assist the Government of Afghanistan and all relevant stakeholders to provide protection to civilians affected by armed conflict;
- engender respect amongst the parties to the conflict for international humanitarian law, international human rights law and the Constitution and laws of Afghanistan so as to minimize the numbers of civilians killed or wounded or otherwise detrimentally affected as a result of armed conflict;
- develop strategies, such as advocacy and coordination, aimed at mitigating the effect of the armed conflict on civilians; and
- inform the public, both in Afghanistan and abroad, of the effect of the conflict on civilians.

Methodology

The information used to compile UNAMA's reports is obtained from a range of sources by UNAMA Human Rights with staff in regional and provincial offices throughout Afghanistan.

⁷ In response to the deteriorating security situation and increasing insurgency and counterinsurgency operations that have resulted in greatly amplified risks to civilians in Afghanistan, the Office for the Coordination of Humanitarian Affairs in collaboration with the United Nations Assistance Mission in Afghanistan, the Afghanistan Independent Human Rights Commission, the United Nations Children's Fund, the Office of the High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees and the Norwegian Refugee Council organized a workshop on the protection of civilians in armed conflict in Afghanistan held on 13-15 August 2007.

When reports of incidents are received, UNAMA Human Rights conducts independent investigations to substantiate or discount the initial report. The civilian casualty figures reported by UNAMA Human Rights are the result of investigations and reports prepared by the team's staff members in accordance with the Security Council monitoring mandate. UNAMA Human Rights investigates all reports it receives of civilian casualties arising from the armed conflict, no matter which group, entity, or authority is alleged to be responsible.

UNAMA Human Rights investigates reports of civilian casualties by tapping as wide a range of sources and types of information as possible. All sources, and the information they provide, are analysed for their reliability and credibility. In undertaking investigation and analysis of specific incidents, UNAMA Human Rights endeavours to corroborate and cross-check all information from as wide a range of sources as possible including, for example, testimony of victims, victim's relatives, and witnesses, health personnel, community elders, religious leaders and tribal leaders, pro-government military forces, local, provincial, regional and central Government officials, United Nations Department of Safety and Security (UNDSS), mass media, published reports and documents, and other secondary sources.

Wherever possible, investigations are based on the primary testimony of victims and/or witnesses of the event and on-site investigations. On some occasions, primarily due to security constraints regarding access, this level of investigation is not possible. In such instances UNAMA Human Rights relies on a range of techniques to gain information through reliable networks, using a wide range of sources. As already noted, all reports are assessed for credibility and reliability.

Every effort is made to ensure that data contained in UNAMA Human Rights' reports on specific incidents is comprehensive; however, such data is not exhaustive. Where UNAMA Human Rights is not satisfied with the evidence concerning a particular incident, it will not be reported. In some instances, investigations may take several weeks before conclusions can be drawn. This may also mean that conclusions as to civilian casualties arising from a particular incident may be adjusted as more information comes to hand and is analysed. However, where information is equivocal, then conclusions will not be drawn until more satisfactory evidence is obtained, or the case will be closed without conclusion and will not be included in statistical reporting or trends analysis. As information is updated, and conclusions and statistics are modified, this can result in slight differences between the statistics published from month to month.

Due to limitations in the operating environment, UNAMA does not break responsibility for civilian casualties into particular sub-groups, other than to attribute incidents (where possible) to pro-government forces or AGEs. In relation to pro-government forces, operations are often conducted jointly between Afghan military forces and contingents of IMF; frequently, sources of information are not able to distinguish between the different elements of those forces and different chains of command, such that specific responsibility can be attributed. ISAF will often deny direct involvement in a specific incident, leaving it to be assumed who was directly responsible since other military forces operating in the country do not communicate to UNAMA whether they were present or not. UNAMA concludes that distinguishing direct responsibility, given such limitations, would be misleading, since it is, in most instances, not possible to properly distinguish between which components of Afghan Military Forces or IMF were actually involved. Similarly, the nature of the armed insurgents, being composed of diverse groups which do not necessarily identify as Taliban and do not act under a single line of authority, and are not apparently motivated by the same goals and ideologies, makes it equally difficult to attribute actual responsibility for civilian casualties to particular individuals or groups of AGEs. This is particularly so when the evidence, even of eye-witnesses, is not properly able to distinguish between them.

In some incidents, the non-combatant status of the reported victims of an incident is disputed. In such cases UNAMA Human Rights is guided by all the information to hand, as well as the

applicable standards of international humanitarian law. This means that UNAMA Human Rights does *not* presume fighting-age males are automatically civilians. Rather, such claims are assessed on the particular facts that are available concerning the incident in question. Thus, if the non-combatant status of one or more victim(s) remains under significant doubt, such deaths are not included in the overall number of civilian casualties.

In light of the above, UNAMA Human Rights does not claim that the statistics presented in this report are complete; it may be the case that, given the limitations in methodology noted above, UNAMA Human Rights is under-reporting civilian casualties.

Protection of Civilians Database

Between October and December 2008, UNAMA Human Rights introduced a new electronic database for the management and recording of cases of civilian casualties in Afghanistan to all field offices as an enhanced tool for measuring the impact of the armed conflict on civilians and to assist efforts for their protection. The database, which became operational on 01 January 2009 will facilitate human rights staff to record and analyze information and manage cases in an effective and uniform manner, and will greatly assist UNAMA Human Rights' advocacy aimed at enhancing the protection of civilians through easier and faster reporting.

The database obliges users into a structured recording process and requires an analysis of all sources of information before a report can be generated for public use. For reasons of confidentiality, and the safety of staff and sources, access to the database is restricted to UNAMA Human Rights Officers who are registered users, both in the field and in the UNAMA Human Rights office in Kabul.

It is planned that with the aid of the database and improved information gathering, analysis and reporting techniques, UNAMA Human Rights will be able to better, and more efficiently disaggregate data, and consequently be able to more clearly understand the impact of armed conflict on women and children.

Impact of the Armed Conflict on Civilians

Overview for 2008

The armed conflict intensified significantly throughout Afghanistan in 2007 and 2008, with a corresponding rise in civilian casualties and a significant erosion of humanitarian space. In addition to fatalities as a direct result of armed hostilities, civilians have suffered from injury, loss of livelihood, displacement, destruction of property, and disruption of access to education, healthcare and other essential services.

UNAMA Human Rights recorded a total of 2,118 civilian casualties between 01 January and 31 December 2008. This figure represents an increase of just over 39% on the 1,523 civilian deaths recorded in 2007 (**see Graph #1**). The 2008 civilian death toll is thus the highest of any year since the end of major hostilities which resulted in the fall of the Taliban regime.

Of the 2,118 casualties reported in 2008, 1,160 (55%) were allegedly caused by AGEs and 828 (39%) by pro-government forces. The remaining 130 (6%) could not be attributed to any of the conflicting parties because, for example, some civilians died as a result of cross-fire or were killed by unexploded ordinance (**see Graph #2**). The majority of civilian casualties occurred in the south of Afghanistan, which saw heavy fighting in several provinces. High casualty figures have also been reported in the south-east, east, central and western regions (**see Graph #3**).

January 2008 saw the number of civilian casualties almost on a par with that experienced in January 2007 – January has traditionally seen lower insurgent and PGF activity, largely due to the fact it is mid-winter. However, this pattern radically changed in February 2008 when 168 civilians died, more than tripling the number of such casualties recorded in February 2007 when 45 civilians were killed. This indicated that the AGEs were commencing their activities earlier than in previous years despite the winter. Contributing to this higher figure was one particular incident on 17 February 2008, when a suicide bombing at a dog fight in Arghandab district, Kandahar, killed 67 civilian spectators. While the use of IEDs, VBIEDs and BBIEDs has been a constant tactic used by AGEs, the incident in Arghandab indicated the growing randomness of the effect of such attacks as well as an increasing disregard of the use of such tactics in civilian areas and the consequent loss of civilian life – a trend that was to continue throughout the year. Such incidents included the 7 July bombing of the Indian Embassy in Kabul, which killed 55 civilians, and another attack in Kabul on 27 November near Masood Square, killing 4 civilians and injuring a further 10.

From February 2008 until the end of December 2008 civilian casualties were consistently higher than those recorded for 2007, except in June 2008 when 172 civilian casualties were recorded compared with the figure of 253 for June 2007. July 2008 was a particularly deadly month, with 323 civilian casualties recorded. The figure, however, for August 2008 was even higher, with 340 civilian deaths recorded, making it the highest number of civilian casualties recorded for any month since the end of 2001. A contributing factor was the high number of civilian casualties caused by an operation conducted by the IMF in the village of Azizabad in Shindand District of Herat Province on 22 August.

Despite the dramatically rising civilian casualty figures reported throughout 2008, the month of September 2008 saw a drop in the levels of reported civilian casualties to 162, a reduction of 52% from the figure recorded for August 2008. The September 2008 figure was only slightly higher than the figure in September 2007 during which 155 civilians died. This drop in casualties was largely attributable to various factors, including the new tactical directives issued by Commander ISAF on use of air-strikes, the fact that Ramadan and International Peace Day were both celebrated during the month, and there were increased security operations by the Pakistan Government against

insurgents in the Tribal Areas. There was a reduction in civilian casualties reported from all regions, the most significant being from the western and southern regions.

With 194 recorded civilian deaths, October 2008 did not see the extremely high number of civilian fatalities recorded in July and August, but considerably more than the 162 recorded for September 2008. This suggests that the dip in casualty rates in September was temporary and did not reflect a significant improvement in the overall situation. Indeed, the October death-toll was of particular concern as it was more than double the 80 civilian deaths recorded for October 2007. The figure for October was not due to any particularly deadly event. Significantly, it appeared that the decline in civilian casualties evident in previous years as winter approached would likely be much less pronounced than in past years. Of the 194 reported civilian casualties for October 2008, 115 (59%) died from attacks by AGEs, 74 (38%) as a result of operations conducted by pro-government forces, and 5 (3%) from crossfire and other conflict related incidents, roughly consistent with overall trends this year.

With 176 recorded civilian deaths, November 2008 saw a further drop from the extremely high number of civilian fatalities recorded between July and August 2008 and represented a further decline on the 194 civilian deaths reported in October 2008. However, the figure was still higher than the 157 casualties recorded in September 2008, and the 160 civilian deaths recorded for November 2007. While the rise in figures for October 2008 initially indicated that the decline in military and insurgent activities witnessed in previous years with the approach of winter was going to be delayed, the figure for November seemed to indicate that winter was at last starting to have an effect on military activities with a resulting drop in civilian casualties. Of the 176 reported civilian casualties for November 2008, 90 (51%) died from attacks by AGEs, 72 (41%) as a result of operations conducted by pro-government forces, and 14 (8%) from crossfire and other conflict related incidents, roughly consistent with overall trends this year.

