



United Nations Assistance Mission in Afghanistan



## **AIHRC and UNAMA joint investigation into the civilian deaths caused by the ISAF operation in response to a Taliban attack in Chora district, Uruzgan on 16<sup>th</sup> June 2007**

### Final Report

#### Summary

On 16 June 2007, Chora district of Uruzgan province came under attack by Taliban forces, who managed to take control of several villages. During their counteroffensive ISAF troops employed artillery shelling and air strikes to eventually regain control over the district on 20 June 2007. The operation resulted in the death of numerous civilians. While the exact number of casualties remains unclear, different sources quote figures ranging from 30 to 88 people killed and 80 to 100 injured.

The operation primarily involved Dutch troops (who constitute the main contingent of ISAF forces in Uruzgan) and the issue of the civilian deaths in Chora led to serious questioning in the Dutch Parliament. The Dutch government sent its own after action review team to look into the operational procedures employed and also requested UNAMA and AIHRC to carry out their own independent investigation<sup>1</sup>. On 4 July UNAMA and AIHRC fielded a joint mission to Uruzgan to verify the facts of the incident and determine whether the parties to the conflict had complied with international humanitarian law and human rights law.

Nevertheless, the loss of civilian lives is always a tragedy and there do remain some real questions regarding the accuracy of ISAF's targeting. In particular, the case shows an urgent need to reassess some of ISAF's more heavy-handed tactics, especially the decision of when to employ air power and heavy artillery. In Chora many villagers were prepared to fight against the Taliban and were hindered in this primarily by a serious failure of support from the Afghan government. It is important to understand that there exists a real sentiment amongst local populations to support counterinsurgency efforts. Any incidents of civilian casualties, even if not in contravention of international humanitarian law, will obviously have a severe impact on this. Real steps must be taken to ensure that incidents such as that in Chora are not repeated and in taking decisions on when and what level of force to deploy ISAF must thus also bear in mind such considerations along with the obvious constraints imposed by international law.

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<sup>1</sup> ISAF HQ undertook a third after action review.

## **Methodology**

From 4 to 7 July two members of UNAMA HRU<sup>2</sup> and 4 members of AIHRC<sup>3</sup> traveled to Tirin Kot to verify the facts in relation to the military operation of 16 June. On Friday 6 July ISAF assisted the mission by flying some of the mission's delegates to Chora district. Since in Uruzgan in general and in Chora in particular the security situation remains volatile after the operation the verification team had to carry out its investigation in a constrained environment. Due to the limited time and security concerns, the delegation could not move to the actual site of the conflict to gather further information.

In Tirin Kot the investigative team met with the ISAF Task Force involved in the incident as well as with several witnesses to the clashes, community elders from Chora, the Chief of Police of Uruzgan, the Chora district administration, doctors from Tirin Kot hospital and with a local NGO. The AIHRC delegates who traveled to Chora were only able to stay for three hours and in this time managed to meet with the district authorities and local community leaders as well as check casualty figures with the clinic. Finally, the team also contacted some further witnesses and actors by satellite phone.

The main aim of the mission was to identify any potential IHL violations that had occurred during the operation. Specifically, it aimed to understand the circumstances which led to operation so as to determine the proportionality of the level of force employed by ISAF in relation to the concrete and direct military advantage gained. In this regard investigation attempted to address the following questions:

- (i) Were realistic precautions taken to minimize collateral damage?
- (ii) Were there alternative or less damaging ways of achieving the intended military objective?
- (iii) Was the damage excessive in relation to the expected military advantage?
- (iv) Did the Taliban comply with international humanitarian law?

Independent of the question of compliance with IHL and human rights law, the investigation also aimed to give recommendations regarding any compensation to be paid to victims of the incident.

## **Location**

Chora district is around one hour South of Tirin Kot by road. It is one of the most populated districts in Uruzgan province (with an estimated population of 75,000 inhabitants). The bordering districts are Tirin Kot, Shahid Shasas, Gizab, Khas Uruzgan Daychopan (Zabul), Shah Wali Kot (Zabul) and Nesh.

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<sup>3</sup> Shamshulla Ahmadzi (monitoring and investigation, Kabul), Rahim Nasrat (Kabul), Ghulam Reza Ebrahimi (Kandahar), Ghulam Rasool (Kandahar)

## Testimonies

### **1. Col. Hans Van Griensven, Task Force Commander responsible for the operation (Wednesday 4 July 2007)**

Chora is a strategically important district for the Taliban who have maintained control over the neighboring Gizab district for the last two and a half years. Control of Chora would increase their access to other adjacent areas and open up a very useful route for drugs and arms trafficking. One year previously the Taliban had already taken over the district but were forced out again.

