

GETTING AWAY WITH MURDER?

**THE IMPUNITY OF
INTERNATIONAL FORCES
IN AFGHANISTAN**

**AMNESTY
INTERNATIONAL**



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GLOSSARY

AIHRC	Afghanistan Independent Human Rights Commission
ANSF	Afghanistan National Security Force
CIA	Central Intelligence Agency
CJSOTF-A	Combined Joint Special Operations Task Force
CSTC-A	Combined Security Transition Command Afghanistan
CSTF-101	Combined Joint Task Force – 101
DIA	Defence Intelligence Agency (USA)
ICCPR	International Convention on Civil and Political Rights
ISAF	International Security Assistance Force
ISA	Intelligence Support Activity
NATO	North Atlantic Treaty Organization
NDS	National Directorate of Security
OEF	Operation Enduring Freedom
OGA	Other Government Agencies
PRT	Provincial Reconstruction Team
SAD	[CIA's] Special Activities Division
SEAL	http://www.acronymfinder.com/Sea%2c-Air%2c-Land-%28US-Navy-military-special-forces-team-member%29-%28SEAL%29.html Sea, Air, Land (United States Naval Special Warfare Development Group/DevGru)
SMU	Special Mission Units
SOP	[ISAF] Standard Operating Procedures
UNCAT	United Nations Convention against Torture

INTRODUCTION

“I want justice. I want the international community to capture and punish my brothers’ murderers.”

--brother of Abdul Habib and Mohammed Ali, brothers apparently killed in their home by international forces in Kandahar on 16 January 2008

Millions of Afghans face violence and insecurity worse than at any period since 2001, when the USA and its allies ousted the Taliban from power. The conflict between the Afghan government and its international supporters, on the one hand, and on the other hand a loose coalition of Taliban, anti-government groups like Gulbuddin Hekmatyar’s Hezb-e Islami, and criminal militias, has now escalated to cover more than a third of Afghanistan, including areas just outside Kabul. In 2008, more than 2,000 Afghan civilians died as a direct result of the conflict, while tens of thousands have been displaced from their homes, and millions more suffer the indirect impact of insecurity in the form of significantly restricted access to education, health care, and even their farms and markets. It was the activity of anti-government groups that injured most civilians in 2008, as in past years. But some 40 per cent (795) of civilian casualties were due to operations by international and Afghan security forces— a 30 per cent increase from the 559 reported in 2007.¹ Most of these civilians killed and injured by international forces suffered as a result of airstrikes and raids of homes by international and Afghan forces.

Many Afghans, including President Hamid Karzai, increasingly complain about the number of civilian casualties caused by international military forces and the lack of public accountability and responsibility for these incidents. On several occasions, President Karzai has condemned “careless operations” by international military forces and as recently as 25 January 2009 criticized international forces for an incident in which, according to the President’s office, 16 civilians were killed.² There is now a persistent perception among many Afghans that international forces in Afghanistan do not sufficiently consider the well-being of ordinary Afghans—a perception successfully reinforced by the propaganda effort of the Taliban and other anti-government forces.

While air strikes by international (predominantly US) forces have garnered much recent attention, night-time raids on houses have resulted in significant injuries to Afghans and their property and fomented tremendous fear and resentment among the local population. As explained in a December 2008 report by the Afghan Independent Human Rights Commission (AIHRC), “*While night time house searches resulted in fewer deaths [than air strikes], night raids frequently involved abusive behaviour and violent breaking and entry at night, which*

stoke almost as much anger toward [pro government forces] as the more lethal airstrikes. In areas where night raids are prevalent, they were a significant cause of fear, intimidation, and resentment toward [pro-government forces].”³

The international military forces’ lack of accountability and their ad hoc investigation and compensation programs have aggravated the situation. As the USA and its allies have started dispatching more troops to Afghanistan, a concerted effort is urgently needed to minimize further civilian casualties and develop a system for prompt, thorough, independent and impartial investigation leading to the prosecution of anyone suspected of having violated international or other applicable law, as well as for systematic reparation process for civilians who are killed or injured as a result of international military operations.

The international community has accepted the responsibility of providing security for the Afghan people. Increasing security for Afghans sufficient to allow them to improve their access to basic economic and political rights cannot be achieved merely by despatching more troops. Respect for international law, including human rights law and international humanitarian law, as well as respect for the rule of law by all parties involved, including the international forces, is a prerequisite to bringing security to Afghanistan. More specifically a concerted effort is needed to clarify and harmonize mandates, rules of engagement, and the chains of command amongst the various international and Afghan security forces operating jointly in Afghanistan. Without a clear sense of who is involved in these operations it is impossible for victims and their families to make complaints, inquire about investigations, and ultimately seek justice. Such a policy shift has to occur before a so-called surge of international troops into Afghanistan takes place, in order to ensure that the presence of more international troops does not lead to more harm to Afghan civilians.

The first part of this Briefing Paper focuses on one particular incident: the night time killing of two brothers, Abdul Habib and Mohammad Ali, at their home in Kandahar, by international forces, on 16 January 2008. Even measured against the violence and insecurity of southern Afghanistan, the unusual circumstances surrounding the killings has garnered the incident particular notoriety, and has highlighted the intransigence and general lack of accountability of international forces operating in Afghanistan.

In order to shed light on this case, Amnesty International interviewed eyewitnesses to the incident in Kandahar and elsewhere in Afghanistan, as well as experts inside and outside the country. Despite months of inquiries by the brothers’ families, Amnesty International, the AIHRC, and United Nations (UN) human rights officials, all that can be confirmed about the incident in Kandahar is this: two brothers were killed at their home by uniformed international troops; neither the Afghan government nor NATO or the US military have assumed responsibility for the raid, much less the deaths; nobody has alleged that the brothers were involved with the Taliban or other anti-government groups; the brothers’ home had been previously raided by international forces in Kandahar; and, after previous raids, the brothers had been detained by international forces and then turned over to the Afghan intelligence services.

Amnesty International’s research in Kandahar and elsewhere inside and outside Afghanistan suggests that it is possible that the international forces involved in this raid were “clandestine” personnel from OGAs—other government agencies, the euphemism used by

members of the US military to describe the civilian intelligence agencies, such as the US Central Intelligence Agency (CIA), operating in Afghanistan. Amnesty International cannot confirm the role of OGAs, but given the denial of involvement by regular international military forces, it cannot rule out the possibility.

