



Afghanistan Independent Human Rights Commission – Investigation

Use of indiscriminate and excessive force against civilians by US forces following a VBIED attack in Nangahar province on 4 March 2007

Summary

On 4 March 2007 a convoy of US Marine Corps Special Forces vehicles traveling on the road from Torkham to Jalalabad in Nangahar province was attacked with a vehicle borne improvised explosive device (VBIED). The driver of the VBIED vehicle was killed instantly and at least one Marine suffered shrapnel injuries.

US forces claim that the suicide attack was part of a complex ambush and that the convoy came under small arms fire immediately after the explosion of the VBIED. There is some evidence at the immediate site of the incident supporting this claim, but it is far from conclusive and all witnesses and Afghan government officials interviewed uniformly denied that any attack beyond the initial VBIED took place.

Following the attack US forces repeatedly used force, shooting at vehicles and pedestrians at the immediate sight of the VBIED attack as well as in several different locations along the next 16 kilometers of the road. In total, at least 12 people were killed and another 35 injured by the shooting, including several women and children (see Annex 1 for a list of confirmed victims).

The AIHRC investigation of the incident found that the large majority, if not all of the victims were civilians. While the AIHRC condemns the suicide attack, the level of force utilized by US forces in consequence was almost certainly excessive and disproportionate to any threat faced or military advantage anticipated. In failing to distinguish between civilians and legitimate military targets the US Marine Corps Special Forces employed indiscriminate force. Their actions thus constitute a serious violation of international humanitarian law standards.

In the aftermaths of the attack several journalists were hindered from accessing the site and some were expressly threatened and forced to delete all pictures and videos they had taken. This obstructed the ability of the media to seek, receive and impart information about the incident and so constitutes a violation of the right to freedom of expression.

Methodology

The regional office of the Afghanistan Independent Human Rights Commission conducted extensive verification efforts. The investigation included numerous interviews with victims and their families, eyewitnesses and local community leaders, as well as with the affected district authorities, local hospitals and clinics and regional and provincial representatives of the Afghan National Police. It also entailed repeated visits to the sites of the incident, observing the available physical evidence.



The AIHRC has also repeatedly approached the responsible regional and national command of NATO/ ISAF to obtain for their version of the incident but was told that due to an ongoing investigation ISAF was unable to share any information or comment on the case. On 11 April 2007 the Combined Forces Special Operations Component Command, U.S. Central Command (CFSOCC) issued a media release regarding their investigation of the incident while NATO/ ISAF, in a separate statement on the same day, released its findings on accusations of media interference following the incident. Both media releases were passed on to the AIHRC by the responsible US JAG officer and are dealt with in the “US Response” section of the report. However, as the details of both investigations remain classified, neither statement adds substantial findings of fact or law to the Commission’s investigation.

Details of the incident

The VBIED attack:

On 4 March 2007 a US Marine Corp Special Forces convoy consisting of around 5 or 6 Humvee vehicles was traveling on the road from Torkham to Jalalabad in Nangahar province. At 09:03 am, in Mohmand Dara district near Spin Pul bridge, the convoy was attacked with a vehicle borne improvised explosive device (VBIED). Eyewitnesses and Nangahar police report that the suicide attacker was driving a Toyota Hiace Super Custom (model 95) vehicle on the road from Jalalabad, and detonated the bomb when passing the convoy on the right side. The driver of the VBIED vehicle was killed instantly, while one US Marine and some of the passengers of the civilian cars in the vicinity suffered shrapnel injuries.

Some local community members interviewed after the incident denied that a VBIED attack took place at all. Such statements, however, are entirely in contrast with most eyewitness reports as well as with the results of the local police investigation and all the physical evidence available, including the remains of the exploded vehicle and the evidence at the site of the explosion. It is thus clear that a VBIED attack did take place.

A complex ambush?

Witnesses report small arms fire occurring at the site of the incident very soon after the explosion. This firing in the immediate area of the initial VBIED detonation killed at least six people and injured a minimum of another six.

The US military, in initial statements after the incident, claimed that the convoy was involved in a complex ambush and came under small arms fire (SAF) immediately after the explosion of the VBIED. A BBC News release quotes US military spokesman Maj. William Mitchell as saying that “we believe it’s possible that the incoming fire from the ambush was wholly or partially responsible for the civilian casualties” (*Investigation into Afghan Deaths*, BBC News 5 March 2007).



There is some limited physical evidence available suggesting that a complex ambush really took place at the site of the incident but this evidence is far from conclusive. Also, every single Afghan civilian and official interviewed strongly denied the occurrence of an SAF attack on US forces. If such an attack did indeed occur, as is claimed by the US military, it was almost certainly very limited in scope and restricted to the immediate site of the VBIED incident. Accordingly, the suggestion that the incoming fire from the ambush was to a major part responsible for the civilian casualties does not appear to be accurate.