On 26 April 2007 Taliban fighters captured one check post and killed all the Afghan National Police (ANP) officers working there. On 29 April, an ISAF Task Force went to Chora together with ANA and retook the check post in Kala Kala. Consequently two to three ISAF platoons were introduced into Chora (approx. 65 soldiers). The ISAF platoons were stationed in the DG's compound and tried to stabilize the area by patrolling the areas surrounding the district centre, organizing the community elders and beginning development work such as building bridges and refurbishing the Bazaar. ISAF felt that people began to support the Task Force and this created serious concerns for the Taliban. Taliban forces began to infiltrate the area to destabilize it and tensions were building up.

On 10 June, there was information that about 1000 Taliban were surrounding the district. The Task Force commander of ISAF asked the governor of Uruzgan, Abdul Hakim Muneeb<sup>4</sup> and the Chief of Police (CoP) to send more Afghan National Auxiliary Police (ANAP) but they did not meet the request. The Ministry of Interior (MoI) did send some reserve police, Afghan Standby Police (ASP), to Uruzgan but these then refused to go to Chora. Hence no reinforcements were sent to Chora by the provincial administration. Finally, 40 ANA were deployed to the area, though this was hardly enough support to effectively counter the threat. Local people who wanted to resist the Taliban with their limited weapons also asked the Task Force platoons in Chora to provide weapons for them to fight in case of a Taliban attack. When the Task Force went to the district area, the CoP did not have enough ammunition but the district governor (DG) who had some ammunition informed them that this was being kept for the DG's own use. The ANP and MoI thus failed completely to support the people who fought against the Taliban.

On 15 June a PRT team from Tirin Kot was returning was targeted in a VBIED attack, which killed 8 children and 3 adults, with 14 more people being wounded.

During the night of 16 June Taliban fighters then began to move into Chora from various fronts. Between 4 am and 6 am all check posts surrounding the so-called Green Zone<sup>5</sup> came under attack (there were check posts in Kala Kala, Nyazi, Shaghasi and Sarab; see map below).

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<sup>4</sup> Originally from Khost province, belongs to Ghilzai tribe, served on high-ranking positions during Taliban regime and used to be deputy minister of tribal affairs and director of finance and revenue in Kandahar. He is graduated from high school. He was affiliated with Harakat Inqilab Islami faction however with very low profile and activism. He was appointed as governor of Uruzgan on 28 Feb 2006.

<sup>5</sup> A relatively secure area in the district center, protected by the check posts and containing the DG's office.



At 8.00 pm the tribal elder Mallim Abdul Sadiq Khan was informed by satellite phone to leave the area as ISAF was going to initiate air attacks. By that point ISAF had gained a good picture of Taliban movements and knew the positions they had taken up and where they had positioned their mortars. Also, due to the fighting during the whole day, many civilian people had fled the area. From 11.00 pm to early morning 4.00 am air attacks were flown and several Taliban positions were targeted. This stopped the advance of the Taliban and the following morning (Sunday, 17 June) ANA reinforcement reached the area and moved towards Saradkhel.

Both the governor and the President called ISAF and asked them to support Commander Tora Abdullah who was still battling the Taliban in Sarab. Throughout Sunday and Monday ISAF moved operations further westwards, while several tribal elders and other local fighters joined Tora Abdullah's resistance. On 19 June the pro-governmental forces pushed forward in South-Western direction and captured two of the check posts which had been abandoned earlier. Tora Abdullah and the local population then finally forced the Taliban to withdraw. On the evening of 19 June the status quo was restored and ANA took over all check posts. Only on 22 June ASP went to Chora and took over the check posts.

According to Colonel Van Griensven, 15 Taliban leaders were killed in the confrontation, including Mullah Mutalideen. The military objective of stopping the Taliban from taking over the district and subsequently killing of large number of people in Chora in retaliation for their support for the government was met.