The confusion regarding which international forces are doing what in Afghanistan is the focus of the second part of this Briefing Paper. Forces from the more than 40 countries with UN-sanctioned troops in Afghanistan operate with a variety of mandates, chains of command, rules of engagement, and degrees of respect for the rule of law. Some 55,100 NATO and allied troops operate under the mandate of the International Security Assistance Force (ISAF), including nearly 23,220 US troops, while an additional 17,000 troops operate independently of NATO under the aegis of Operation Enduring Freedom (OEF). The situation has improved somewhat since November 2008, when ISAF and US OEF commands were unified at the top, with one (US) commander at the head of both chains of command. Nevertheless, the two forces maintain distinct missions, command structures and rules of engagement—a situation sure to be exacerbated by the proposed insertion of tens of thousands more US and allied troops in Afghanistan.

In addition to regular military forces in Afghanistan, there are numerous members of civilian intelligence agencies—OGAs—as well as private contractors and local militias conducting military operations. Ordinary Afghans (as well as international observers) frequently cannot distinguish between these forces during an operation.

Further compounding this confusion is the lack of a clear system of assisting even those Afghans who can prove their injury at the hands of a particular international unit. Some Afghan families whose relatives were killed or injured and those who had property destroyed have received financial compensation or *solatia* (after-injury payment that does not involve legal admission of liability) from governments involved in military operations. However, Afghan and international forces lack a consistent program for investigating claims of civilian casualties or injuries and assisting those injured by Afghan and the international military forces, and in practice, many Afghans have no understanding of how to initiate a claim for injuries. Therefore many Afghans with credible claims of deaths, injuries and significant property damage are overlooked or ignored by these mechanisms.

Amnesty International welcomes the Tactical Directive issued on 30 December 2008 by General David McKiernan, who currently commands both US OEF and NATO/ISAF forces in Afghanistan, calling for increased protection for civilians. In this document, Gen. McKiernan seems to recognize that *“The way [international forces] act, the techniques we use, and the means we employ must serve to protect and defend the Afghan public and reinforce their confidence in [the government of Afghanistan] and the forces fighting on their behalf.”* In response to this challenge, the Directive issued a command to all international military forces (as well as armed civilian contractors) operating in Afghanistan: *“Whenever we believe we may have caused civilian casualties or civilian property damage we will immediately investigate the incident. If it is determined ISAF caused those casualties or that damage, ISAF will immediately acknowledge that fact.”*⁴

NATO/ISAF has also created an investigation mechanism for civilian casualties. In a letter to Amnesty International sent on 13 January 2009 NATO/ISAF stated, “COMISAF has also

established an ISAF Headquarters body, headed by a senior military officer, with the primary responsibility of following allegations of civilian casualties. This body will soon be augmented with two civilian members.” Amnesty International welcomes these efforts but urges NATO/ISAF to ensure that these policies and mechanisms are fully and properly implemented.

In light of this Tactical Directive, Amnesty International again calls on US and ISAF forces to conduct a full, public, and transparent investigation of the incident documented in this report and to bring to account those responsible. Furthermore, Amnesty International calls on all international and Afghan security forces to develop and implement a consistent, clear and credible mechanism for receiving complaints and investigating claims of civilian casualties or injuries resulting from its military operations.

Amnesty International urges international forces operating in Afghanistan to:

- Review all relevant operational procedures to ensure full compliance with international law and standards;
- Ensure that every case of civilian death, injury and property damage occurring as a result of operations by military personnel, their civilian contractors, or members of other government agencies, is investigated promptly, thoroughly, independently and impartially. As an immediate matter, the investigating unit of ISAF has to expand its mandate to cover OGAs and contractors as well as military personnel, and it should cooperate with the AIHRC;
- Bring to justice, in proceedings which meet international standards of fairness, any personnel found to have violated the laws of war, international human rights law, or other applicable laws, and
- Make amends through assistance and provide reparations to victims and their families in accordance with international standards and in a timely manner.

A CASE IN POINT: KANDAHAR MYSTERY

On 16 January 2008, two Afghan civilians, brothers Abdul Habib and Mohammed Ali, were violently killed inside their home while their families watched. Eyewitnesses told Amnesty International that a group comprised of uniformed international troops as well as Afghans raided the family home of the two men. The international military personnel, wearing desert camouflage uniform, entered the premises in the early hours of 16 January and shot the two men at close range, without first attempting to arrest them, giving them any warning or otherwise attempting to communicate with them. Both men were unarmed at the time of being shot. Meanwhile, Afghan personnel reportedly waited outside to provide perimeter security.

Witnesses, local sources, and international interlocutors in Kandahar and elsewhere in Afghanistan and in the USA all told Amnesty International that the raid was carried out by forces operating from the US-controlled “Firebase Gecko/Maholic” located on the outskirts of Kandahar City.⁵ This firebase is housed in what used to be the residence of Mullah Omar, the Taliban’s leader.⁶ Firebase Gecko/Maholic has primarily been occupied by US Army Special Forces deployed as part of the US-led Operation Enduring Freedom mission.⁷ However, Amnesty International has received credible information from international sources intimately familiar with the conduct of international forces in Kandahar that other clandestine forces, including personnel from US “other government agencies”, including the CIA, have also operated from the firebase. While credible, this information remains unconfirmed due to the profusion of different forces, both international and Afghan, with different mandates and chains of command operating in Kandahar, and the veil of secrecy shrouding the operation of international forces.

THE MIDNIGHT KILLINGS

Abdul Habib, a poultry shopkeeper, and his older brother Mohammad Ali, a butcher, lived in the same large, multi storey house, a common practice among Afghans. Like many houses in Kandahar, the building had several stories above ground and a basement apartment, and a shared courtyard surrounded by a high wall with a main gate opening onto Muhammad Gul alley. Abdul Habib, in his early 30s, lived on the ground floor with his six children. Mohammad Ali, in his early 50s with five children, occupied the basement apartment.