With 104 reported civilian casualties in December 2008, civilian deaths declined significantly from 176 recorded in November 2008. This decline was consistent with seasonal trends and parallels a similar fall in reported security incidents as cold weather began to envelop the country. Compared to December 2007, in which 88 civilian deaths were reported (a similarly significant decline in death rates notable from the preceding month), the casualty figures recorded for December 2008 represented an 18% increase in civilian deaths. Broadly consistent with overall trends, of the 104 reported civilian casualties for December 2008, 54 (52%) died from attacks by AGEs, 33 (32%) as a result of operations conducted by pro-government forces, and 17 (16%) from crossfire and other conflict related incidents.

From the beginning of winter there was also a shift in the location of attacks. Incidents tended to concentrate in provinces less affected by the weather, such as Khost or those in southern Afghanistan. Indicating the spread of conflict into hitherto more stable regions, the northern region reported a notably relatively higher number of civilian deaths from October 2008 when 1 civilian casualty was recorded, to 7 in November 2008, to 10 civilian casualties in December 2008.

Air-strikes by IMF took a heavy toll throughout the year. By the end of July 2008, some 224 civilians had been reportedly killed by air-strikes, which constituted more than half of the 384 non-combatant deaths attributed to actions by pro-government forces for that period. In July there were a number of high profile incidents, including an air strike on 6 July 2008 in Deh Bala district, Nangarhar, in which 47 civilians were killed, including some 30 children and 13 women travelling on foot to a wedding party. In several incidents, compounds with an alleged AGE presence were targeted in air-strikes but civilians were also killed in such attacks. One incident occurred on 4 July 2008 in Nuristan, in which UNAMA Human Rights documented the death of 17 civilians; this included two women and some medical staff who were killed while trying to leave the area. This

was followed by a military operation that took place in Azizabad village of Shindand district, Herat Province, on 21-22 August 2008 which resulted in 92 civilian casualties, including 62 children.

Following the issuance of a new tactical directive by Commander of ISAF on the use of air-strikes, there was a marked reduction in civilian casualties attributed to pro-government forces in October 2008. However this did not continue into November 2008; a particularly deadly event on 3 November in Wach Bakhto village in Shawali Kot district, Kandahar province, resulted in a toll of 37 civilians dead and a further 31 injured in an air-strike which information suggests may have erroneously targeted a wedding celebration. In December 2008 the number of civilian deaths attributed to air-strikes once again declined, indicating that the spike in November had resulted from the one incident in Shawali Kot, in line with the declining trend seen in September and October.

Hostility to search and seizure operations (including night time raids) became more pronounced throughout the year, despite amendment of standard operating procedures regarding such practices. In particular there were a number of joint Afghan and international operations in which excessive use of force allegedly resulted in civilian deaths.

UNAMA data also suggests that 41 civilians were killed in “force protection incidents” because they were perceived, for example, as being too close to military convoys or failing to follow instructions at check points. This constitutes a relatively small part of the overall casualty figures and suggests that amendments by IMF to “escalation of force procedures” and greater awareness among Afghan civilians have had a positive impact.

Throughout 2008, AGEs continued to target individuals perceived to be associated with the Government or the international community for assassination. The victims of intimidation tactics include doctors, teachers, students, tribal elders, civilian government employees, former police and military personnel, and labourers involved in construction work. Incidents recorded by UNAMA throughout the year further confirm already substantial evidence indicating that insurgents are undertaking a systematic campaign of intimidation and violence in order to undermine confidence in the GoA and its international backers.

Threats against education facilities led to the closure of several schools and destruction of others in insurgent-dominated areas of the country, such as a number of districts in Farah, Badghis, Helmand and Kandahar provinces. Attacks against education institutions, including girls’ schools, were also noted in other areas of the country, such as in the western, northern, eastern and south-eastern regions. In 2008, 293 school-related security incidents and 92 deaths were reported, compared to 232 school-based security incidents in the same period for 2007 and 213 incidents in all of 2006. In early September 2007, AGEs burned more than 100,000 textbooks *en route* from Kabul for Kandahar and Nooristan provinces. It was also confirmed that more than 640 schools had ceased to provide education services to students because of AGE threats. As a result of these factors alone, it is estimated that more than 230,000 children have been denied access to education.

“Humanitarian space” has shrunk considerably. Large parts of the south, south-west, south-east, east, and central regions of Afghanistan are now classified by UNDSS as ‘extreme risk, hostile environment’. Aid organizations and their staff have been subjected to a growing number of direct attacks, threats, and intimidation. Some highly publicized incidents included an ambush on an International Rescue Committee vehicle on 13 August 2008 in Logar province, in which three female international aid workers and their Afghan driver died and for which the Taliban claimed responsibility. On 26 August 2008 an aid worker was abducted and subsequently killed in Nangarhar province. In September 2008, there was a suicide attack on a UN convoy in Spin Boldak in which three UN staff died: two doctors involved in a polio eradication campaign and one UNAMA driver. Attacks on NGOs also continued in September 2008, especially in Logar Province

in the central region where four NGO staff were reportedly abducted by AGEs, while another four NGO staff were reportedly abducted in the eastern region. In October 2008 Kabul saw a notable rise in the number of direct attacks on international and humanitarian targets, with a number of killings and abductions.

In 2008, a total of 38 aid workers were killed, 147 were abducted, 70 aid convoys and 63 aid facilities were attacked. Insurgents also frequently targeted private transport companies and construction workers who are not categorized as aid workers but in many cases were involved in the delivery of humanitarian aid and the implementation of development projects. According to the Agency Coordinating Body for Afghan Relief (ACBAR), an umbrella group of NGOs, the situation had “forced many aid agencies to restrict the scale and scope of their development and humanitarian operations.” This effectively means that vulnerable people in need of assistance are unable to exercise their right to receive life-saving humanitarian support. Subsequent to the killing of its staff, the IRC after 20 years of operating in Afghanistan suspended all its programs for several weeks, which is illustrative of the continuing erosion of humanitarian space and the ramifications of this for vulnerable Afghans in violent and volatile areas.

Women and children have, to a significant extent, been the unseen victims of the armed conflict in Afghanistan. The UN Special Rapporteur on Extrajudicial, Summary Executions in May 2008 observed: “Women are also threatened or targeted for assassination by the Taliban and other AGEs for a range of reasons”. Women and children, even if they not the intended targets, were often subjected to violence, particularly through insurgent attacks carried out heedless of the implications for civilians. Air-strikes, night raids on civilian dwellings, and force protection incidents conducted by Afghan Government soldiers and IMF in several cases resulted in the death or injury of women and children.

Violence inflicted directly or indirectly on women and children often results in serious psychological trauma. Ongoing violence and lack of security also significantly impedes or prevents access by civilians, in particular women and children, to essential services, including health care and education. Armed conflict causes social and economic harm, such as depriving families of breadwinners, or imposing extra financial burdens in relation to medical care for injured family members. As the UN Special Rapporteur Extrajudicial, Summary Executions observed: “Women who have lost men-folk in the current conflict very often end up in disastrous situations. Some receive monetary assistance for their losses, but many are unaware of such a possibility.”

Understanding adequately the ways in which women are affected by the conflict is difficult, inhibiting coordinated interventions at the policy, advocacy or programme levels to mitigate the impact of the conflict on them. The new electronic database, introduced in January 2009, will help UNAMA to improve the collection and analysis of information, including disaggregation of data on civilian casualties by age and gender where possible. This will enable a fuller picture of the impact of the conflict on men, women, girls and boys. Also important to examine are the effects of conflict and insecurity on incidents of domestic violence; the impact of limitations of freedom of movement for women’s access to basic and maternal health care; the differential impact of insecurity on girl’s access to education; the effects of conflict-related displacement; and the poverty suffered by women whose male relatives have been killed or injured.

The last months of 2008 saw a number of particularly high-profile incidents that illustrate the impact of the armed conflict on children. In a widely condemned attack in Kandahar on 12 November 2008, two attackers on a motorbike used toy water-pistols to spray a group of school girls with acid. Sixteen individuals, including 12 students and 4 teachers were injured, 6 of them critically. The acid-attack was widely blamed on insurgents, though the Taliban later denied any involvement. Other incidents demonstrate the way in which children frequently fall victim to suicide and IED attacks or air-strikes simply because they happen to be close to the intended target

at the time of an attack. On 28 December 2008, for instance, a suicide bomb targeting the District Administrative Centre of Mandozaiy district, Khost, was detonated as a group of school children was walking by. The attack killed 5 children and wounded 14. Finally, in December in an example of the use of children by insurgents to carry out acts of violence, a teenage boy in Sangin district, Helmand, was pushing a wheelbarrow filled with explosives that detonated near a passing patrol of international soldiers. It is not clear if this was a suicide attack or whether the device was remotely detonated.

Overall, there is only limited information on the specific ways in which children are affected by the armed conflict, including through internal displacement, detention by ANSF and IMF, and impairment of access to education facilities due to insecurity and targeting of schools and teachers by AGEs. The Security Council in Resolution 1806 (para 14) expressed its strong concern about the killing and maiming of children as a result of the conflict. The Security Council stressed the importance of implementing Security Council Resolution 1612 in Afghanistan and requested that the child protection capacity of UNAMA be strengthened. During 2008, coinciding with a visit of the Special Representative of the Secretary General on Children and Armed Conflict, a special Task Force aimed at monitoring the effects of armed conflict on children was established pursuant to Security Council Resolution 1612. UNAMA is part of this task force, which monitors the effects of the conflict on children and contributes to the Secretary General's periodic reports to UN Security Council.