Most of the civilian casualties occurred on 16 and 17 June. The Colonel claimed that the Taliban killed many civilians, forced the local people to stay in their houses and fired from the vicinity of civilian dwellings at the ISAF forces. Allegedly in Kalas they also gathered the bodies of several people they had killed in one location and then fired at ISAF so as to trigger retaliatory bombings in that location that would then put the blame for these civilian casualties on ISAF. ISAF troops were puzzled to see so many civilian casualties and on 20 June ISAF legal advisors and investigative specialists were sent to Chora to ascertain the casualties and to assess any damages for possible compensation. They also sent a medical team to the area.

The Colonel felt that, despite the casualties, people were not turning against ISAF and wanted them to remain in the area. At the time of the AIHRC/ UNAMA mission, ISAF was still in the process of making their assessment for the payment of compensation. According to ISAF figures the clashes resulted in **between 35 and 70 civilian deaths**, but not all of these were due to ISAF bombing and shelling. Many of the dead might also have been killed by the Taliban. ISAF claims to have had ground guidance to bomb Taliban targets and to have taken all possible precautions to avoid civilian casualties under the difficult circumstances.

ISAF main conclusions after the incident were as follows:

- Lack of support for the local people resisting the Taliban attack from governor of Uruzgan, the Afghan Police forces and the government of Afghanistan in general before and during the battle; Lack of leadership of the governor of Uruzgan

- Good cooperation with the ANA, who are now popular with the people; there was close coordination between Platoons and ANA during the counter attack.
- Unwillingness of the ASP to deploy in the area; the area could have been protected if the ASP available had been sent in time to reinforce the checkpoints.
- Necessary use of force to defend Chora and its people.

## **2. Malauvi Hamidulla, Provincial Council Chairman;**

**Abdul Khaleq, Wolesi Jirga member from Chora district/ brother of Malim Sadiq Khan (Wednesday, 4 July 2007)**

According to the interviewees, for months previous to the incident Taliban forces from Zabul, Nimroz and Kandahar had been planning an attack on Chora and some of their communications had been intercepted. The information was passed on to the international forces, the Ministry of Interior (MoI) and it was even raised in the Wolesi Jirga (WJ).

On 16 June the Taliban attacked the district, coming from the East and from the South. Abdul Khaleq, whose house is located in Qala-e-Ragh, claimed that there were 50 families in his sub village, which came under severe attack and was shelled by both the Taliban and ISAF. The Taliban began their attack in the morning while ISAF began its shelling in the afternoon. During the shelling people began to move towards the district centre and 21 shells fell very close his house. Local villagers defended the village from the Taliban up until 10pm. At 10pm the DG informed them to leave the area as ISAF was going to initiate bombings. At that point in time the villagers engaged in the fighting were also running out of ammunition. The air attack began at 11.00pm and went on until the morning, when it stopped to resume again at 11am on 17 June.

According to Abdul Khaleq, three civilians were killed by the Taliban in the village. One was shot dead and two others were beheaded. ISAF shelling killed one woman and injured two women and a boy. He stated that the Taliban also killed one woman and two men in Sarab village and set their house on fire. Altogether, he estimated that **78 people were killed and 98 injured**. He reckoned that only about 10 were injured due to Taliban shelling. Many of the injured were taken to Chora clinic, the TK health centre in Kandahar and PRT hospitals.

On 19 June, allegedly upon ISAF's request, the DG announced that it was safe for the people to return to Qala-e-Ragh. But on 20 June, when some people began to return, the Taliban fired rockets at ISAF and they landed in the village. Soon after the rocket attack ISAF planes flew several bombing attacks in the area, which killed another three civilians and injured five.

## **3. Abdul Malik Khan, Head of Department for Refugees and Reconstruction (Thursday 5 July 2007)**

According to Abdul Malik Khan, **70 people were killed and approximately 100 injured** in the incident. The governor visited the area and the government had paid some compensation. He believed that due to the shelling from both sides, many people got trapped and could not leave the area. He felt that the police were very weak

and that the ANAP did not do anything to secure the place. Because of his affiliation with the government Abdul Malik's brother was beheaded by a Taliban fighter who later was killed during the fighting. He felt that the Taliban did not show any serious concern for the people's wellbeing and used them as shields.

#### **4. Mohammad Nabi Baha, director of Afghanistan National Construction Coordination NGO (Thursday 5 July 2007)**

Mr. Nabi Baha explained the work that the Afghanistan National Construction Coordination ANCC does on construction and development projects and how it functions as implementing partner of UNICEF, WFP and the PRT.