According to several eyewitnesses interviewed by Amnesty international shortly after the incident, at some point between 1 and 2am on a rainy night in mid-January, 2008, a joint force comprised of Afghan and international military personnel raided the house. All of the witnesses said that the raid took place without warning and apparently without any provocation.

One of the family members, who witnessed the entire incident, told Amnesty International:

"We were asleep at home. We were woken up by the sound of loud knocking at the front door. [Abdul Habib] got up and went to the door of the bedroom. He opened the door and then turned around to put on his shoes.⁸ At the same time the Americans came over the walls and started shooting. His back was facing the outside and he was shot in the back. He fell forward into the bedroom. He lay halfway in the threshold."⁹

According to the witness, "the Americans",¹⁰ who were wearing yellow camouflage uniforms (commonly used in the desert environment of southern Afghanistan) and had lights attached to their helmets, then entered the bedroom.

"I saw [Abdul Habib] being dragged into the courtyard by two men. I saw them shoot [him] again. First they fired one shot. Then they fired another five shots."

The witness clarified that Abdul Habib, like everyone else in the house, was unarmed at the time.

The witness told Amnesty International that she saw six "Americans" inside the apartment, but she could see there were several more in the courtyard. None of the assault force inside the apartment could speak the local languages, so "the Americans" made it clear through gestures that they wanted the family to stop screaming.

At that time, the witness saw Mohammad Ali running up the stairs from the basement apartment to the courtyard. *"The Americans shot him [Mohammad Ali] on the stairs, so that his legs were above his head on the stairs."* According to the witness, Mohammad Ali was also unarmed at the time he was shot.

The witness continued:

"Then the Americans searched the house. ...First they killed them and then they searched the house. They didn't find anything and they didn't take anything. We didn't have any weapons in the house. They searched everything, they even opened the packages of biscuits distributed at school but didn't find anything."

A neighbour described the incident to Amnesty International thus:¹¹

"At the time of the incident I was at home. It was 1:30am and I saw from the gate of my house that the entire alley was filled with Afghan and American troops ...I heard the screams of women and children.

[After 30 minutes when the troops left] I went over and saw Abdul Habib lying face down inside the gate. Because it was raining his body was wet. He had been shot in the back. I personally saw that eight bullets had hit his back.

When I went to the basement I saw Mohammad Ali who had been killed on the staircase. There were seven bullet holes on his body. One had struck his neck and the rest his back and chest.

Later all the neighbours from the alley came and we took the corpses to the mosque.”

One notable aspect of the raid is that it did not draw the involvement of Afghan National Police (ANP) forces that operated a permanent checkpoint near the brothers' home. Residents of the area who spoke with Amnesty International said they heard from the ANP forces manning the checkpoint that the joint international-Afghan force involved in the raid had stopped at the checkpoint before the operation and had told the ANP not to respond if they heard shooting as they were about to conduct an armed operation. Amnesty International cannot further verify this claim due to security considerations, but it would explain the ANP's failure to react to an incident involving multiple gunshots within earshot of the police checkpoint.

EARLIER RAIDS

The raid that led to the killing of Abdul Habib and Mohamad Ali was the third time in less than six months that a combined international-Afghan force had raided the brothers' home. International troops had detained Abdul Habib on two previous occasions within months of his death; Mohammad Ali had been detained once before the night he was killed. None of the previous raids or detentions seems to have resulted in any formal charges, or even public allegations, against the brothers.

The first operation was also an early-morning raid which according to the AIHRC took place on 13 September 2007. In the early hours of the morning, a joint force of international and Afghan armed men blew off the doors of the family home and entered the compound. Amnesty International spoke to a witness who was present during the operation:

“I was woken up by armed men who came into my bedroom. Some of them were speaking in Pashtu and some were talking in a foreign language. A man speaking in Pashtu asked me “Do you have any weapons in your house?” I said “No.” The men were wearing sandy camouflage uniforms.”

According to witnesses, Abdul Habib and Mohammad Ali were hooded, bound, and had their hands tied behind their backs during the operation. After the premises had been searched, they were detained for nearly two weeks.

Abdul Habib and Mohammad Ali's brother told Amnesty International:

“On the first days of Ramadan of this year [the Afghan year, corresponding to early September 2007] they came and took them from the house. They searched the house for one and a half to two hours, then they took them to Mullah Omar's house [Firebase Gecko/Maholic]. They were special forces, Afghan and Americans, who took them.”¹²

The next day Abdul Habib's daughter informed me and because the personnel were foreigners I knew they were from Mullah Omar's house. That night the Americans kept them and the next day they were transferred to NDS [the National Directorate of Security, Afghanistan's intelligence service]. They were at NDS for 11 days. I gave NDS the guarantee to release them.”

The NDS in general and the NDS operations in Kandahar specifically, face credible allegations of engaging in systematic and routine torture and ill-treatment of detainees.¹³ After their release, the brothers told their families that they had been taken to Firebase Gecko/Maholic where they were interrogated by international personnel. Both men were reportedly kept hooded and had their hands bound during their time in Gecko before they were transferred to the NDS. Both men lodged complaints with the AIHRC about their detention and the ill-treatment they allegedly suffered during this period.

The family home was reportedly raided for a second time a short time after the Muslim celebration of the Eid al-Fitr (which in 2007 fell on 12 October), again by a joint international-Afghan force wearing camouflage uniforms. The troops searched the house after they had hooded male family members and tied their hands behind their backs. On discovering that Mohammad Ali was not present, the troops detained Abdul Habib and confiscated his mobile phone, identification papers, and 3,000 Afghanis (US \$60). Abdul Habib was reportedly taken to Firebase Gecko/Maholic, where he spent one night. He was then transferred to the NDS in Kandahar City for 32 days.

On his release, Abdul Habib informed family members that international military personnel who interrogated him at the Firebase had threatened him with violence if he spoke about his detention or complained to the authorities.

Despite these threats, Abdul Habib complained again to the AIHRC about the second raid on his home and his detention at Firebase Gecko/Maholic. He also informed the AIHRC that after receiving direct threats, he had concerns for his life.