Landmines and Explosive Remnants of War (ERW)

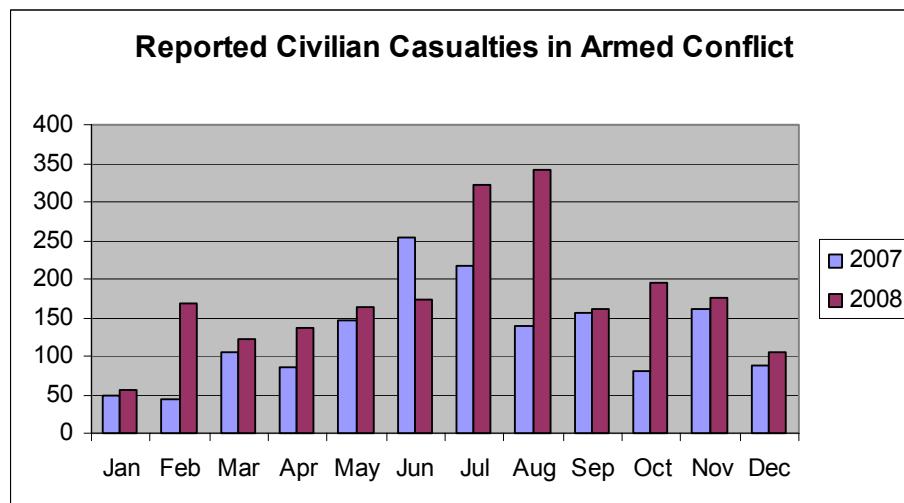
ERW are of major concern in Afghanistan. According to the Mine Action Coordination Centre for Afghanistan (MACCA) on average, over 60 people are killed or injured every month in mine-related incidents and half of the victims are children. According to the MACCA, supported by the United Nations and the Government of Afghanistan through its Department of Mine Clearance, 179 people were killed and 574 were injured as a result of mines and ERW in 2008, a slight rise on 2007.

In Afghanistan, there are currently 5,560 known hazards, covering an estimated total area of 690 km² and impacting over 2,090 communities. In 2008 alone, more than 84,000 anti-personnel mines, 900 anti-tank mines and 2.5 million ERW were destroyed by the Mine Action Programme of Afghanistan (MAPA). This resulted in the clearance of over 50km² of minefields and almost 113km² of former battle area. Over 1.4 million Afghans received Mine Risk Education (MRE), of which over 40% were female and 70% were children. 15,000 teachers have now been trained to teach MRE.

The MAPA has achieved over 70% progress towards achieving the goal set by the Afghanistan Compact and is over half way towards the Ottawa/ Mine Ban Treaty of completely clearing all mined areas. However, as highlighted above, the level of contamination throughout the country remains high and has a serious impact on the lives and livelihoods of millions of Afghan civilians.

Figures for those killed by ERW are not included in Protection of Civilian casualty figures presented in this report.

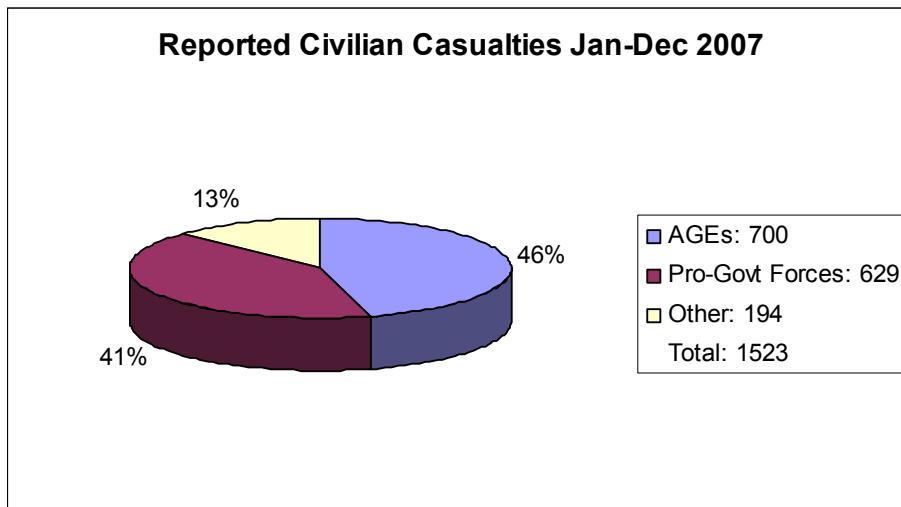
#1 Graph/Table showing the number of reported civilian casualties as a result of armed conflict in Afghanistan in 2007 and 2008*



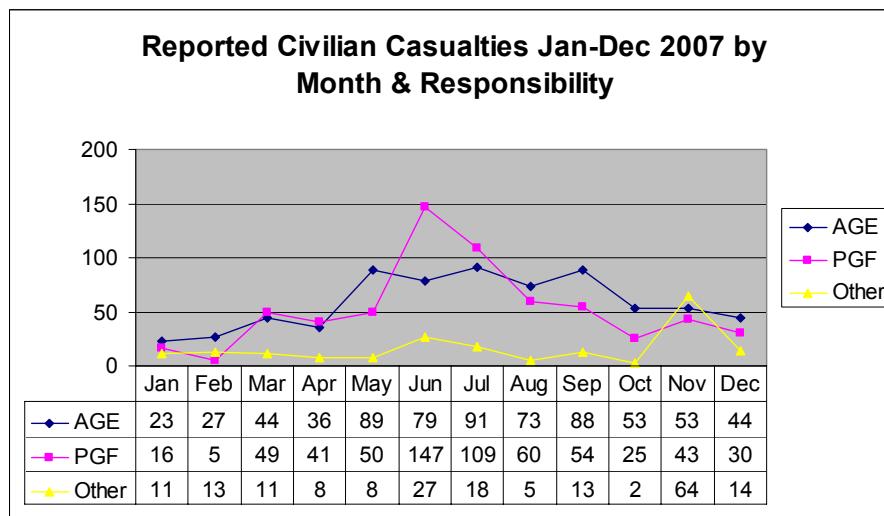
Month	2007	2008
January	50	56
February	45	168
March	104	122
April	85	136
May	147	164
June	253	172
July	218	323
August	138	341
September	155	162
October	80	194
November	160	176
December	88	104
TOTAL	1523	2118

* Information contained in these graphs is sourced from reports of civilian casualties investigated by UNAMA Human Rights and is updated regularly.

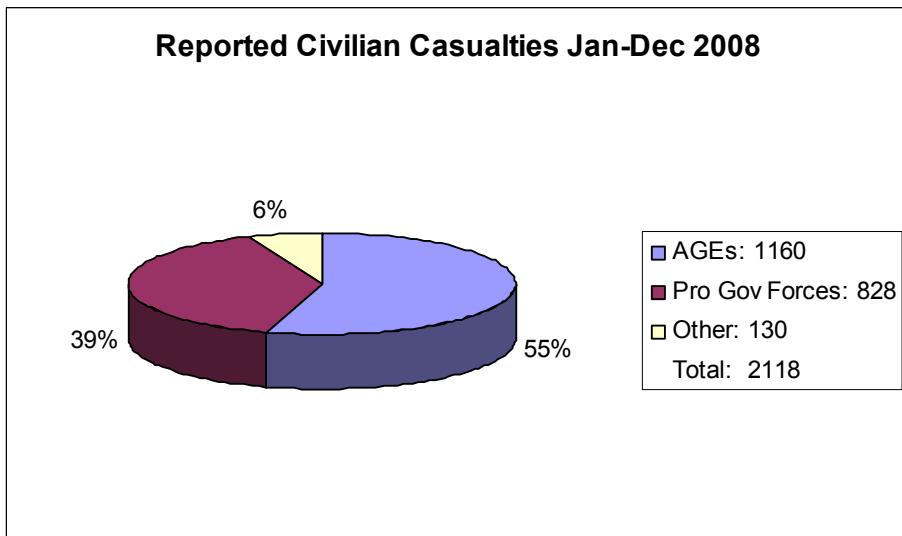
#2 - Graph representing the number of reported civilian casualties for 2007



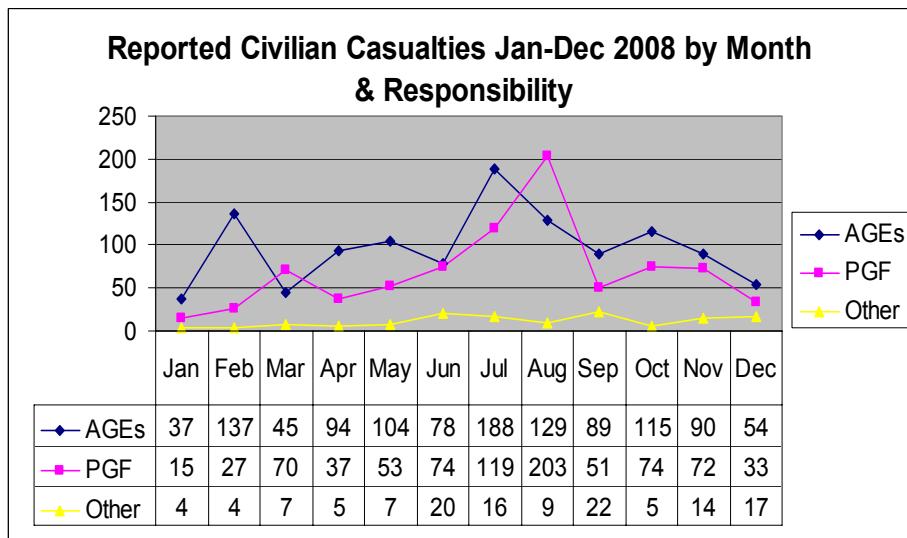
#3 - Graph representing the number of reported civilian casualties, January to the end December 2007, by month and responsibility



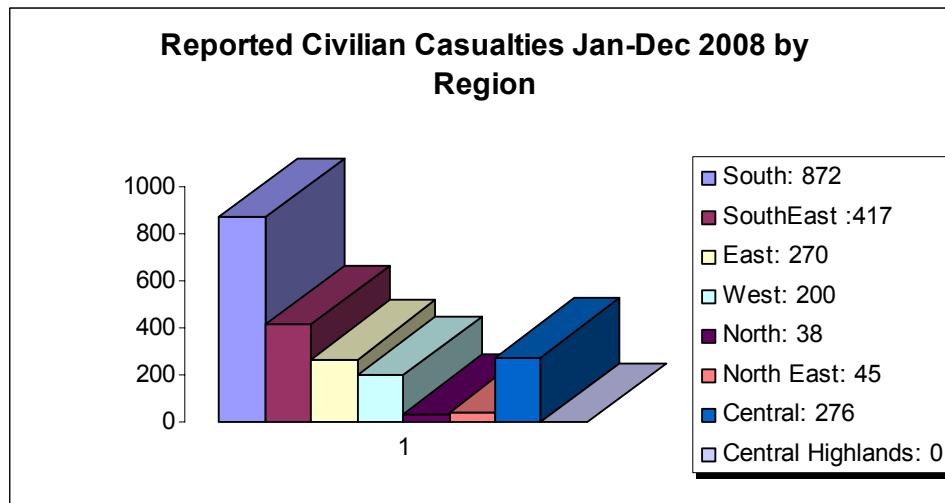
#4 - Graph representing the number of reported civilian casualties for 2008 (total: 2118)