He visited Chora after the conflict and completed a survey of the casualties and the damage to property caused by the fighting. In total, ANCC completed two surveys, one soon after the fighting and another on 1 July. According to the final survey, 43 people were killed in Qala-e-Ragh and 17 in Sarab (**60 total killed**) with 24 injured in Qala-e-Ragh and 9 in Sarab (**33 total injured**). Among them were 23 women and children. Also, 23 houses were completely destroyed and 16 damaged in Qal'-e-Ragh, while in Sarab 5 houses were completely destroyed and 2 houses suffered damages. The majority of the casualties were caused by the air bombardment and shelling. Allegedly no clear guidance was given to the local people before the operation.

According to ANCC the Government had already paid some compensation to the victims' families. It paid 100,000 Afg for each person killed and 25,000 Afg, 12,000 Afg, and 10,000 Afg for the injured depending on the severity of the injury. ISAF had not yet paid any compensation.

#### **5. Elders from Chora:**

**Haji Rahimin, Sarab village;**

**Maulavi Taj Mohd, Noori village;**

**Neyamtuhulla, Qala-e-Ragh village**

**(Thursday, 5 July 2007)**

According to the elders about **29 people were killed in Sarab village**. Tora Abdullah who was defending two check posts in Sarab also had his house destroyed by the Taliban.

Neyamtuhulla described how on 16 June, when the villagers were fighting back against the Taliban attack under the leadership of Malim Abdul Sadiq Khan, at about 11am air and artillery attacks were launched against the village. These strikes also hit those who were fighting against the Taliban. This created some tension and some people left the village. They could not understand why ISAF instead of attacking Taliban mortar positions had attacked the villagers.

#### **6. General Mohammad Qasim<sup>6</sup>, Provincial Chief of Police (Thursday, 5 July 2007)**

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<sup>6</sup> Originally from Paktiya province of Afghanistan. Graduated from Police Academy and belongs to Khiljai tribe. Has close relations with Governor Muneeb and was also brought to this post by him. Old professional police. Is unable to play an effective role in the security of the province. He was head of the communication office in the Ministry of Interior before his appointment as CoP Uruzgan.

The CoP has been working in Urugzan for one and a half years. He stated that there were 1001 ANAP in the province. Officially there should also be 350 ANP though he was not aware of the present number. Finally, the MoI had sent a further 100 ASP. At present the CoP claimed that there were 150 ANAP, 45 ANP and 100 ASP stationed in Chora district. According to him 60 ANAP were sent on 16 June to support Tora Abdullah in Sarab area. He believed this to be an important area that needed protection but was confident that the 60 ANAP were sufficient.

The CoP said that air support was necessary to push the Taliban out as there was not enough ammunition in Chora and the police was ill equipped. Further the ANP was not a fighting force but its main role was to maintain law and order. He denied that ISAF requested more ANAP and repeated that only 60 ANAP were sent immediately after the fighting started and he felt that this was enough.

**7. Commander Tora Abdullah, local commander leading the resistance against the Taliban attack in Chora  
(Thursday, 5 July 2007; conversation by satellite phone)**

According to Tora Abdullah, who led local resistance against the Taliban operation in Sarab village, approximately 1000 Taliban fighters attacked the Sarab check posts. Tora Abdullah stated that 48 ANAP were under his command and another 12 villagers joined him to resist the Taliban. He said that he did not get any further support from international or national forces. A group headed by the former CoP of Uruzgan, Rozi Khan, came to the area and advised him to withdraw because they could not support him in resisting the Taliban. Allegedly they did not provide any further support. Tora Abdullah then contacted the governor and others for help and finally called the President, asking how the government could expect him to resist the Taliban without any support. The President must then have called ISAF and thus managed to eventually get some air support.

According to Tora Abdullah, the Taliban entered local houses and kept the civilians hostage, forcing them to prepare food for them. He further claimed that about 30 civilians were killed by the Taliban in Sarab. Some were killed and set on fire. Tora Abdullah himself lost his mother-in-law, brother-in-law and his brother. He stated that his mother-in-law's hands were cut and then she was set on fire. ). His 7 year old son, Abdul Wali, was also taken captive and Tora Abdullah claimed that the Taliban tortured him and set him on fire but that he managed to escape. Similarly, two more of the Commanders brothers-in-law, Abdul Rahim and Abdul Ghani, were arrested by the Taliban who cut off their tongues and set them on fire before they managed to escape. At the time of writing they were in hospital in Kabul (this was also confirmed by other sources).