NO EXPLANATIONS, NO ACCOUNTABILITY

It is not unusual for the Afghan army or police, and their international supporters, to report killing two Afghan men in Kandahar, which is still the primary base for the Taliban insurgency and a major target for what the previous US administration called the “war on terror”. What is unusual is that in this instance, international forces have not assumed responsibility for the attack. Before and after this incident, international forces have asserted their responsibility for other lethal attacks, typically justifying them by claiming that they were killing Taliban or other armed anti-government forces in the course of an armed confrontation (though some of these justifications are contested and, in several notable instances, shown to be wrong).

Amnesty International is not aware of any charges brought against the two brothers by Afghan authorities after any of the raids on their homes. None of the international forces operating in Kandahar have clarified why, on two occasions, the two brothers’ home was raided or they were detained and handed over to Afghan authorities. Amnesty International requested further information from NATO/ISAF and US OEF forces—who are the only legally operating international military forces in the area— in December 2008 and January 2009.

International forces operating in Kandahar have not assumed responsibility for this incident. US Forces have yet to address the incident publicly, while NATO/ ISAF have denied direct involvement in the incident. On 7 January 2009, a NATO spokesperson told Amnesty International that NATO had established that the non-Afghan troops reportedly involved in the incident were not NATO/ISAF forces. According to NATO, officials in Kandahar and Kabul had checked the operational logs and which units were operating in Kandahar on the particular night. NATO clarified that it did not document this internal investigation, in line with its standard operating procedures.¹⁴ In a letter dated 13 January 2009, NATO said:

Based on a complete review of NATO-led International Security Assistance Force (ISAF) records and consultations with both Regional Command (South) and the Canadian forces in the area, I can inform you that we have no evidence of any ISAF involvement in the incident. I can also relay that ISAF has no further information about the brothers’ actions or affiliations that may be germane to the circumstances of their deaths. ...

[I]t is my understanding that after being informed of the deaths, and also responding to inquiries from UNAMA and AIHRC, ISAF’s Regional Command (South) in Kandahar reviewed the incident and determined that ISAF troops were not involved. Therefore, given that its troops were not involved and having no additional information, ISAF conducted no further inquiry into this matter, considering it to be a matter for the Afghan authorities.¹⁵

Philip Alston, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, conducted a 12-day fact-finding mission in May 2008 to investigate this incident, among others. At the conclusion of his report, he stated: “[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.” The Special Rapporteur further stated: “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.”¹⁶

Attempts by the family of Abdul Habib and Mohammad Ali to take up the case with local authorities have also been frustrated. Afghan National Security Force (ANSF) personnel and local government officials in Kandahar reportedly told family members they are “powerless” to take action against the international forces and US ‘OGA’ personnel operating out of Firebase Gecko/Maholic.¹⁷

Abdul Habib and Mohammad Ali’s brother expressed his frustration and anxiety about the mystery surrounding his brothers’ killing to Amnesty International:¹⁸

“We don’t have any enemies and nobody had threatened us. I don’t know who gave the Americans incorrect information and we want justice from whoever gave the Americans incorrect information.

We went to Ahmad Wali Karzai [brother of President Hamid Karzai and a powerful power broker in Kandahar] and discussed the matter with him. He referred us to NDS and they said we share your grief. The government told us we can’t do anything and we have no power over these guys from Gecko.

The special forces from Gecko ... conduct a lot of searches and greatly harm the people.

I myself fear a lot and don’t spend the night at my house and fear that they will kill me like my brothers.”

According to the AIHRC, the brothers’ surviving family members have fled to Pakistan.¹⁹

Amnesty International cannot confirm whether or not the two brothers were involved in anti-government military action, or criminal activity, or a local feud. None of the witnesses who spoke with Amnesty International described any armed confrontation immediately prior to the raid.

The circumstances described by eyewitnesses and neighbours suggest that the two brothers were killed without any warning and without any provocation, unarmed and unthreatening. The description of a significant number of troops strongly indicates that the brothers could have been captured alive, if they were suspected of any alleged wrongdoing.

In the absence of any other explanation, it is possible that this case is an instance of local forces collaborating with international troops taking advantage of their position to pursue personal agendas, such as settling a blood feud or eliminating political or commercial rivals. The lack of information from international forces only fuels such suspicions and fosters

feelings among Afghans that international forces are above the law and unaccountable for their actions.

Regardless of the motivation for the raids, the accounts gathered by Amnesty International, the organization is deeply concerned suggest that the killing of the two brothers was arbitrary, in violation of their right to life—a gross violation of human rights, and in the context of the armed conflict in southern Afghanistan potentially a war crime.

Despite the presence of thousands of international troops, the armed conflict in Afghanistan is characterized as one "not of an international character," since it is not a war between the armies of two states, but rather of government forces fighting against internal enemies, albeit with the help of other nations. All parties to a non-international armed conflict are obliged, as a minimum, to apply Article 3 common to the four Geneva Conventions. In addition, many of the provisions of international humanitarian law (the laws of war) treaties have become rules of customary international law, that is, rules derived from consistent state practice and consistent consideration by states that they are bound by these rules. Such rules apply to all states regardless of treaty obligations. Certain rules originally formulated for international armed conflict are now understood to bind parties to non-international armed conflict as well. In the context of the conflict in Afghanistan, Common Article 3 of the four Geneva Conventions and the relevant rules of customary international humanitarian law continue to apply, as do the rules of international human rights and domestic law.

One of the fundamental principles of international humanitarian law is the principle of distinction, which requires all parties to the conflict to distinguish between combatants on the one hand and on the other hand civilians and any other persons taking no active part in the conflict (including captured, surrendered and wounded members of the armed forces). Civilians and civilian objects may at no point be targeted during conflicts. Military objectives are members of the armed forces, other persons taking a direct part in hostilities for the duration of their participation, and "those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."²⁰ All the available information about the killing of Abdul Habib and Mohammed Ali suggests that they did not take an active part in the hostilities, certainly not at the time they were killed.

Alongside the laws of war, international human rights law applies at all times, in war time or peace. Human rights law is contained in treaties including the International Covenant on Civil and Political Rights (ICCPR) and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), to which Afghanistan and all ISAF states (including the USA) are states parties. While some rights guaranteed by international human rights treaties can be subject to derogation during times of public emergency, some rights, including the right to freedom from torture and other ill-treatment, are non-derogable. Article 4 of the ICCPR provides that even "[I]n time of public emergency which threatens the life of the nation" states may not derogate from the prohibition on arbitrarily depriving individuals of life in Article 6 of that Covenant and the prohibition on torture and other ill-treatment in Article 7.