The surviving driver of one of the cars shot in ultimate proximity to the VBIED site, for instance, states: “I was following a road leading to the main road about 500 meters away from the site of the explosion in the Spin Pul area. My car was stopped 40 meters away from the ISAF convoy, which was on the main road. Suddenly they opened fire on my car and shot more than 240 bullets. I myself jumped out of the car and got injured, but my father, friend and my nephew were killed in the car” (AIHRC interview, 12 March 2007).

The shooting of civilians:

After departing from the VBIED site the US Marine Corps Special Forces convoy continued to Jalalabad. During the next 16 kilometers, the convoy in several different locations opened fire on civilians traveling by foot or in vehicles, causing further deaths and injuries. The firing killed at least another 6 people and injured at least 25 more, including several women, children and old men. No evidence was found that any of the vehicles or persons fired on away from the main VBIED site posed a threat to the American convoy or were anything other than civilians.

According to the reports of numerous witnesses and the Nangahar police several vehicles, including taxis, minibuses and a Coaster bus as well as a number of pedestrians and bystanders came under attack by the American convoy in at least six different locations (see Annex 2 for a list of the vehicles damaged by the shooting). The shootings are spread over a distance of 16 kilometers from the site of the initial firing at the location of the VBIED detonation to the last confirmed civilian victims in Barikau, Batikot district. Several of the vehicles fired upon were stationary when they came under attack and the reports uniformly indicate that the targets were exclusively civilian in nature and that no kind of provocative or threatening behavior on their part preceded the attacks.

One eyewitness states: “I heard a big blast ... after that I heard guns firing. A Coalition Forces vehicle arrived at my fuel station and opened fire on me and on laborers working beneath the [nearby] bridge. One woman in front of her house was hit by bullets and another woman from Kabul was killed in a Coaster vehicle on the road” (AIHRC interview, 8 March 2007). A different witness in Batikot district reports one Toyota Corolla car going towards Torkham stopping on approach of the convoy but then being shot, which resulted in the death of one passenger and the injury of 4 more, including a child. He adds that close to this incident another car was shot at and that 3 persons including one woman were injured in consequence (AIHRC



interview, 12 March 2007). A victim in yet a different location, around 15 kilometers from the site of the VBIED, was injured when the car he was traveling in was fired upon by the American forces. “There is no reason why they should have fired on the car, we were quite a long distance away,” he claims (AIHRC interview, 10 March 2007).

Site cleanup after the incident:

After the incident, international forces returned to the site. This was claimed to be for investigative and medical assistance purposes but also involved a comprehensive clean-up operation. The cleanup was confirmed by several local residents and included the removal of all bullet shells and cartridges from the area.

Afghan National Police (ANP) units were not allowed to access the incident site until these forces had departed the area. The criminal investigations office of the ANP Nangarhar stated that “our team made a full observation, 2.5 kilometers around the site of incident, but ... ISAF forces had collected all the shells, magazines and cartridges from the spot and we couldn’t find any trace or sign of them” (AIHRC interview, 13 March 2007).

Interference with the work of Journalists on site:

There are also several reports of journalists being hindered from accessing the area and being forced to delete all pictures and videos already taken. 7 Journalists, representing 8 different media outlets complained that US Marines and Afghan forces confiscated their equipment to delete any images stored and forbid them to continue their work even outside of the security perimeter area around the VBIED site. There is some evidence that two of the journalists breached the security perimeter around the site, but all those interviewed agreed that the interference with the media went far beyond just these two cases. In several cases, US Marines expressly threatened journalists, with one cameraman reporting that he was told to “delete the photographs or we will delete you” (AIHRC interview, 6 March 2007). Another journalist said a soldier told him through a translator that “if any of this incident is released or shown on any media then the reporter will face the consequences” (AIHRC interview, 5 March 2007). While in a media release on 11 April 2007 NATO/ ISAF RC(E) spokesman Lt. Col. David Accetta claimed that ISAF’s internal investigation showed that “the deletion of any film media by ISAF Forces was an isolated event by one soldier,” this account does not match the testimonies taken by the AIHRC.

After the incident, the US military defended the forced deleting of images, arguing that their publication could have compromised an investigation. The Associated Press quotes a letter by Col. Victor Petrenko, chief of staff to the top U.S. commander in eastern Afghanistan, in which it is claimed that “investigative integrity is one circumstance when civil and military authorities will reluctantly exercise the right to control what a journalist is permitted to document” and that photographs or video taken by “untrained people” might “capture visual details that are not as they originally were” (*U.S. military defends deleting journalists’ footage*, Associated Press, 12



March 2007). NATO/ ISAF's later press release stated that interference occurred "to ensure the protection of the SVBIED site for security, force protection and investigational purposes."