Tora Abdullah alleged that the Taliban took civilians as hostages, fired from inside civilian houses and so triggered retaliatory bombings by ISAF. Due to the air strikes, three people in one house and 12 in another house were killed, with a further 15 bodies found in the house of a single family though three of these were allegedly

Taliban fighters (**30 killed in Sarab village**). According to him a total of 60 Taliban were killed in Sarab<sup>7</sup>.

**8. Mohammed Ibrahim; district governor of Chora;  
Shura of 16 local elders and community leaders  
(Friday, 6 July 2007)**

Both the DG and the community leaders confirmed the stories of serious Taliban abuses. They claimed that Taliban fighters fired from the vicinity and even the inside of civilian dwellings thus abusing civilians as shields. Allegedly the Taliban also killed several policemen and other civilians for attempting to resist their presence. According to them the victims were the policeman Abdul Ghani and his mother in law who were both burnt alive in the village of Sarab, as well as Noor Mohamad, Sher Mohamad and the policeman Haji Sardar Shah who were all beheaded and finally the policeman Haji Payenda Gul who was killed in unknown circumstances.

Elders and the DG claimed that in total 88 people were killed (78 died immediately, with 10 later succumbing to their injuries). The DG also provided the AIHRC delegation that had traveled to Chora with a list in which all the affected households are listed with the number of casualties they suffered.<sup>8</sup> Despite the Taliban's abuses, they stated that out of the total 88 casualties only six casualties were caused by the Taliban forces, with the remainder being the result of ISAF bombings and artillery fire. Overall 60 houses and a mosque were reported damaged or completely destroyed with serious damage also being done to livestock and harvests in the field.

Community leaders pleaded for ongoing international involvement and submitted an appeal demanding ISAF stay in the district. Unless proper security arrangements were made to secure the district the people said that they would be forced to leave.

**Analysis:**

Given the limited access to the area and the constrained timeframe of the mission, so far only some preliminary conclusions can be drawn.

All the information gathered suggests that there were many omissions on the part of Afghan authorities in providing sufficient manpower and resources to prevent or stall the Taliban attack. ISAF was aware of these issues and appealed for assistance but claims it did not receive any support from the provincial or central authorities. Whether ISAF could have been more assertive and taken the matter up with the central authorities through appropriate channels in Kabul is a question that needs to be handled by ISAF itself in its internal review.

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<sup>7</sup> These numbers could not be verified but in the light of the other evidence seem to be somewhat exaggerated. Some of the prominent Taliban allegedly killed during the fighting from various sources are Mulla Abdul Matalif, Mulla Ismail, Mulla Isreal, Mulla sakhi, Mulla Abdull, Langari Mulla Shaista, Mulla Saet Mohammad and Qari Faiz Mohammed.

<sup>8</sup> The document lists a total number of 90 casualties but because these are only identified as numbers per household rather than individually it is hard to assess whether the list or the DG and elders oral statement should be taken as more reliable.

Regarding the eventual engagement by ISAF on 16 June, the decision to take military action to stop the Taliban taking over the district of Chora seems to have been justified in the rapidly developing situation. ISAF had received information that the Taliban infiltration was already causing several civilian deaths and there was a realistic anticipation that if the Taliban were allowed to take over the district it might result in massacres of community leaders and the people who supported the government by resisting the Taliban attack. Besides the potentially severe humanitarian consequences a withdrawal would thus have led to a serious loss of faith in the government and the international forces. During the AIHRC/ UNAMA mission the community leaders repeatedly appealed for ISAF to stay in Chora even after what had happened. They were particularly concerned that the area may yet come under Taliban rule at some point.

Assuming that under the above circumstances and under ISAF's mission and mandate the military goal hoped to achieve in the operation can be considered a justified one, several questions still need to be addressed to determine if the operation did in fact comply with the rules of IHL. In particular, it needs to be shown that the force used was proportionate to the legitimate aim pursued in the specific incident. To show this one needs to first consider the precautionary measures taken to minimize collateral damage, and the potential availability of any less damaging alternative ways of achieving the intended objective, to then analyze whether the damage caused was excessive in relation to the expected advantage. Finally, one also needs to look at any potential violations committed by the Taliban in the course of their actions.