In a General Comment on Article 4, the UN Human Rights Committee stated that in addition,

other rights, provided in the ICCPR and elsewhere, could never be curtailed in an emergency, the right to be treated with humanity and dignity when deprived of liberty (Article 10); the prohibitions on hostage-taking, abductions and unacknowledged detention; and deportation or forcible transfer of populations without a valid international legal basis (Article 12). The treatment of the two brothers by international forces over several months indicates the violation of these norms, as the brothers were arbitrarily detained, held without charge or trial, subjected to ill-treatment while in custody, and ultimately, killed seemingly without cause or explanation.²¹

Because it constitutes a treaty obligation inherent in the Covenant as a whole, another human right provided for in the ICCPR that can never be curtailed, even during emergencies (such as an armed conflict), is the right to an effective remedy (Article 2(3)).²² This right is denied to most Afghans who have suffered injury or property damage as a result of ISAF or OEF military operations. As stated in a letter to Amnesty International on January 13, 2009, NATO/ISAF forces said they have established an ISAF Headquarters body, headed by a senior military officer, with the primary responsibility of following allegations of civilian casualties. This body will soon be augmented with two civilian members. In addition, ISAF has updated its standard operating procedures (SOP) on the Escalation of Force in order to minimize the possibility of civilian casualties. These SOPs are classified for reasons of operational security in order to prevent insurgents from using knowledge of the SOPs to circumvent their intent.

According to CIVIC, a nongovernmental organization which has worked extensively on reparation for civilians injured in Afghanistan and Iraq, there are several ad hoc mechanisms in Afghanistan to make amends, whether through compensation or solatia, to civilians suffering combat-related losses. Furthermore, only a few militaries, including of the USA, Canada, Australia, Germany and a handful of others, maintain ad-hoc systems to pay compensation when a civilian is harmed. A program created and funded by the US Congress called the Afghan Civilian Assistance Program provides assistance to civilians harmed by any international military operation. NATO forces maintain a common Post-Operations Humanitarian Relief Fund which provides immediate assistance, though only nine NATO states (including the USA, but not Canada or the UK) have donated to this fund, and the system suffers from lack of coordination and clear guidelines.²³ The Afghan government maintains a fund called the Martyr's Fund to pay a stipend to victims, but this system is also not coordinated with any of the other programs mentioned here. In short, even when Afghans can identify which troops have caused them injury, they face an array of arbitrary, inconsistent mechanisms that may, or may not, amend for their loss. This confusion presents a significant barrier to Afghans who may seek amends for personal or property damages from international forces and thus significantly erodes the rule of law as well as the perception of the international forces' respect for the rule of law and the well-being of Afghans.

SOLDIERS, SPIES AND MILITIAS

A major difficulty in establishing any type of accountability for the conduct of international and Afghan government forces is the profusion of different units with different chains of command and very different rules of engagement. The situation has been clarified somewhat since November 2008, when ISAF and US OEF commands were unified at the top, with one (US) commander, Commander Gen David D. McKiernan at the head of both chains of command. But the identity and mandate of various international forces in Afghanistan defies easy explanation.

Afghans facing international forces have great difficulty distinguishing between OEF, ISAF and the myriad of other international units operating in the country—in fact, as displayed above, most Afghans simply refer to all international troops as “Americans” or by the country in charge of the nearest international garrison. In part, this confusion is the inevitable result of several military and intelligence missions occupying the same space. The operation of clandestine intelligence forces, which often cloak their activities or seek to hide their efforts, only exacerbates the difficulty faced by ordinary Afghans trying to make sense of the foreign forces ostensibly there to protect them.

As illustrated by the confusion surrounding the 16 January 2008 raid, there are a variety of different forces, both international and Afghan, operating in Kandahar Province. These forces engage in joint operations making it particularly difficult to definitively identify which force(s) were involved in the raid that led to the killings of Abdul Habib and Mohammed Ali. The following section provides an overview of the myriad of personnel deployed in Afghanistan and specifically in Kandahar Province.

INTERNATIONAL MILITARY FORCES IN AFGHANISTAN

At the time of the incident (16 January 2008), there were two distinct military engagements, with separate rules of engagement and mandates, in Afghanistan:

- “Operation Enduring Freedom”, the US-led coalition of approximately 22,000 troops (including about 3,000 non US forces) with a counter-terrorism and training mission;
- The NATO-led, UN mandated International Security Assistance Force (ISAF), which supports the extension of Afghan Government control across the country. NATO assumed strategic command, control and coordination of ISAF on 11 August 2003. ISAF conducts security and stabilization operations, including the direction of Provincial Reconstruction Teams (PRTs)²⁴ which, in addition to fostering security, support security sector reform and facilitate reconstruction and development across Afghanistan. Today ISAF consists of approximately 55,100 personnel from 39 countries, including 23,220 troops from the USA.

ISAF AND OEF IN KANDAHAR: BLURRING THE LINES

ISAF forces finally expanded to cover Kandahar in July 2006. Since then, NATO-led ISAF forces have been deployed in Kandahar Province, within ISAF's Regional Command South (RC-South).²⁵ At the time of the raid of the two brothers' house, a Canadian force of approximately 2,500 personnel formed the main ISAF presence in Kandahar. This comprised a Battle Group,²⁶ an Operational Mentor and Liaison Team²⁷ and a PRT. The multinational Headquarters or Forward Support Base for RC-South is located at Kandahar Airfield and is currently led by the Netherlands, but was led by Canada at the time of the lethal raid on the home of Abdul Habib and Mohammed Ali.

In addition to ISAF forces deployed in Kandahar, there are also international forces from the US Operation Enduring Freedom mission deployed in the province.²⁸ Whilst ISAF and OEF personnel largely focused on significantly different missions between 2001-2005 (with ISAF focusing on stability and reconstruction and OEF focusing on counter-terrorism and training),²⁹ the lines have become increasingly blurred since 2006, when ISAF expanded its operations to eastern and southern Afghanistan.

OEF has two major Commands: Combined Security Transition Command-Afghanistan (CSTC-A) and Combined Joint Task Force 101 (CJTF-101).