Legal Analysis

Shooting of civilians

Both Afghanistan and the United States have ratified the 1949 Geneva Conventions and are bound by the fundamental customary principles of international humanitarian law.

International humanitarian law requires that civilians taking no active part in hostilities are to be respected and protected. Common Article 3 of the 1949 Geneva Conventions prescribes that "persons taking no active part in the hostilities ... shall in all circumstances be treated humanely" and expressly states that "to this end the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above mentioned persons: (a) violence to life and person..."

All parties to a conflict must distinguish between civilians and combatants at all times and any attacks not directed against military targets are prohibited. The rule that civilians must under no circumstances become the direct target of an attack, as reiterated in art.8(2)(e)(i) of the 1998 Rome Statute of the International Criminal Court, is fundamental to the established law of armed conflict and undoubtedly part of established customary international law.

In any attacks on legitimate military targets, civilians must as far as possible be protected from the incidental effects of the operation. Article 13 of the 1977 Second Additional Protocol to the Geneva Conventions formulates accepted customary law and requires that "the civilian population shall enjoy general protection against the dangers arising from military operations." The level of protection required is determined by the equally customary principle of proportionality, which stipulates that attacks are prohibited if they may be expected to cause incidental or collateral loss of civilian life, injury to civilians and/ or damage to civilian objects that is excessive in relation to the concrete and direct military advantage anticipated.

The AIHRC's investigation of the incident of 4 March 2007 suggests that the US forces involved acted in serious violation of international humanitarian law by directly attacking non-military targets in several different locations, contravening the principle of distinction between combatants and civilians and Common Article 3 of the Geneva Conventions. Even if it is accepted that the US Marine Corps convoy was attacked with small arms fire after the explosion of the VBIED, all available evidence and reports suggest that the consequent response at the very least employed excessive force against civilians as it was almost certainly disproportionate to any threat faced or military advantage anticipated.



The AIHRC also expresses great concern regarding the civilian injuries caused by the detonation of a VBIED in a populated area and emphasizes the universally binding nature of international humanitarian law on all parties to the conflict.

Interference with the work of the media

Both Afghanistan and the United States have ratified the 1966 International Covenant on Civil and Political Rights and are bound by its provisions on freedom of expression.

Article 19(2) of the ICCPR gives everyone the right to freedom of expression. It states that “this right shall include freedom to seek, receive and impart information and ideas of all kinds...” Article 19(3) provides for certain restrictions on this right but requires these to be provided by law and to be necessary for either “the respect of the rights or reputations of others” or for “the protection of national security or of public order or of public health or morals.”

The forced deleting of images by the US military as well as the refusal to let journalists continue in their work constitutes a violation of the right to freedom of expression as it obstructed the ability of the media present to seek, receive and impart information about the 4 March incident, without falling under the exceptions stipulated by ICCPR art.19(3). Immediately following the incident the US military relied on the notion of “investigative integrity” to justify their actions in this regard and in the NATO/ ISAF media release of 11 April 2007 Lt. Col. David Accetta said that the internal investigation showed that “in this case, the soldier reasonably believed that the restoration of the security cordon and the deletion of the photographs were necessary.”

Arguably these are not sufficient grounds to justify the substantial curtailment of the right to freedom of expression, especially as the loss of information caused by these actions was directly harmful to the successful undertaking of a genuinely impartial investigation.

US Response

In a media release on 11 April 2007 the Combined Forces Special Operations Component Command, U.S. Central Command (CFSOCC) announced the completion of its investigation into the 4 March incident. 2007. According to the release “the investigation revealed the actions taken by the some of the special operators in the convoy following the SVBIED attack appear to warrant a further inquiry by the Naval Criminal Investigative Service (NCIS). Accordingly, this matter has been referred to NCIS for appropriate action.” It also stated that the results of the investigation had been forwarded to higher headquarters for review and to determine future courses of action.

Lt. Col. Lou Leto, spokesperson for CFSOCC said that the CFSOCC “deeply regretted the loss of life and casualties that resulted from the SVBIED attack and the actions that followed” and that it would “work to prevent similar events from occurring in the future”



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The AIHRC welcomes and strongly supports the decision to undertake a full criminal investigation of the incident. It urges the US administration to release the complete findings of the investigation and to ensure full and public accountability. The Commission also emphasizes the importance of ensuring that the victims of the incident and their families receive an apology and are effectively compensated for their injuries.

Regarding the issue of media interference by US forces the AIHRC again urges that the findings of the investigation be made public but welcomes the steps NATO/ ISAF has promised to take so as to ensuring a proper and professional relationship between US forces and media representatives.