(i) **Were realistic precautions taken to minimize collateral damage?**

Since there was no government support to send in additional reinforcements and the defenders in Chora were outnumbered and with limited ammunition, it appears that it was eventually inevitable for ISAF to intervene. But the decision to counterattack was taken by ISAF only at 7.30pm on 16 June and by that stage their means of warning the people affected were limited. Nevertheless ISAF attempted to warn local civilians of the impending strikes by contacting the DG and the important local tribal leader Malim Sadiq Khan. It may be criticized that given the importance of warning and protecting any endangered civilians the military decision to defend Chora was only taken at the last minute. However, this may well have been influenced by the Afghan government's previous failure to take decisive action that was then compounded by an extremely rapidly deteriorating situation that necessitated urgent action. Under the circumstances of 16 June ISAF probably took reasonable steps to inform civilians to leave the area and thus minimize collateral damage, though there are some concerns that need to be addressed to avoid similar incidents in the future.

It seems that despite ISAF's attempts many people were not warned on time and/ or got trapped and could not leave the area before the air and artillery strikes began. The Tribal elder, Malim Sadiq Khan, who resisted the Taliban, claims that he fought with 50 to 60 men and many others were ready to join him. Since he was fully engaged in the fighting, it was not possible for him to warn all villagers to move out of the area though he claims that he tried to spread the message whenever possible. Eventually Malim Sadiq Khan and his family were themselves evacuated with a vehicle that the DG had sent so it may be questioned whether such efforts could not have been replicated on a wider scale.

A different concern is that, according to some villagers, earlier during the year, ISAF had distributed leaflets in various conflict zones in the province advising people to stay at home in case of fighting. This was not specific to Chora but may well have misled some of the people harmed by the fighting. There is an urgent need to keep the population updated about different precautionary measures, linked to different types of attacks.

Finally, there was another claim that on the 20 June, through Mosque loudspeakers, it was announced that people of Qala-e-Ragh could return to the area which was allegedly cleared and safe. When people began to move, Taliban elements still in the village fired rockets at ISAF. In response ISAF called in an air strike, which resulted in three civilians being killed and five injured. People claimed that the DG had asked the mosque to announce that people should return after receiving permission from ISAF. But ISAF denied that they ever gave permission for people to move back into the village and the DG claims that he was not involved in the announcement. On the other hand tribal elder Malim Sadiq Khan claimed that the DG did initiate the announcement via the mosque loudspeaker and that when the residents queried him he said that ISAF had asked him to announce for the people to return. Overall, the issue is unfortunately not sufficiently clear to determine who was responsible for the announcement and whether it was made recklessly.

Bearing in mind the limitations of the AIHRC/ UNAMA investigation it is difficult to come to any definite conclusion about the appropriateness of the precautions taken by ISAF to minimize the damage. But it is evident that, despite the very difficult circumstances, ISAF made a serious attempt to send a message to warn the civilian population to leave the area before the air strike.

(ii) **Were there alternative or less damaging ways of achieving the intended military objective?**

From the information gathered it seems that, due to the lack of manpower and resources and to the failure of the provincial government in protecting the area, ISAF felt they did not have any alternative but to use air power and artillery attacks to counter the Taliban's attacks.

Serious questions remain unanswered regarding the initial lack of initiative on the part of local and international forces to send additional forces to the area and so thwart any offensive on the district by the Taliban. Of concern are particularly the overall lack of coordination and the weak decision-making process for security arrangements at district, provincial and national level. Such lessons need to be taken into account to prevent similar incidents in the future.

In the immediate situation faced on 16 June though it seems that ISAF determined they had no other realistic options to achieve their intended military objective but to rely on air power and artillery attacks. The tribal elder Malim Sadiq Khan who led the local resistance in one area felt that there was no need for air strikes as his forces could have resisted and pushed back the Taliban without them but he also accepted that they only had limited ammunition left to continue fighting so his claim may not

be entirely plausible. It is possible to imagine alternative, less damaging tactics being used in a similar situation. However, given the urgency of the situation and the presumably limited means available for an immediate response it cannot be concluded that this alone means ISAF's actions constituted a violation of IHL.

There are more concerns regarding the use of air strikes in the second attack on 20 June. Although ISAF had no reason to believe that civilians had returned to the area, the communication breakdown between ISAF and the local government authorities is apparent and unfortunately resulted in further civilian casualties. On the one hand, given that at this stage only a few Taliban were left in the area and that the situation of civilians on the ground was unclear, it may be questioned whether the use of an air strike to target these few remaining Taliban was a justifiable military strategy. On the one hand, it is possible to understand the use of air strikes to oppose an AGE presence if there are only limited fighters on the ground. Again, though this incident does probably not *per se* amount to a violation of IHL, it is important to ensure that in future further steps are taken to prevent similar problems from occurring.