CSTC-A's mission is to deploy US Embedded Training Teams to provide advice, training and mentoring to the Afghan National Army and Police.³⁰

CJTF-101, with about 19,000 personnel, is primarily concerned with conducting counter-terrorism operations as a component of the US-led "war on terror". A key element of the OEF deployment are Special Operations Forces, which form part of Combined Joint Special Operations Task Force-Afghanistan (CJSOTF-A). The US has recently announced that as part of its new "surge" of forces, it will deploy up to 20 additional Special Forces teams to Afghanistan.³¹

CJSOTF-A is largely comprised of US personnel from all three services (Army, Navy and Air Force) such as US Army Special Forces and US Navy SEALs. However, a number of other countries have also deployed their Special Operations Forces to CJSOTF-A. These forces, which are deployed throughout Afghanistan, are engaged in a wide array of operations, including "direct action,"³² various forms of unconventional warfare, espionage, reconnaissance, and so-called psy-ops (psychological operations) CJSOTF-A forces known to have operated in Kandahar Province include US,³³ Canadian,³⁴ and Polish³⁵ personnel.

Due to the high levels of insurgent activity in these regions, ISAF forces have become engaged in significant counter-insurgency operations. These include special reconnaissance and direct action operations carried out by Special Operations Forces deployed as part of ISAF³⁶ which are essentially little different from the operations carried out by Special Operations Forces deployed as part of OEF.³⁷ Furthermore, it appears that in many instances ISAF and OEF forces engage in joint operations.³⁸

In addition to Special Operations Forces deployed as part of CJSOTF-A, elite Task Forces or Special Mission Units (SMUs) have also been deployed to Afghanistan for the specific purpose of tracking, targeting, and apprehending or killing of what the USA calls "high-value

targets” within al-Qa’ida, the Taleban and other associated insurgency groups. These Task Forces/SMUs are highly secretive, and have frequently changed their name and composition in order to minimize their exposure.

They are reportedly comprised of the most elite Special Operations Forces, which are categorized as ‘Tier I’ level forces.³⁹ They have included the US Army’s 1st Special Forces Operational Detachment-Delta (aka Delta Force), SEAL Team 6 (aka Naval Special Warfare Development Group, or DevGru), the 75th Ranger Regiment, and the Intelligence Support Activity (ISA). Over the past few years, a small number of other countries have also deployed their Tier I Special Operations Forces to these Task Forces/SMUs including Canada⁴⁰ and the United Kingdom.⁴¹ US civilian intelligence or ‘other government agency’ (OGA) personnel from the CIA as well as personnel of the Defence Intelligence Agency, and US civilian contractors, have also reportedly been included in these Task Forces/SMU’s.⁴²

Unlike other Special Operations Forces, which are often assigned to a specific area of operations, these Task Forces/SMUs can be deployed at reasonably short notice to any part of Afghanistan to target “high-value” targets. However, they have also been deployed to specific locations, particularly the border region between South East Afghanistan and Pakistan, for longer periods of time to conduct more sustained operations.

US ‘OTHER GOVERNMENT AGENCIES’ (OGAS)

The US Central Intelligence Agency has also deployed personnel to Afghanistan who have the capacity to conduct direct action operations. CIA personnel formed the main component of the initial advance party which was sent into Northern Afghanistan in late September 2001.⁴³ Paramilitary operatives from the CIA’s Special Activities Division (SAD) have also been engaged in actively tracking, targeting, and apprehending or killing senior al-Qa’ida and Taleban officials (“High-Value Targets”, or HVTs, in military parlance). SAD is reportedly comprised mainly of individuals with extensive military backgrounds (usually former Army Special Forces, Delta Force or SEAL personnel).⁴⁴ With increased demands placed on SAD

since 11 September 2001, civilian contractors have also reportedly been recruited for operations.⁴⁵ CIA paramilitaries have reportedly formed part of the elite Taskforces/SMUs which focus on key “High-Value Targets” in Afghanistan.⁴⁶ However, they also have the capacity to conduct their own operations, and have directly recruited Afghan militia forces to support their counter-terrorism missions. Amnesty International has received credible information that CIA personnel are currently operating in Kandahar Province, and that they have operated out of Firebase Gecko.⁴⁷ Amnesty International has also received information about the operation of other US intelligence agencies in Afghanistan, and Kandahar specifically, but the nature of these agencies prevents confirmation of this information.

AFGHAN FORCES DEPLOYED IN KANDAHAR

Afghan forces operating in Kandahar include elements of Afghan National Security Forces (ANSF), primarily the Afghan National Army (ANA), the Afghan National Police (ANP), and the National Directorate of Security (NDS), the Afghan civilian intelligence service. With their capacity reportedly gradually improving, ANA units are increasingly involved in joint operations with international military forces.⁴⁸

In addition to formal ANSF, there are also other Afghan forces in Kandahar which are

reportedly currently working closely with some international Special Operations Forces and civilian intelligence agencies, particularly OGAs such as the CIA. Comprised of former militias which are controlled by Afghan powerbrokers who exercise influence in Kandahar, the militias played a key role in supporting US Special Operations Forces and the CIA in ousting the Taliban in late 2001. Amnesty International has received information that such Afghan militias controlled by international personnel are operating in Kandahar Province.⁴⁹

Elements of these militias were reportedly retained by international personnel as highlighted by a US Army Special Forces soldier: "*The Afghan commandos that you hear about may be a number of manifestations; and you're probably talking about the Mohawks that may or may not still be around that eventually were picked up by the CIA and became their guys. They had a lot of money, a lot of training, a lot of everything.*"⁵⁰ These forces reportedly continue to operate today. As one Western official noted, "*The brightest, smartest guys in these militias were kept on...They were trained and rearmed and they are still being used.*"⁵¹

CONCLUSION

Abdul Habib and Mohammed Ali's death may seem insignificant against the backdrop of the conflict in Afghanistan. However the lack of accountability on the parts of the international security forces involved in the deaths of these two brothers signals to Afghans that international security forces do not uphold the principles of transparency, accountability, and the rule of law. As more US troops are currently being dispatched to Afghanistan, the perceptions of complacency by international security forces is breeding more resentment and anger among the Afghan population, particularly in the conflict-affected southern and eastern areas of the country where the Taliban and other armed opposition groups are most active.