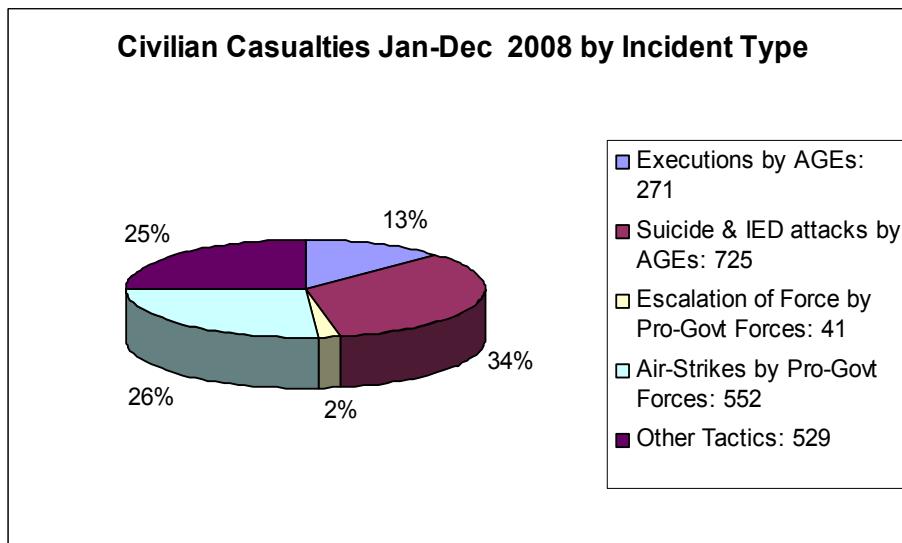
#5 - Graph representing the number of reported civilian casualties, January to the end December 2008, by month and responsibility



#6 - Graph representing the number of reported civilian casualties by Region for 2008



#7 - Graph representing the number of reported civilian casualties, January to the end December 2008, by incident type

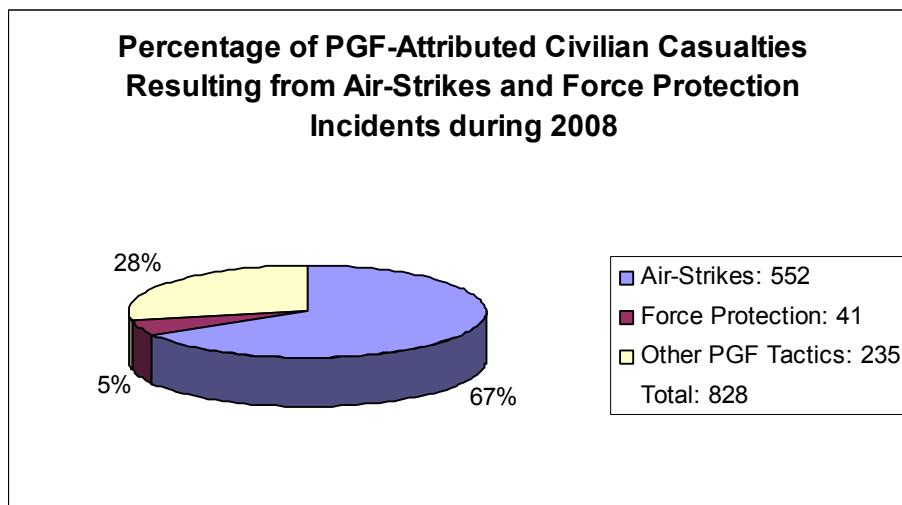


Pro-Government Forces

Pro Government Forces and Civilian Casualties

Afghan security forces and IMF supporting the Government in Afghanistan were responsible for 41 % of the total civilian casualties recorded in 2007. At around 39 % of total civilian casualties recorded in 2008, the proportion of deaths attributed to pro-government forces remained relatively stable. However, at 828, the actual number of recorded non-combatant deaths caused by pro-government forces amounts to a 31 % increase over the 629 such deaths recorded in 2007. This increase occurred notwithstanding various measures introduced by IMF to reduce the impact of the war on civilians, including internal as well as independent external investigations, after-action reviews, the creation of mechanisms geared to reviewing trends and reducing the impact of the war on civilians, and the issuance of new tactical directives regarding the use of air-strikes.

#8 –Graph representing PGF caused civilian casualties Jan-Dec 2008.⁸



Air-strikes

Air-strikes account for the largest percentage of civilian deaths attributed to pro-government forces. UNAMA recorded 552 civilian casualties of this nature in 2008. This constitutes 64 % of the 828 non-combatant deaths attributed to actions by pro-government forces in 2008 and 26 % of those killed overall. There have been several high-profile incidents, such as the widely reported 22 August 2008 air-strike on Azizabad village in Shindand district, Herat in which 92 civilians were killed.

⁸ Other tactics includes persons killed as a result of ground engagements, artillery fire, etc.

Case Study: Air raid on a wedding party, Deh Bala, Nangarhar

On 6 July 2008, at around 6:30 am, international military air assets carried out an attack on a remote mountainous area of Kamala village in Deh Bala district of Nangarhar province – an area widely rumoured to be an AGE hideout. However, at the time of the strike, a wedding entourage was resting at Kamala area, on their journey from the bride's village to the groom's village. 47 non-combatants, who were part of a bridal entourage, were killed and 11 others wounded in the attack. Amongst the dead were 35 children, 9 women and 3 men.

District and provincial authorities informed UNAMA that two days prior to the operation, AGEs had attacked a nearby Afghan National Boarder Police (ANBP) post and that intelligence reports received by IMF and ANSF indicated that AGEs had infiltrated the area and established camps there. An IMF press release, which was issued immediately after the incident, made no mention of civilian casualties and stated that several militants had been killed using precision-guided munitions. Following several independent investigations and a strong community reaction, however, IMF later acknowledged the civilian death toll and made *solutia* payments.

In the aftermath of the incident in Shindand district on 22 August 2008, COM-ISAF issued a new tactical directive in relation to air-strikes to ISAF contingents, which was mirrored in a similar directive to US Forces Afghanistan. While these appeared to have had an initial positive effect, with a drop in the number of civilian casualties resulting from air-strikes reported in October 2008, the number rose again at the beginning of November 2008 with two major incidents in Kandahar and Badghis provinces. In December 2008 the number of civilian casualties as a result of air attacks dropped again, though it is unclear whether this is due to the effect of the new tactical directive or simply the fact that the winter is reducing the number of insurgent or IMF operations.

Air-strikes called in by ground forces engaging insurgent fighters represent a particular threat to civilians, as often compounds with an enemy presence also house civilians unable to leave when fighting breaks out. In several incidents, compounds with an alleged insurgent presence were targeted in air-strikes but civilians were also killed in such attacks.

Case Study: Air attack on a wedding party, Shah Wali Kot, Kandahar

In the afternoon of 3 November 2008, OEF and ANSF forces were on a joint patrol in the Bakhto Tangi area of Shah Wali Kot district in Kandahar, when insurgents ambushed them. A firefight ensued and was apparently ended by the withdrawal of the insurgents from the area. The patrol then moved on to Wach Bakhto village, where some sources reported that they opened fire on 3 houses. Close air support was called in and air-strikes hit Bakhto Tangi, causing damage to property but no casualties. However, air-strikes on Wach Bakhto village resulted in a large number of civilian casualties. An official Government-OEF joint investigation put the number of civilian dead at 37 and the number of injured at 35.

According to eyewitness reports given to UNAMA, all those civilians killed and injured in Wach Bakhto were attending a wedding-party in one residential compound. OEF and Government sources claimed that insurgents used villagers' houses to attack the patrol and had infiltrated the wedding-party compound that was bombed. Eyewitnesses and victims interviewed by UNAMA, however, strongly denied the presence of any insurgents at the wedding party.

Force Protection Incidents

UNAMA figures suggest that, in 2008, 41 civilians were killed in force protection incidents because they were perceived as being too close to military convoys or because they failed to follow instructions at check points. This constitutes a relatively small part of the overall casualty figures (see **Graph #8**) and suggests that amendments to escalation of force procedures have had a positive

impact. The fact that the last quarter of 2008 saw as few as 6 deaths resulting from military escalation of force procedures appears to further support this. With a projected increase in the volume of military traffic as substantial numbers of new troops deploy to Afghanistan, this issue is liable to grow in importance, and UNAMA will continue to monitor the effectiveness of steps taken to minimize escalation of force incidents.

Case Study: Escalation of force measures by an ISAF convoy, Panjwai, Kandahar

On 28 July 2008, a husband and wife and their two young children were returning home in a taxi in Panjwai district, Kandahar province. A passing ISAF convoy fired at the vehicle, wounding the father and killing both of the young children. The Canadian contingent of ISAF forces had issued warnings to the local population to pull off the road and remain stationary while convoys are passing.

Whilst there are conflicting reports as to whether the vehicle was moving at the time of the incident, according to the children's father in an interview with UNAMA, the vehicle had parked on the side of the road when they saw the convoy, but after the first two vehicles had passed, the third vehicle opened fire.

A statement by ISAF notes that, "The vehicle was directed to keep its distance but it did not comply. ISAF soldiers gave hand, arm and audio signals as well as flashing light signals to stop. When the vehicle was 10 meters away and still approaching rapidly, the ISAF soldiers, fearing an attack, fired on it." A subsequent investigation by the Canadian Forces National Investigation Service concluded that the soldiers had "followed proper escalation of force procedures and acted within their rules of engagement". However, an *ex gratia* payment is believed to have been made in this case.

Search and seizure operations/Home searches

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in May 2008 noted that the killings by pro-government forces that most frequently raise issues under international human rights and humanitarian law are those that occur during surprise night time raids. Based on protection of civilians regional consultations in mid 2007 and on the recently published AIHRC report "From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan,"⁹ it is clear that the current practice of house searches is deeply resented by Afghan communities.