**(iii) Was the damage excessive in relation to the expected military advantage?**

The casualty figures given by different sources differ widely. The number of people allegedly killed during the operation varies from 30 to 88 and of those injured from 50 to 100. Due to the time and security constraints on the investigation the exact figure of casualties could not be authoritatively verified by AIHRC and UNAMA. Similarly there exists not exact breakdown of the number of people killed by the international and national forces as opposed to those killed by the Taliban. Based on the evidence, however, several conclusions can be drawn.

Regarding the total number of casualties these can safely be assumed to be on the higher side of the spectrum suggested in the different testimonies. With very few exceptions almost all of the sources interviewed reported at least 50 or more people killed, with most estimates suggesting around 60-70 deaths. This is reaffirmed by several incomplete casualty lists that were passed to the investigative team from different sources. While not authoritative and frequently listing victims only per household and not individually the lists do strongly support a conclusion of rather higher casualty figures. It must also be noted that a substantial number of those killed are likely to have been engaged in the fighting on one of the two sides at the time. This would mean that though part of the overall casualty figures they were at the time combatants for the purpose of IHL.

In terms of responsibility it is clear that while the Taliban were definitely responsible for some of these casualties the large majority of the people who died were killed by ISAF air strikes and artillery fire. Contrary to ISAF, Taliban forces were responsible for directly targeting civilians but in terms of overall casualty figures most reports seem to suggest that Taliban forces were only responsible for around a quarter or even less.

Basing the proportionality analysis on these figures, collateral damage does initially appear to be very high. However, if the operation is seen in its context as a necessary

and urgently initiated, full military operation in a civilian area and one considers the relatively high total population of the affected area (approximately 10,000 to 15,000 in Sareb and Qala-e-Ragh area alone) and the intensity of the fighting, then the number of casualties may seem acceptable. This is especially so in the light of the military objective to assist the local population in resisting a Taliban attack and so, amongst others, to prevent the likely much higher retaliatory civilian killings that were expected to follow a Taliban victory. A withdrawal of national and international forces from the areas could well have resulted in a massacre of local villagers with a much higher total civilian death toll. This is further reinforced by the local community's strong feeling of relief after succeeding in resisting the Taliban attack and especially by their repeatedly expressed desire that international forces remain in the area despite the events at Chora.

Despite the tragic loss of civilian life, it may thus be possible to conclude that ISAF's use of force in the specific Chora incident was not disproportionate in relation to achieving the necessary and expected military advantage. Accordingly, on the specific facts ISAF does not appear to be responsible for any serious violations of international humanitarian law.

Nevertheless, the loss of civilians is always a tragedy and there do remain some real questions regarding the accuracy of ISAF's targeting. In particular, the case shows an urgent need to reassess some of ISAF's more heavy-handed tactics, especially the decision of when to employ air power and heavy artillery. In Chora many villagers were prepared to fight against the Taliban and were hindered in this primarily by a serious failure of support from the Afghan government. It is important to understand that such local potential to challenge the Taliban exists. Any incidents of civilian casualties, even if not in contravention of international humanitarian law, will obviously have a severe impact on this. Real steps must be taken to ensure that incidents such as that in Chora are not repeated and in taking decisions on when and what level of force to deploy ISAF must thus also bear in mind such considerations along with the obvious constraints imposed by international law.

**(iv) Did the Taliban comply with international humanitarian law?**

There exists sufficient evidence to suggest that the Taliban did not show any real concern for the civilian population in the area and that in fact they were actively involved in various acts which amount to violations of Geneva Conventions Common Article 3. They used human shields by allegedly firing from the vicinity of civilian dwellings in order to cause retaliation strikes from ISAF. Also, they directly targeted civilians and were reportedly engaged in the mutilation and burning of women and children in order to spread terror. It is true that previously civilian men had taken up arms against the Taliban and thereby lost their status as protected civilians and become legitimate targets. But this cannot in any way justify the alleged serious mistreatment and executions. Similarly, family members of such combatants are always still to be considered a part of the civilian population unless they themselves are directly engaged in the hostilities.