Respect for international law, including human rights law and international humanitarian law as well as respect for the rule of law by international and Afghan security forces, is imperative to bringing security to Afghanistan. Improving access to basic economic and political rights for Afghans is contingent upon improving security and building respect for the rule of law. International forces operating in Afghanistan cannot simply counter the perception common among Afghans that they are above the law. They must, as a matter of international law, ensure proper accountability for the actions of all international forces, whether in the regular military, civilian contractors, or intelligence agencies.

Improving the conduct and accountability of US and other international forces in Afghanistan would also be of tremendous practical value in carrying out their UN-mandated responsibility toward the Afghan people. The 2006 US Army Manual on Counterinsurgency, which is primarily attributed to General David H. Petraeus, now in command of the US Central Command and the US's military operations in Afghanistan states, "Establishing the rule of law is a key goal and end state in COIN [counter insurgency]". To date, this principle has not been properly implemented by international forces operating Afghanistan.

Amnesty International welcomes the steps taken by NATO/ISAF to minimize civilian casualties since June 2008. Three tactical directives have emphasized the seriousness of civilian casualties as a result of its operations and procedures to minimize it. However, much more is needed to ensure that the safety and security of innocent civilians is made a top operational priority and not left as mere military rhetoric.

NATO/ISAF, US, and Afghan security forces need to urgently develop a unified—or at least, coherent and consistent—system for prompt, thorough, independent and impartial investigation leading to the prosecution of suspects, as well as for systematic reparation process for civilians who are killed or injured as a result of international military operations.

Amnesty International calls on all international security forces operating in Afghanistan to immediately investigate the deaths of Abdul Habib and Mohammad Ali, make public its findings, and bring to justice any international military personnel involved in the killings. By clarifying what happened to these two brothers, international security forces and the international community will be one step closer to meeting obligations to Afghanistan and addressing the growing insecurity of the Afghan people.

ENDNOTES

1 United Nations Assistance Mission to Afghanistan (UNAMA) Annual Report Of The United Nations High Commissioner For Human Rights And Reports Of The Office Of The High Commissioner And Secretary-General: Report of the High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights.

2 Mohammad Rafiq, "Afghans protest against US on civilian deaths report," Reuters, 25 January 2009, <http://www.reuters.com/article/asiaCrisis/idUSSP384643>.

3 Afghan Independent Human Rights Commission, "From Hope to Fear: An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan", December 2008, http://www.aihrc.org.af/index_eng.htm.

4 Tactical Directive, 30 December 2008, ISAF HQ Kabul. http://www.nato.int/isaf/docu/official_texts/Tactical%20Directive_090114.pdf. An unclassified version of this directive is attached as an appendix to this Briefing Paper.

5 Firebases, or forward operating bases, are small fortified outposts established by international military forces throughout Afghanistan enabling them to retain a long-term presence and conduct operations in a specific area. Firebases can range in size from housing a dozen or so troops to accommodating hundreds of soldiers and supporting facilities.

6 In 2007 Firebase Gecko was renamed Firebase Maholic in memory of Sgt. Thomas Maholic who was killed during operations in Kandahar Province in June 2006. However, few individuals (particularly Afghans) appear to be aware of the name change (all sources consulted still refer to the Firebase as Gecko, or as "Mullah Omar's house"). For the purposes of this report Amnesty International will refer to the Firebase as Firebase Gecko/Maholic. For further details on Firebase Gecko/Maholic, see 'U.S. Special Forces Using Former Taliban Base', Associated Press, 1 February, 2007.

7 Ibid.

8 It is common practice in Afghanistan to take shoes off when entering a room or abode. When leaving the room the individual will turn around to face his shoes and therefore will momentarily have his back to the entryway.

9 Amnesty International interview, Kandahar, 20 February 2008.

10 Although the witness described the individuals as "Americans", the identification is inconclusive as many Afghans refer to all international personnel as Americans; the most Amnesty International can infer from the testimony is that the raiders were Western.

11 Amnesty International interview, Kandahar, 20 February 2008.

12 Many Afghans in Kandahar denote International forces distinct from the regular NATO troops as "Special Forces". Such identification does not necessarily establish the presence of troops actually comprising US Special Forces.

13 Amnesty International, Afghanistan: Detainees transferred to torture: ISAF complicity?, (ASA 11/011/2007), November 2007, <http://www.amnesty.org/en/library/info/ASA11/011/2007/en>.

14 Amnesty International telephone interview, Brussels, 7 January 2009.

15 Correspondence from COMISAF to Amnesty International, 13 January 2009.

16 Statement by Professor Philip Alston, Special Rapporteur of the United Nations Human

Rights Council on extrajudicial, summary or arbitrary executions, Kabul, 15 May 2008, available at <http://www.unhcr.ch/hurricane/hurricane.nsf/view01/676D6941A0FA3BA5C125744A0036A992?opendocument>.

17 See 'UN hits at spy-led Afghan killings', The Financial Times, 5 May 2008.

18 Amnesty International interview, Kandahar, March 2008.

19 Afghanistan Independent Human Rights Commission (AIHRC), "From Hope to Fear – An Afghan Perspective on Operations of Pro-Government Forces in Afghanistan", Kabul, December 2008. p.24.

20 Protocol I Additional to the 1949 Geneva Conventions, Art. 52(2).

21 UN Human Rights Committee, General comment no. 29: States of emergency (article 4), para. 13.

22 UN Human Rights Committee, General comment no. 29: States of emergency (article 4), para. 14.

23 For instance, according to NATO, "the ISAF has been established to provide quick humanitarian assistance, such as the supply of food, water and shelter, or the repair of buildings or key infrastructure, immediately following sizable ISAF military operations." As of October 2008 (the last available data) the fund had Euro 2, 844, 673, with Euro 1,300,000 coming from the US alone. NATO Fact Sheet on POHRF, October 2008, <http://www.nato.int/isaf/topics/factsheets/factsheet-pohrf.pdf>.

24 PRTs are generally involved in initiating various quick impact, medium and long-term reconstruction and development projects. Canada assumed responsibility for the Kandahar PRT in August 2005.