Conduct towards women household members during searches often contravenes local customs and angers local communities. Exacerbating factors include aggressive behaviour, offensive language, pointing of weapons at family members, damage to property, use of dogs, and alleged theft of possessions. Inappropriate home searches by IMF and others can result in increased support for AGEs. This has implications for building an environment conducive to respect for IHL and human rights law.

⁹ AIHRC, *Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan*, p. 25-27, December 2008. Available at <www.aihrc.org.af> (last accessed on 28 January 2009).

AIHRC Case Study: Night raid on a private home, Arghandi, Kabul

On 8 January 2008, between approximately 1:10am and 1:40am a group of armed men identified by one witness as a mix of national and international “soldiers... speaking English, Persian, and Pashto” searched approximately 10-11 houses in the village of Arghandi in Kabul province. [...] Five days after the incident happened AIHRC interviewed five witnesses in Arghandi:

“We were asleep and an explosion ...woke us up,” one 24-year-old man remembered. “Our main door was blown up by explosives. We were so afraid that I [didn’t want to] go out of the room to check what was happening. Then suddenly they broke [open] the door to my room... They tied my hands behind my back and took me outside in the yard. They were also abusing me verbally.

Another man interviewed, a 45-year-old father, had a similar experience: “They entered my room, tied my hands at my back, and started beating and abusing (saying bad words) to me. While beating me they broke my nose. The one who was beating me was an [Afghan] national soldier who was speaking Persian. My nose started bleeding. Then they took me and my brother [--] who is a 25-year-old young man outside in the yard under the wall.

Two witnesses identified the armed men as a mix of American and Afghan national forces wearing camouflage and night goggles. Another said they were all American forces with Afghan interpreters. After approximately two hours, the armed men finished searching the houses. They took with them one man who sold watches and mobile phones, according to the community. AIHRC was not able to verify whether and when he was returned. Another woman was injured when one of the doors was blown open. In the search process, they caused property damage, including destroying any locks on luggage bags or doors. Following the search, several mobile phones, some jewelry, and at least 5000 Afghanis were missing from the homes searched.

One of the men who was bound by the armed men said that when he was brought outside he became very afraid that other soldiers would abuse the females inside the house because there were no female soldiers to deal with the women. One man said he was concerned that the incident would have a permanent impact on his children and other children that witnessed the incident. “The kids are so afraid that from that night on they cannot sleep well. When they are asleep they scream and if a little noise happens outside they think that [the soldiers] are back and they want to harm them.” The residents wanted to protest publicly but according to one witness, the District Commissioner told them not to because it would not do any good. To AIHRC’s knowledge, no explanation, apology, or compensation was ever given by any military or civilian authorities. As with other night raid cases, AIHRC was not able to confirm the community’s testimony with either national or international military and civilian authorities. Without any statement by the military or paramilitary authorities involved, it is impossible to determine the motivation for the search and whether its military value justified the actions described above. Based on the accounts above, however, there did not seem to have been any obvious provocation or threat to the invading soldiers. There was no account of return fire or struggle by the civilians involved. [...]

In certain cases it is not possible to determine which government or military authority is responsible for a particular military operation. This has been the case even in incidents where investigations were taken to the highest level of different command structures. The abstruse chains of command and consequent absence of any accountability for such night raids, such as those conducted by unidentified OGAs, fosters a culture of impunity and impacts negatively on the perceptions of the legitimacy of the IMF presence in Afghanistan.

Case study: Raid by unidentified foreign forces, Kandahar city

On 16 January 2008, in the early hours of the morning, a house was raided in Kandahar City, and two brothers who were living there were shot and killed. They had already experienced two earlier raids. On 13 September 2007, the same house was raided in the early hours of the morning, both brothers were detained, and their mobile phones and documents were seized. They spent one night at Maholic Base — known locally as “Gecko Base” — and were then turned over to the National Directorate of Security (NDS), from which they were released. (Maholic is a base of US Special Forces and OGA on the outskirts of Kandahar City.) Later that year, there was another raid on their house. Only one of the brothers was present. He was again held at Maholic Base, turned over to the NDS, and released. Witnesses stated that the raid was carried out by international forces who were wearing black uniforms and spoke with American accents.

UNAMA’s efforts to follow-up on this case are illustrative of the lack of transparency and accountability that characterize some operations. While numerous witnesses and Government sources confirmed the participation of armed international actors in the raid, ISAF informed UNAMA that the operation was not carried out by ISAF forces and Bagram stated to UNAMA that “no American personnel” participated in the raid. Despite extensive inquiries those responsible for conducting the raid could not be identified.

Others who have investigated this incident have encountered the same problem. The Afghan Independent Human Rights Commission (AIHRC) noted the “lack of corroborating testimony or comments by any military authorities” and that “local officials refused to speak on the record regarding this case”. (AIHRC, *Hope to Fear: An Afghan Perspective on Operations of pro-government forces in Afghanistan*, p. 24-25) The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, who conducted a fact-finding mission in May 2008, concluded that: “In January 2008, two brothers were killed in a raid in Kandahar City which was led by international personnel. The victims are widely acknowledged, even by well-informed Government officials, to have had no connection to the Taliban, and the circumstances of their deaths are suspicious. However, not only was I unable to get any international military commander to provide their version of what took place, but I was unable to get any international military commander to even admit that their soldiers were involved. . . . [I]t is absolutely unacceptable for heavily-armed internationals accompanied by heavily-armed Afghan forces to be wandering around conducting dangerous raids that too often result in killings without anyone taking responsibility for them.”

Lack of accountability/redress

Afghans feel growing anger at the perceived impunity for civilian casualties and damage to property caused as a result of conflict by AGEs or ANSF and IMF. With regards to operations by IMF, separate and frequently confusing command structures and joint operations have meant that in many incidents involving pro-government forces it is unclear who is responsible for a particular operation.

UNAMA has consistently argued that there is a need for better coordination between security forces operating in Afghanistan and a coherent system of accountability which can be readily pursued.

The Afghan Government as well as the international community are obliged to uphold the rule of law, justice and equity. In this respect the Afghan public has voiced growing anger at the perceived impunity for civilian casualties – especially those civilian casualties attributable to the actions of IMF. The UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions stated in May 2008 that “the response of the international forces [to incidents of alleged civilian casualties] combines great seriousness of intent and adherence to the applicable law with a surprisingly opaque and unsatisfactory outcome.” He further observed that “often those whose relatives had been killed were unable to ascertain any information as to those responsible. Moreover, no-one in Afghanistan tracks the outcome of investigations and prosecutions, and makes such information public.” The UN Special Rapporteur recommended greater transparency and effectiveness in the accountability

procedures for international forces involved in incidents resulting in civilian casualties. He emphasized the need for better coordination between security forces operating in Afghanistan, stating that they "have a responsibility to make sure that there is a coherent, unified system of accountability which Afghans and others can follow. However messy this system may be on the inside, composed as it must be of multiple mandates and of disparate national military justice systems, it is essential that those pieces add up to a coherent whole."

Following her visit to Afghanistan in November 2007, the UN High Commissioner for Human Rights called on international forces to respect the principles of accountability and transparency. She also stated that ISAF needs to be more responsive and accessible to families in ensuring redress, which includes a systematized and consistent approach to "compensation" or condolence payments for losses incurred in military operations.

Some attempts have been made to address these issues by the establishment of a civilian casualties tracking cell within ISAF directly reporting to COM-ISAF, and the streamlining of US military operations under the umbrella of "US Forces Afghanistan", also under the command of COM-ISAF with its own civilian casualties tracking mechanism.

Solatia/Compensation

There is no legally recognized "right" of Afghan citizens to compensation or condolence payments for death/injury, or damage to property, arising from the actions of IMF. IMF in Afghanistan have individual Status of Forces Agreements (SoFAs) or equivalent with the Government of Afghanistan, which usually contain immunity clauses exempting the military force in question from civil or criminal liability and from the jurisdiction of Afghan courts.

All IMF present in the country (including all ISAF contributing countries, and forces operating under the umbrella of OEF) do have mechanisms for paying compensation where legal liability is found - usually when it is determined that death, injury or damage arose from *illegal* or *negligent* actions of the armed forces in question. Some international military forces also make *solatia* payments, which are made when loss or damage to property, or injury or death are alleged to have arisen from the actions of the international military force in question, irrespective of legal or criminal liability. Often such payments are made based on "hearts and minds" or humanitarian considerations.

There are no uniform standards or procedures for processing claims, including for *solatia*. For example, the UK (under direction from the Ministry of Defence in London) tends to take a conservative, legalistic approach whereby payments are made only where death, injury, or damage is found to result from *illegal* actions by members of its armed forces. All claims cleared for processing are referred to MoD Whitehall which can take more than one year to complete. Payments under this model are rarely made.

By contrast, the US has two sources of funds to cover compensation or *solatia* payments. For compensation claims, there is a legal claims process similar to that of the UK. There is a 'slush fund' out of which discretionary payments or *solatia* can be made on a "no-admission of liability basis". The payment of such funds is at the discretion and recommendation of the relevant commander. While *solatia* payments facilitate the provision of funds for Afghans who suffer death, injury, or damage without a lengthy legal process, and on a no-liability basis, there are problems with the manner in which such redress is provided

In general, the lack of coherence in the methods and standards that are in place for the payment of compensation or *solatia* causes confusion among Afghans as to the circumstances when such monies will be paid. It also creates expectations among Afghans that money will be paid on a more or less "no questions asked" basis which can have the effect of encouraging the making of

exaggerated or false claims. This, in turn, can have implications for investigations concerned with establishing whether civilians were killed/injured in a particular incident. The different sets of legal standards and lengthy processing times, also mean that in some cases payment of compensation can take lengthy periods of time, in some cases more than a year, often with little or no result for persons affected by conflict.

The Afghan Government also pays out money to conflict-affected victims where death or injury results from the actions of the Afghan military forces and/or international military forces. The amount paid is 100,000 Afs (USD\$2,000) per deceased victim and 50,000 Afs (USD\$1,000) per wounded person. Such payments are open to political manipulation; given the nature of official enquiries to ascertain level of casualties from specific military operations, the numbers who receive pay-outs do not always tally with efforts geared to determining civilian casualty rates. The fact that people know that the Afghan Government will pay money after a military operation adds to the possibility that the numbers of killed or wounded will be exaggerated in order to receive higher payments.