Based on the above, sufficient evidence exists to conclude that the Taliban forces involved in this incident committed serious violations of GC Common Article 3.

Taliban statements have repeatedly expressed publicly their great concern about the killing of Afghan civilians and any violence targeted against civilians. It is thus hoped that the Taliban leadership will take real steps to address the violations that seem to have occurred in the Chora incident. They must ensure that those responsible for acts such as the mutilations and the use of civilians as shields that occurred in this case are held accountable and that similar practices are not employed again.

### **Conclusions:**

- In the months previous to the incident in Chora there was clear evidence that the general security situation was deteriorating in the area and a serious military threat to the local government presence was building up. Despite being repeatedly made aware of this, the provincial and central authorities took no sufficient action to reverse this trend and stabilize the situation. It is not yet clear what responsibility ISAF bears for not intervening earlier. In allowing the situation to deteriorate to such an extent they certainly failed to preempt the threat from materializing.
- Precipitated by the government's and its international partners' failure to take action the fierce Taliban attack that commenced on 16 June forced an immediate decision to be taken. On the same evening the ISAF forces in the province decided not to abandon the area and to assist the local population that was fighting back against the Taliban forces.
- The ensuing battle and especially the large-scale air and artillery attacks employed by ISAF resulted in the death of a large number of civilians and the injury of numerous more as well as in significant damage to civilian property. Despite widely diverging casualty figures quoted by different sources it is probably safe to assume that overall around 60 to 70 people died in the operation and that, despite serious Taliban abuses against the civilian population, the majority of people were killed by ISAF fire.
- The death of so many civilians is always a tragedy and all possible steps must be taken to alleviate the loss and suffering of all those affected and to minimize the occurrence of similar events in the future.

However, the findings of the investigation suggest that in the specific circumstances ISAF forces were not responsible for any serious violations of international humanitarian law. Given the urgency of the operation; the steps taken to warn civilians of impending attacks; the military goal of assisting the widely pro-governmental local population in their defense of the area; and the realistic anticipation that given the local resistance a Taliban takeover might well lead to significantly higher civilian casualties, ISAF's use of force was probably not excessive in relation to the anticipated advantage of the operation. Nevertheless some questions do remain regarding the accuracy of targeting and the possibility of employing alternative, less heavy-handed tactics in this sort of situation.

While being responsible for fewer of the casualties, the Taliban forces involved in the fighting in Chora seem to have committed several direct

attacks on civilians (including executions and mutilations) as well as having abused civilians as shields in the fighting. This amounts to a serious violation of Common Article 3 of the Geneva Conventions. Having repeatedly expressed their concern regarding civilian casualties and any abuses committed against civilians, it is expected from the Taliban leadership that will take decisive action to ensure accountability for those responsible and prevent the reoccurrence of similar violations.

### **Recommendations**

- The Government has paid compensation to injured victims and the families of those killed but ISAF has yet to finalize their assessment of any compensation to be paid and/ or assistance to be provided. As outlined above, there appears to have been no serious violation of IHL and human rights law on the part of the ISAF troops involved in the operation. Still, the circumstances of the incident certainly do seem to call for serious measures to be implemented to alleviate the loss and suffering of those affected. In particular, ISAF might consider (i) making payment to those injured and the families of those killed by ISAF fire, (ii) assisting the community to rebuild their houses and (iii) investing in some development work which will benefit the community. In line with its goals of stabilizing the area and helping the affected communities get back on their feet offering similar assistance to those affected by Taliban actions might also be considered.
- There is a serious need for an overall evaluation of the provincial administration's ability to face the Taliban threat in Uruzgan. It is vital to establish clear coordination mechanisms both at provincial and central level, in order to avoid a situation like the one in Chora, in which security was allowed to deteriorate very rapidly and the government was also unable to respond to the emergency when the Taliban attacked the area. The development of strategies and policies aimed at marginalizing the Taliban in the Province will also be crucial.
- The Chora case impressively demonstrates that there exists a real sentiment amongst local populations to support counterinsurgency efforts. It is clear that this potential is seriously undermined by any incidents of civilian casualties, even if it is not in contravention of international humanitarian law. In this light there is an urgent need to reassess the way ISAF might deal with similar cases and in particular to analyze under which circumstances exactly some of ISAF's more heavy-handed tactics (especially the use of air power and heavy artillery) should be employed. Real steps must be taken to ensure that incidents such as that in Chora are not repeated.



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