25 Approximately 22,360 personnel are deployed to RC-South as part of ISAF. In addition to Kandahar, RC-South also encompasses the Provinces of Deh Kundi, Helmand, Nimruz, Uruzgan, and Zabul. ISAF also has other regional commands throughout Afghanistan.

26 A 'Battle Group' or 'Task Force' (U.S. Term) has been described as "the basic building block of an army's fighting force. A battle group is formed around an infantry battalion or armoured regiment which is usually commanded by a Lieutenant Colonel.

27 OMLTs are comprised of small (usually 12-20) ISAF multidisciplinary teams who are tasked with training, advising and in some cases supervising, Afghan National Army (ANA) and Afghan National Police (ANP) forces. OMLTs are also responsible for liaison between ISAF and the ANA and ANP at the Provincial level.

28 As of 1 April, 2008, the US reportedly has nearly 50,000 military personnel deployed to Afghanistan. Of this figure approximately 60% serve in the NATO-led ISAF mission (29,000) and the remaining serve in OEF (19,000). See 'U.S. Forces in Afghanistan', Congressional Research Service (CRS) Report for Congress, 15 July, 2008. Although there are personnel from other countries participating in OEF, US personnel make up the overwhelming majority of OEF forces.

29 However, even during 2001-2005 there were instances of overlap, particularly with regard to ISAF Special Operations Forces.

30 Embedded Training Teams are essentially the same as ISAF OMLTs merely under a different command structure.

31 Gordon Lubold, "A surge of Special Forces for Afghanistan likely", Christian Science Monitor, 19 January 2008.

32 "Direct action" uses specialized forces to carry out short-duration strikes and other small-scale offensive actions in otherwise unreachable or difficult territory. Direct actions often operate with different rules of engagement. Andrew Feickert, 'U.S. Special Operations Forces (SOF): Background and Issues for Congress' Congressional Research Service (CRS) 16 May, 2008, p. 2.

33 US Army Special Forces operate out of Firebase Gecko/Maholic, see "U.S. Special Forces Using Former Taliban Base", Associated Press, 1 February, 2007.

34 Canadian Special Operations Forces have also operated out of Firebase Gecko/Maholic, see "U.S. Special Forces Using Former Taliban Base", Associated Press, 1 February, 2007.

35 Polish Special Forces (GROM) are reportedly deployed in Kandahar and are working closely with Canadian Forces, see "Poland will deploy Helicopters, UAVs, and More Troops to Southern Afghanistan for Counter-Insurgency Operations". Edited excerpts of a speech by General Franciszek Gagor, Polish Armed Forces, 31 March 2008, available at <http://www.sfu.ca/casr/ft-poland-afghan-1.htm>

36 Australia, Norway and the United Kingdom are among some of the states which have contributed Special Operations Forces to ISAF.

37 One difference appears to be that ISAF Special Operations Forces have largely focused on Taliban targets (mainly Mid Level Targets) since 2006, whereas OEF-A Special Operations Forces remit also extends to targeting al-Qa'ida High Value Targets, Amnesty International confidential interview with ISAF Special Operations Force personnel.

38 See "U.S. Special Forces Using Former Taliban Base", Associated Press, 1 February, 2007.

39 'Tier I' "refers to a high level of readiness and training, with specific emphasis on direct-action counterterrorism: dynamic entry for the seizure of HVT individuals or the rescue of hostages. See Sean M. Maloney, "Enduring the Freedom: A Rogue Historian in Afghanistan", Potomac Books, 2005, p. 49.

40 For instance, Joint Task Force 2 (JTF-2), see "JTF2 in Combat in Afghanistan" Toronto Star, 16 September, 2005.

41 For instance, the Special Air Service (SAS) Special Boat Squadron (SBS) and Special Reconnaissance Regiment (SRR). A joint US/UK Task Force/SMU comprising US Delta Force and UK Special Boat Squadron (SBS) and Special Reconnaissance Regiment (SRR) is reportedly currently deployed in the Tribal belt of Pakistan near the Afghan border conducting "clandestine reconnaissance missions" to facilitate unmanned aerial vehicles (UAV) strikes against al-Qa'ida HVTs, see Sarah Baxter "Get Osama Bin Laden before I leave office, orders George W Bush", The Sunday Times, 15 June 2008.

42 Civilian contractors recruited for such Task Forces are usually former Special Operations Forces or OGA personnel. For further information see Robert Young Pelton, "Licensed to Kill: Hired Guns in the war on terror", Crown, 2006.

43 For further information on the CIA's role in the US-led invasion of Afghanistan in 2001, see Gary Bernsten and Ralph Pezzullo, "Jawbreaker: The Attack on Bin Laden and Al-Qaeda - A Personal Account by the CIA's Key Field Commander", Three Rivers Press, 2005; Gary C. Schroen, "First In: An Insider's Account of How the CIA Spearheaded the War on Terror in Afghanistan", Presido Press, 2006.

44 For further information on the CIA's Special Activities Division, see "Paramilitary OPS Wanted in Pentagon", Associated Press, 27 July, 2004; "The CIA's Secret Army", Time, 26 January, 2006; Richard Best Jr. and Andrew Feickert, "Special Operations Forces (SOF) and CIA Paramilitary Operations: Issues for Congress", Congressional Research Service (CRS) Report for Congress, 6 December, 2006.

45 See Robert Young Pelton, "Licensed to Kill: Hired Guns in the War on Terror", Crown, 2006.

46 See "Afghanistan, Iraq: Two Wars Collide", The Washington Post, 22 October, 2004.

47 Amnesty International confidential interview with a Western official with knowledge of International intelligence operations in Afghanistan.

48 See "Afghan Corps Faces A Resurgent Taliban", Washington Post, 10 June, 2006; "Afghan, NATO forces rout Taliban: Officials", Reuters, 19 June, 2008.

49 Amnesty International confidential interview with a Western Official with knowledge of International intelligence services operations in Afghanistan.

50 See "Interview with CPT Paul Toolan" 1st Battalion, 3rd Special Forces Group, Operational Leadership Experiences in the Global War on Terrorism, Combat Studies Institute, Fort Leavenworth, Kansas, 24 July, 2006, p.8. (emphasis added in text).

51 See "Afghan death squads 'acting on foreign orders' ", The Independent, 15 May, 2008

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