In addition, there is ACAP (Afghan Civilian Assistant Program), a community-focused scheme which is administered by IOM and funded by USAID. This grew out of the “Leahy Initiative” (support for war-affected communities in the south and east of Afghanistan) and provides in-kind assistance to families and communities that have suffered losses as a direct or indirect result of hostilities. Campaign for Innocent Victims in Conflict (CIVIC) is a small international NGO which advocates on behalf of victims in need of assistance.

Casualties caused by actions of Afghan police and armed personnel

The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in May 2008 highlighted the problem of killings by the Afghan police and other armed personnel acting under the authority of government officials, which has been largely overlooked. While there are no reliable figures on the number of such unlawful killings, there are sufficient documented cases that suggest such killings do on occasion occur.

A number of cases may suggest the importance of monitoring ANSF activities and of holding personnel to account for abuses against civilians. In one incident that occurred in Zabul province in October 2008, ANA officials were accused of detaining and torturing several elders in order to obtain information on a previous IED attack in the area. A separate incident in Uruzgan province raised credible allegations of pro-government forces extra-judicially executing six non-combatants on 14 November 2008. During a raid in the Guhargin area of Shahid Hasas district the victims, who were all members of one family, were reportedly shot and killed while having breakfast at their residence. The security forces carrying out the raid allegedly released 3 farmers, who were present in the compound at the time, unharmed.

Conflict-related detention practices

Conflict-related arrest and detention by both Afghan and international forces remain of significant concern in the context of the Afghan conflict. UNAMA human Rights has documented numerous cases of men and boys being arrested by ISAF, who are then handed over to Afghan Government authorities (most notably the NDS) where they are detained for extended periods of time, without being afforded the required minimum due process guarantees and frequently without informing their relatives. UNAMA has also collected testimony from individuals detained by other IMF, in particular OEF where they are held for long periods without due process. Given the extremely limited access of both UNAMA and the AIHRC to facilities where conflict-related detainees are

held, it is impossible to give an accurate picture regarding the overall number, condition, and status of such detainees.

Both ANSF and international forces undertake arrest and detention operations in a manner which gives rise to several problems. Frequently heard complaints by Afghan civilians include a failure to acknowledge the arrest of a particular individual and/or ability to access information on his/her status and condition; arrest and detention based on unverified intelligence information; a lack of due process (including lengthy detention without charge or fair trial procedures); and allegations of mistreatment and cultural insensitivity during arrest and/or while in detention. Instances of ill-treatment and torture have been alleged on several occasions. Issues related to pre- and post-detainee transfer (by IMF to Afghan control) responsibilities (including *non-refoulement*) are also of concern.

The detention of persons by ISAF in the conduct of military operations is governed by a SOP which establishes rules regarding such detentions and limits the time which ISAF may hold such persons to 96 hours. ISAF informs the ICRC of all such detentions. After 96 hours, detainees are either released or transferred to the Afghan authorities. The *de facto* recipient of many of these detainees is NDS, or indirectly to the NDS through the Afghan National Police (ANP) or the Afghan National Army (ANA). Some ISAF countries (including UK, the Netherlands, Canada, Norway, and Denmark) have signed Memoranda of Understanding (MoU) with the GoA regulating the transfer of detainees from their respective ISAF contingents and have obtained certain diplomatic assurances about the treatment of these detainees, including that no transferred detainee will be subject to the death penalty. The MoU are not identical. All of them provide that the representatives of the relevant ISAF country, the AIHRC and the ICRC will have access to transferred detainees. The Dutch MoU is the only one which explicitly states that the UN should have a monitoring role for prisoners transferred from Dutch forces to the Afghan Government.

In practice there is little information on the conditions and treatment of such detainees surrendered to the Afghan authorities. The NDS continues to operate without a public legal framework that clearly defines its powers of investigation, arrest, and detention, and the rules applicable to the detention facilities under its control. UNAMA has received complaints from some individuals, who had been detained by the NDS, that they suffered physical abuse and torture; including alleged use of sleep deprivation techniques, stress positions, and electric shocks during interrogations, permanent shackling, and denial of access to legal counsel. The treatment of detainees by the NDS, including those transferred from ISAF control, raises questions concerning responsibility of the relevant ISAF troop-contributing countries under relevant principles of IHL and human rights law.

Of equal concern are individuals detained by OEF pursuant to the “Global War on Terror” who are held in Bagram Theatre Internment Facility (BTIF) at Bagram Airbase. The US forces in Afghanistan operate under framework agreements with the Afghan Government which includes the right of US forces to arrest and detain individuals engaged in insurgent activities or for security reasons. However, the status and rights of such persons is governed by applicable principles of international humanitarian law, international human rights law and Afghan domestic law. The Afghan Government retains formal sovereignty within Afghan territory, including with respect to citizens or persons detained by international military forces operating within its territory. Accordingly the Afghan Government has ultimate responsibility for the treatment of detained persons within its territory, including those detained at BTIF.

The BTIF is governed by US Department of Defence Directives. Detainees in Bagram have no right to legal counsel or to trial before a properly constituted court. Detainees are subjected to the Enemy Combatant Review Board (ECRB) to determine their status which is reviewed on a six month basis. If determined to be an illegal enemy combatant the detainee can only be released through the National Reconciliation Programme, transferral to the Afghan Ministry of Defence or the NDS for

prosecution by the GoA, by authorized release in the case of Afghan nationals, or, for some nationals of third countries, transfer to Guantanamo Bay Naval Base. There are reports that some persons have been in detention at Bagram for as long as 5 years. Some ex-detainees allege being subjected to severe torture, even sexual abuse. Ex-detainees also allege that they were held in cages containing between 15-20 men and that 2 detainees died in questionable circumstances while in custody.

UNAMA does not have access to the Bagram detention facilities despite requests for such access. The ICRC has been visiting detainees at the BTIF since January 2002. Most of the 600 detainees are Afghans captured by the US-led coalition in southern and eastern Afghanistan. At the beginning of 2008, the ICRC was also granted access to detainees at several US-run field detention sites in Afghanistan, where people are often held before being transferred to the BTIF. Since January 2008, prisoners at BTIF have been permitted video phone calls of 20 minutes duration to communicate with their relatives. Details of ICRC assessments and advocacy are privileged and are not made public.

Case study: Detention of a Mullah by PGF, Ghazni

Whilst visiting his family in Spandai village of Ghazni center, Ghazni, on 25 February 2008 a Mullah was detained by international military forces and the ANP during a night search operation on the allegation of being an AGE. The Mullah had previously been arrested in 2002 by NDS, but had been subsequently released after 15 days in detention. Numerous follow up inquiries by UNAMA to the international military in the area never resulted in a confirmation of the whereabouts of the Mullah. UNAMA HR was eventually informed by the ANP that the Mullah was being held at the PRT base in Ghazni. After follow up with the Ghazni PRT, UNAMA was informed that the Mullah had been transferred to Bagram on 13 March 2008 where he is still being detained. To UNAMA's knowledge, no charges were ever brought against him.

Location of military bases

Parties engaged in armed conflict (whether international or non international) have an obligation not to place military facilities, which might be a likely target of attack, within or near civilian population areas so as to minimize the impact of armed conflict on non-combatants. Article 58 of Additional Protocol 1 of 1977 – which according to the International Tribunal for the Former Yugoslavia constitutes part of international customary law¹⁰ – states that:

“The Parties to the conflict shall, to the maximum extent feasible:...(b) avoid locating military objectives within or near densely populated civilian areas.”

According to the policy regulating the conduct of forces acting under Chapter VII of the UN Charter, which includes ISAF: “*In its area of operation the United Nations force shall avoid, to the extent feasible, locating military objectives within or near densely populated areas, and take all necessary precautions to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations.*” (Observance by United Nations Forces of International Humanitarian Law, SG Bulletin; 6 August 1999)

It is evident that often Afghan Government and IMF installations are located close to, or within, residential areas. Attacks on such military installations by AGEs frequently result in the death and injury of civilians and damage to assets vital for their survival and well-being. Military bases

¹⁰ See for example ICTY, Case No. IT-95-16-T, para. 524

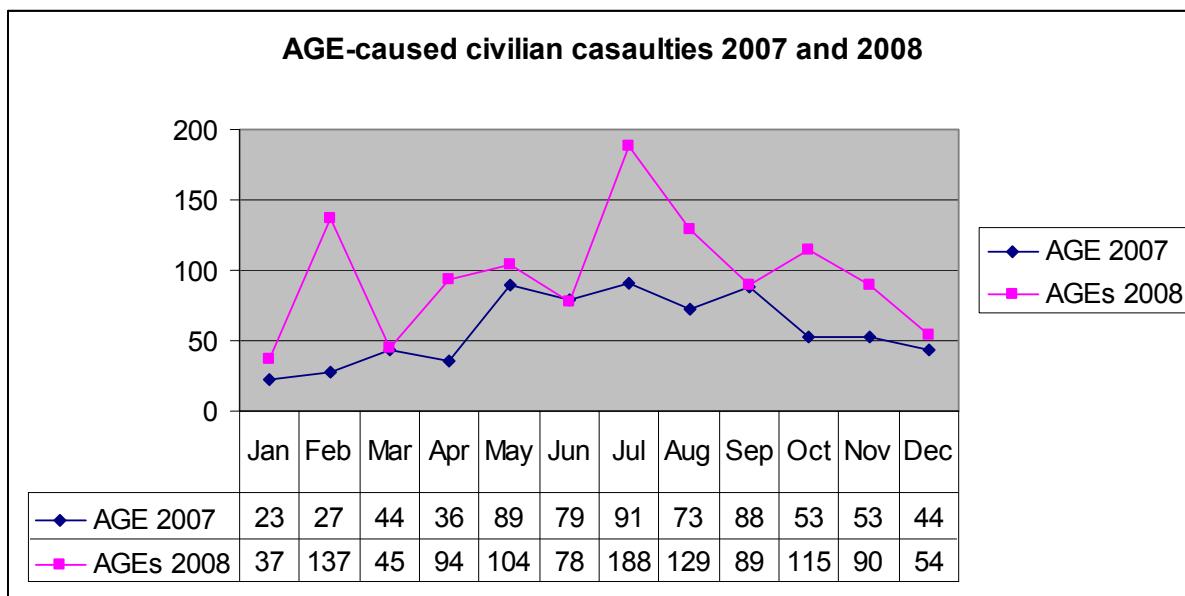
should, wherever possible, be located away from residential areas to minimize potential civilian casualties resulting from insurgent attacks on such bases. When deciding on the location of new military installations consultation with local communities should be undertaken as much as possible so as to determine the suitability of potential sites. Of increasing concern is the location of military bases and installations of the IMF and ANA within the city of Kabul – these, and the military convoys travelling to and from them, have been increasingly targeted by AGEs in suicide and VBIED attacks, the most recent being in January 2009, leading to a number of civilian casualties.

AGEs

AGEs and Civilian Casualties

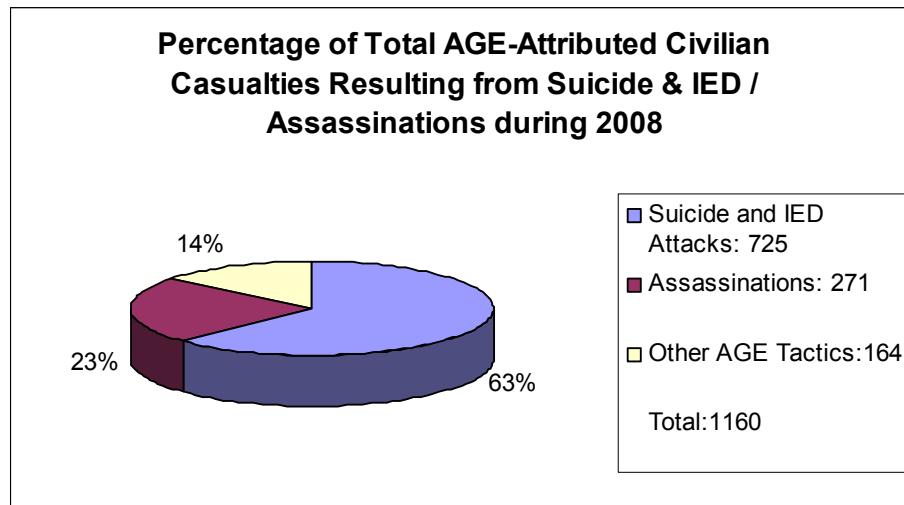
The increasingly deadly impact of insurgent operations on Afghan civilians was one of the most notable features of the conflict in 2008. Civilian deaths reportedly caused by anti-government elements rose from 700 in 2007 to 1160 in 2008, an increase of over 65%. While seasonal trends remained broadly consistent, in practically every month of 2008 the insurgent-caused death toll among civilians was higher than in the same month of 2007 and outstripped the death rate resulting from the actions of pro-government forces. (see **Graph #3 and #9**).

#9 Graph: AGE-caused civilian casualties in 2007 and 2008 compared



The vast majority of those killed by insurgents are victims of suicide and other IED attacks (725 killed) or are targeted assassinations (271 killed). Together, these tactics accounted for over 85% of the non-combatant deaths attributed to AGE actions (see **Graph #10**). The remainder of AGE-inflicted fatalities resulted primarily from rocket attacks and from ground engagements in which civilians bystanders were directly affected.

10 Graph: AGE caused Civilian Casualties from Suicide and IEDs/Assassinations in 2008



Suicide and IED attacks

Accounting for 725 non-combatant deaths, or 34% of the total civilian casualties in 2008 (see **Graph #10**), suicide and IED attacks killed more Afghan civilians than any other tactic used by the parties to the conflict. UNDSS recorded 146 suicide attacks and 1,297 detonated IEDs in 2008, with another 93 suicide attacks and 843 IEDs that were discovered before they could be detonated. Although the majority of such attacks have been directed primarily against military or government targets, attacks are frequently carried out in crowded civilian areas with apparent disregard for the extensive damage they cause to civilians. Throughout 2008, insurgents have shown an increasing willingness to inflict harm on civilians in such attacks.

Case study: Suicide attack at a dog-fight, Arghandab district, Kandahar

On 17 February 2008, a suicide bomber blew himself up in the midst of a crowd that had gathered to watch a dog fight in the Nagahan Rudkhana area of Arghandab District, Kandahar Province. The presumed target was Abdul Hakim Jan, a prominent leader of the Alokozai tribe and the commander of the district's contingent of the [now discontinued] Afghan National Auxiliary Police (ANAP) force. In addition to Abdul Hakim Jan and 12 other ANAP personnel, the attack killed at least 67 civilians and wounded at least 90 more. Several reports gave even higher casualty figures.

The attack demonstrated insurgents' willingness to cause a large number of civilian casualties when conducting suicide attacks. AGE have, however, shown some sensitivity to the negative perceptions caused by the loss of civilian life. Speaking to the media, a Taliban spokesman denied responsibility for the attack in Arghandab. While this may have been because others were responsible, a more likely explanation is that the Taliban denied responsibility because the number of civilians killed in this incident was unusually high.

Case study: Indiscriminate IED attack, Spin Boldak district, Kandahar

On 2 August 2008, 12 civilians, including a bride and groom, were killed and 6 others wounded when a local bus carrying a wedding party was hit by a road side IED in the Loy Kariz area of Spin Boldak district. There was no military target in the area. The highway between Spin Boldak and Loy Karez village, where road construction work was in progress, has been the scene of similar attacks in the past. Local elders and officials publicly condemned the incident which they attributed to the Taliban.

The negative effect that suicide bombings have on the Afghan civilian population extends far beyond the direct impact of individual attacks. Regular suicide attacks create a lasting climate of fear throughout affected and unaffected communities alike and severely limit the affected population in their enjoyment of such basic human rights as freedom of movement and access to education and other essential services. Children tend to suffer especially under the effects of suicide attacks. They are particularly vulnerable to the direct consequences of an attack, and they are particularly hard hit by the limitations that such attacks can precipitate. There have been several cases in which children have been utilised as the perpetrators of suicide attacks. Even more than with other means of warfare, the traumatic effects of suicide attacks extend well beyond the specific victims of an attack.

Assassinations, Threats & Intimidation

While suicide and other IED attacks caused the most damage, there are particular concerns about insurgent tactics centred on the increasingly systematic, direct targeting of non-combatants for intimidation purposes. The AIHRC, in their December 2008 report “Insurgent Abuses Against Afghan Civilians” spoke of “a campaign of terror” and found that insurgents had “committed widespread and systematic violations against civilians with the aim to weaken the government ... [by] systematically terrorizing the civilian population with ‘night letters,’ [threats], kidnappings, executions (often by beheading) and other crimes.”¹¹

In 2008 UNAMA Human Rights recorded 271 reported assassinations by insurgents, with UNDSS (relying on a slightly wider definition) reporting as many as 343. Several of these assassinations were gruesomely staged public executions by beheading, hanging or shooting. In one such attack on a bus in Kandahar in October 2008, 27 passengers allegedly linked to the ANSF were taken from the bus and executed by insurgents. Another case is described in an AIHRC report. In this case, four brothers in Uruzgan province were executed by Taliban insurgents because two of them had previously worked for the Government as members of the ANA and ANP:¹²

¹¹ AIHRC, *Insurgent Abuses Against Afghan Civilians*, p. 25, 2008. Available at www.aihrc.org.af. (last accessed on 14 January 2009).

¹² AIHRC, *Insurgent Abuses Against Afghan Civilians*, p. 25, December 2008. Available at www.aihrc.org.af. (last accessed on 14 January 2009).

AIHRC case study: Execution by insurgents of four brothers in Uruzgan

In December 2007, the Taliban took over a small village in the Dehrawood district of Uruzgan and told two of the brothers to leave their homes. The two brothers and their families fled. But when they arrived in the new village they were kidnapped and brought back to their old village. After being brought back, two further brothers living in different villages in Helmand were also kidnapped. One was captured while working on the roof of his home. The other was captured while watering his farm. With the brothers held away from their relatives, the next day Taliban members came to the house and told the remaining family members that they had one hour to leave the village. They rented a car and fled.

On their way out of the village, the family came across the beheaded bodies of the four brothers on the side of the road. The bodies showed signs of gruesome torture. A group of Taliban was with them. AIHRC was told that their hands had been tied behind their back. M's body had had his abdomen ripped open with a knife and the fingers of L were also cut off.

A relative tried to get off the vehicle and pick their bodies up but one of the Taliban came forward and he put his Kalashnikov to his chest and said, "Don't get out of the vehicle or you will be dead just like them." The family requested that the mother be allowed to take her sons' bodies for burial but it was no use. The Taliban refused to allow their mother to take her sons bodies and bury them. According to her "the only thing I could do was see my four dead sons and cry".

The bodies remained there and the family continued on. According to the family they will never go back to "that place that became a hell for us."

Such tactics were directed against individuals perceived to be linked in any way to the Government, national or international security forces or the international community, and have intensified throughout the year. On several occasions, even a rudimentary link or connection was, apparently, sufficient rationale for AGEs to single out an individual as a target. UNAMA Human Rights and the AIHRC have documented cases in which victims were threatened or severely beaten for "cooperation" as inconsequential as having a foreigner's number saved in a mobile phone or accepting food aid from the World Food Program. Victims included doctors, teachers, students, tribal elders, civilian government employees, former police and military personnel, and labourers involved in public-interest construction work. UN and NGO staff members have also become victims of violence and have received death threats on numerous occasions. In these areas of the country, most UN and NGO staff members choose to hide their identity on the way to and from work so as to mitigate the problem. There is also an increasingly high number of reported kidnappings and verbal or written threats, with several regions such as the south, south-east, east and west reporting increasing intimidation of individuals linked, or perceived to be linked, to the Government or the international community.

Incidents of intimidation also appear to be spreading into areas previously seen to be relatively calm, such as the north, where reports of such activities are becoming increasingly common. An example is the number of attacks on education facilities in the north region of Afghanistan which greatly increased throughout 2008 (see section below).

In many instances where individuals become victims of targeted insurgent violence it is hard to identify one single cause such as "cooperation with NGO X." Rather, the factors leading to such attacks are often cumulative and might include, to use a case documented in southern Afghanistan as an example, working for an Afghan NGO, having been seen speaking to UN staff, and sending one's daughters to school.

Reprisals tend to be more systematic than one-off attacks on those accused of "collaboration". In most cases victims are first warned – often several times – by means of written or verbal threats. If threats are not heeded then violence ranging from beatings to abductions to mutilation and murder will often be used.

The campaign of intimidation severely impacts on the civilian population beyond those specifically targeted, instilling widespread fear and terror. According to the AIHRC report “there is often no clear delineation between where intimidation ends and violence begins. The insurgents specifically use targeted assassinations as a form of intimidation, to impact on the population far beyond the individual victim(s).”

Case study: AGE intimidation and execution of female police, Kandahar city

On 28 September 2008, Lt. Col. Malalai Kakar, a prominent female ANP criminal investigator working for Kandahar police, was assassinated. Kakar was reportedly shot dead in the Chowney area of Kandahar city when traveling by car to her duty station. The Governor’s office confirmed the incident and attributed it to Taliban. The Taliban also claimed responsibility for the killing and stated that the victim’s son was also shot and killed.

During a meeting with UNAMA the previous week, Kakar had reported receiving constant threatening phone calls from unknown individuals warning her to leave her job or face the “death penalty”. The last assassination of a high profile female official in Kandahar city had occurred in September 2006, when the Head of the DoWA, Safia Amadjan, was assassinated, also reportedly by AGEs. In late November 2008, UNAMA received a second complaint from another female police officer employed and living in Kandahar city. The woman, who had already notified UNAMA of a series of other written warning and threats, reported that a night letter had been left at her home, drafted on headed Taliban note-paper and signed by a Taliban representative. It warned her to stop her work and heed previous threats she had been given, or face the same fate as Amadjan and Kakar. Local police were reportedly unable to provide her with adequate protection, simply advising her to remain in her home and not go to work.

Attacks on educational facilities

Insecurity and direct attacks on education facilities, students and staff by insurgents are taking an increasingly detrimental toll on the Afghan education system. This threatens the significant progress that has been made in this sector throughout the country since the fall of the Taliban regime. According to UNICEF, attacks on schools and educational facilities rose by 24%, from 236 incidents reported in 2007 to 293 in 2008.¹³ Attacks occurred throughout the country rather than remaining confined to regions where armed conflict is prevalent – there is no province in Afghanistan that has not suffered from at least one attack on educational facilities, staff or students over the last two years.

¹³ UNICEF, School incident reports 2008, 12 January 2009.

Insurgent tactics targeting educational facilities range from night letters and verbal threats to arson, grenade or rocket attacks, and the killing of education personnel and students. UNICEF received reports of 92 deaths and 169 injuries resulting from such attacks.¹⁴ In one widely reported attack in Kandahar city on 12 November, attackers threw acid onto female students and teachers, severely injuring 16 (12 students and 4 teachers).

Case study: Attacks on Education Targets in the north of Afghanistan

During 2008 in the northern region, 20 incidents were reported to UNAMA where school buildings and teachers were the target of threats or physical attacks. They primarily consisted of attacks on school buildings (or temporarily erected school tents), carried out in school holidays or outside school hours when children were not present, and ranged from low level arson attacks in which school books were burned, to more serious attempts to burn down school premises using petrol. Unoccupied school buildings in two separate districts in Balkh were also targeted by RPG rounds in August and October, although the damage resulting from these attacks was minimal. In November, a residential building in Jawzjan housing female teachers working at a local school was also hit by RPG and small arms fire. Individual teachers have been the specific target of attacks in three cases, with the most significant incident being the shooting and killing of a teacher on his way home from school in Qaramqul District (Faryab) on 2 September. From September 2008, several night letters were distributed in Districts in Balkh and Jawzjan provinces warning teachers and students to stay away from school, and also making more general threats against those working for the government.

Attacks on schools in the north are not a new phenomenon. Isolated attacks on schools were also reported in 2006 and 2007, but the view of the authorities and elders at the time was that these attacks were motivated by local inter-community disputes rather than being linked to a national anti-government insurgency. In 2008, however, the north experienced several security incidents of the type more commonly seen in areas of the country where the anti-government insurgency is more deeply rooted - including attacks on police check posts, on district headquarters, on UN and NGO vehicles and compounds, assassinations of district officials, political party representatives and mullahs, as well as the attacks on teachers and schools detailed above. An increasing number of local officials and community representatives linked such attacks, including the deliberate targeting of schools, to a broader attempt by insurgents to gradually intimidate, polarize and radicalize local communities and to ferment support for the insurgency. (*see also “Attacks on educational facilities, infra*)

According to the Ministry of Education, more than 640 schools are currently closed due to insecurity, thereby depriving some 230,000 students of their right to education.¹⁵ In some provinces in the southern parts of the country, up to 80 % of the schools are now closed.¹⁶ Government schools are not the only ones suffering from hostilities. Community Based Education (CBE) Schools, supported by NGOs, have also had their teachers threatened, and have been forced to close.¹⁷ Parents, confronted with the deteriorating security situation and direct attacks on school facilities and students are often faced with the difficult choice of sending their children to school, or risking their safety by doing so.

¹⁴ According to the security section at the Afghan Ministry of Education, accessed September 2008.

¹⁵ Ibid.

¹⁶ In the province of Zabul, for instance, as many as 35,000 children were reportedly not in school due to security concerns, BBC News, 25 June 2008

¹⁷ For instance, the Swedish Committee for Afghanistan had to suspend at least four CBE schools in Yahya Khail district of Paktika Province during the first quarter of 2008. Likewise, according to CARE Afghanistan, its CBE program runs with limited activities in approximately half of its operating districts (August 2008).

Case Study: Attacks on boys' schools in Farah province

During 2008, insurgents destroyed several schools around the province, including, for instance, three schools in Bakwa district and one school in Bala Buluk district. All of these schools were boys' schools as, due to strong AGE influence, insecurity and customary attitudes which hinder families from sending female children to school, no female schools are functioning in these districts.

Girls' schools are particularly likely to become a target for insurgent attacks but boys' schools have also been hit on numerous occasions. In an interview with Radio Freedom in 2007, Taliban spokesman Qari Yusuf Ahmadi explained to reporters that "we [the Taliban] have burnt some schools where anti-Islamic lessons were being taught." He condemned schools where children were taught "wrongly" and stated that "many changes have been made to the textbooks ... For instance, the letter 'A' used to be for 'Allah' but in these textbooks [now] 'A' is used for 'Anar' [pomegranate]. 'J' used to be for 'Jihad', but these books have 'J' for 'Jowar' [maize]. We do not permit such changes."¹⁸

Case Study: Attack on schools: Bakwa and Bala Buluk districts, Farah Province

As confirmed by UNICEF and education authorities in Farah, there have been other incidents involving schools throughout 2008 in Bakwa and Bala Buluk districts of Farah Province. During the year, AGES destroyed three schools in Bakwa and one school in Bala Buluk district. All the schools affected have been boys' schools, as there are no female schools functioning in these districts. Districts like Bakwa and Bala Buluk, where there is almost no government control, have no girls' schools due to insecurity, AGE threats, and traditional and customary attitudes which hinder families from sending female children to school. However, it seems that the intention of AGES in these areas is to deny all children access to education.

Public perceptions of insurgent actions

As outlined above, both the high number of suicide and IED attacks, and the systematic campaign of violent intimidation by insurgents have a severe impact on Afghan communities that goes well beyond the direct impact of any specific attack. Increasing general insecurity impacts adversely on ordinary Afghans' quality of life and inflicts loss of income and other forms of socio-economic hardships. A widely prevailing climate of fear and terror affects Afghan civilians, frequently making them reluctant to pursue available employment opportunities, express their opinions or even just move freely around the country.

While Afghans are generally well aware of where responsibility for AGE-caused incidents lies, there is also a strong feeling of anger and disappointment with the Government and the international community for not living up to expectations and failing to bring security to the country. Many clearly feel that more could be done to protect them from the impact of AGE actions. This sentiment is well illustrated by the statement of man in Kandahar city whose family had received threat letters from insurgents and then described his efforts to seek Government help to the AIHRC:

"We complained to the police about the night letters. Their response was, 'We cannot do anything to help.' We repeatedly approached the head of the Kandahar provincial council and asked him to assist us with our problems [...] but he can do nothing either [...]. We are not satisfied with the performance of Afghanistan National Army. During night they stay in

¹⁸ Interview with Radio Freedom, broadcast in 2007.

their check posts and don't dare to move out of their check posts and patrol. The international forces do not patrol in our area either.”¹⁹

¹⁹ AIHRC, *Insurgent Abuses Against Afghan Civilians*, p. 38-39, 2008. Available at <www.aihrc.org.af> (last accessed 29 January 2009).

Humanitarian Space and Humanitarian Access

The deteriorating security situation and drastically reduced humanitarian access intensified the challenge for the humanitarian agencies to address the complex needs of vulnerable Afghans. By late September 2008, “humanitarian space” had shrunk considerably. By the end of 2008 large parts of the south, south-west, south-east, east, and central regions of Afghanistan were classified (and remain classified) by the UN Department of Safety and Security²⁰ as an “extreme risk, hostile environment” for operations. UNDSS recorded over 198 direct attacks, threats and intimidations of aid workers throughout 2008. In addition, 38 aid workers (almost all from NGOs) had been killed and a further 147 abducted.

On 1 August 2008, the Agency Coordinating Body for Afghan Relief (ACBAR) issued a statement calling for respect for humanitarian principles after an increase in attacks on civilians and NGO workers. Subsequent to the killing of four of its staff in early August 2008, the International Rescue Committee (IRC) suspended all its programmes for several weeks after 20 years of operating in Afghanistan, resuming two months later, which is illustrative of the continuing erosion of humanitarian space and the ramifications of this for vulnerable Afghans in violent and volatile areas. In this extremely volatile security environment, the only way to access certain areas to ensure adequate monitoring of the humanitarian situation is by air.

Because of the continuing insecurity, as of October 2008 between one-third and one-half of the country, including much of the south, remains inaccessible for most humanitarian organizations. In this context, military actors such as ISAF provide emergency relief through PRTs. By so doing they blur the lines between humanitarian and military actors, which is of grave concern to the humanitarian community. For example, some military actors persist in using the same white vehicles as UN agencies and NGOs, despite the National Civil Military Guidelines for Afghanistan.

Increasingly limited physical access also constitutes a challenge to obtain data to assess what is happening in areas affected by armed conflict or insurgency. In a briefing to the Security Council in July 2008, the Emergency Relief Coordinator summed up the situation in Afghanistan: “Due to limited access, we simply do not have a complete picture of the nature and scope of the humanitarian caseload in Afghanistan. For humanitarian actors, this lack of access is a constant source of frustration and concern”. The limited humanitarian access has led to displacement of people who move to seek humanitarian aid. However, the number of persons affected is difficult to gauge.

²⁰ Analysis made by UNDSS

Appendix

Graphs representing civilian casualties by Region/Month and Responsibility

