

Kate Clark

## Death of an Uruzgan Journalist

### *Command Errors and 'Collateral Damage'*

#### INTRODUCTION<sup>1</sup>

On 28 July 2011, Omaid Khpulwak, one of the most promising Afghan journalists of his generation,<sup>2</sup> was killed while hiding in his place of work, a building undergoing multiple Taliban suicide bomb blasts and a counter-attack by the Coalition (the international military forces deployed to Afghanistan).<sup>3</sup> The answer to the question of who killed Omaid, a reporter who had worked with courage and integrity for both the BBC and Pajwak news agency in his home province of Uruzgan, has emerged slowly.

The day after the attack, the International Security Assistance Force (ISAF) issued a press release describing the success of Afghan National Security Forces (ANSF) in dealing with this and a simultaneous attack on the governor's office. It

remained reluctant to admit US soldiers had been present and even when it did, later, accept international forces had been there, continued to insist the counter-attack had been 'Afghan-led'. The Afghan government, meanwhile, was insisting Omaid had been killed by the Taliban. The Afghanistan Analysts Network (AAN) pieced together the available evidence and, three weeks after his death, reported on the possibility that Omaid had been killed by an American soldier who had mistaken him for an insurgent.<sup>4</sup>

AAN also raised the question of whether US soldiers, if they had killed Omaid, could or should have known he was a civilian, especially given that he was a journalist at his place of work. Under International Humanitarian Law (IHL),<sup>5</sup> those participating in a conflict must at all times distinguish between civilians and those who are fighting, and have a duty to take all feasible precautions to avoid incidental loss of civilian life.

Confirmation that an American soldier killed Omaid came on 8 September when the United States military released the executive summary of its own investigation into his death.<sup>6</sup> The military has now

---

<sup>1</sup> The author would like to thank those who peer reviewed this paper, including journalists, Shoaib Sharifi and Tom Hyland, and those who provided IHL and military expertise and wished to remain anonymous.

<sup>2</sup> For AAN's obituary which has links to other obituaries, see Susanne Schmeidl, 'Death of an Uruzgan Journalist', *Afghanistan Analysts Network*, 31 July 2011, accessed at [www.aan-afghanistan.com/index.asp?id=1978](http://www.aan-afghanistan.com/index.asp?id=1978).

<sup>3</sup> These include the International Security Assistance Force (ISAF) and the 'counter-terrorism' mission, Operation Enduring Freedom (OEF), which is predominantly staffed and led by US Special Operations Forces (SOF). The two military groupings have separate command chains, but General John Allen is in command of both. (The term Coalition Forces is also occasionally used to refer to Afghan militias who fight closely with OEF, such as the Kandahar and Khost Strike Forces.)

---

<sup>4</sup> The investigation was based on testimony, published accounts, ballistics evidence, and photographs of the body and place of death. See Kate Clark, 'Death of an Uruzgan Journalist: Who Killed Him?' *AAN*, 24 August 2011, accessed at [www.aan-afghanistan.com/index.asp?id=2037](http://www.aan-afghanistan.com/index.asp?id=2037).

<sup>5</sup> Also known as the Law of Armed Conflict, it includes the Geneva Conventions and Additional Protocols.

<sup>6</sup> For text of the executive summary, plus analysis, see Susanne Schmeidl, 'The Death of an Uruzgan Journalist:

released the full report of its investigation<sup>7</sup> after Tom Hyland, a journalist for the Australian newspaper, *The Sunday Age*, made a Freedom of Information request.<sup>8</sup> Although the report has been heavily redacted, it establishes that no Afghan forces were involved in the counter-attack, only Americans. It also tells in granular detail, the events and decisions that led, not only to Omaid being killed, but to seven US soldiers being injured, among them the ranking officer at the scene. It is painful to read the timeline of Omaid's last hour and a half. It shows just how long he survived and how, even at the very end, he might have come through alive.

It has become clear that Omaid Khpulwak was not killed because of egregious breaches of IHL. Neither was he a tragic victim caught in cross-fire – although he was certainly unlucky to be in a building that was targeted by the Taliban. They, incidentally, took no measures to protect civilians, killing 17 civilians that day in a simultaneous attack elsewhere in Tirin Kot. However, two of the US military investigators' recommendations point out shortcomings on the US side: a failure to establish whether civilians were present before launching the counter-attack, and a failure to exercise tactical patience. Decisions made about how to deal with the Taliban suicide bombers, therefore, worsened an already dangerous and confusing situation and created the context in which a US soldier, in the end with a reasonable belief that Omaid was a possible suicide bomber, shot him dead.

This report explores two issues. First, even though the killing of Omaid was likely a lawful act of war, it bears important lessons about how the military can prevent what it calls 'collateral damage'. It also raises the question of whether local journalists, who are the key figures in reporting in conflict zones in Afghanistan, can be better protected.

---

Omaid Never Stood a Chance', *AAN*, 9 September 2011, accessed at [www.aan-afghanistan.com/index.asp?id=2062](http://www.aan-afghanistan.com/index.asp?id=2062).

<sup>7</sup> United States Department of Defence, *Khpulwak Investigation (Releasable)*, 30 August 2011, includes General John R Allen, Commander ISAF and US Forces-Afghanistan, 'Memorandum for Record', 3 September 2011. Both released in redacted form on 28 December 2011 and accessed at [www2.centcom.mil/sites/foia/rr/CENTCOM%20Regulation%20CCR%2025210/Forms/AllItems.aspx?RootFolder=%2fsites%2ffoia%2frr%2fCENTCOM%20Regulation%20CCR%2025210%2fKhpulwak%20Investigation&FolderCTID=%26View=%7b41BA1AAF%2d785A%2d481A%2dA630%2d12470AFCD6FD%7d](http://www2.centcom.mil/sites/foia/rr/CENTCOM%20Regulation%20CCR%2025210/Forms/AllItems.aspx?RootFolder=%2fsites%2ffoia%2frr%2fCENTCOM%20Regulation%20CCR%2025210%2fKhpulwak%20Investigation&FolderCTID=%26View=%7b41BA1AAF%2d785A%2d481A%2dA630%2d12470AFCD6FD%7d).

<sup>8</sup> Tom Hyland, 'Our Afghan Partners Go Missing in Action', *The Sunday Age*, 15 January 2012, accessed at [www.theage.com.au/world/our-afghan-partners-go-missing-in-action-20120114-1q0j2.html](http://www.theage.com.au/world/our-afghan-partners-go-missing-in-action-20120114-1q0j2.html).

This paper's second theme is the gap between the facts on the ground and the public account issued by ISAF's Public Affairs office. This helped spark suspicions among Omaid's family and friends of a cover-up. That it took a Freedom of Information request to fully establish what happened is unfortunate; the release of the military investigation has shown how an honest explanation of events can be a positive contribution both to accountability for civilian deaths and to improving the protection of civilians.

## 1. THE EVENTS OF 28 JULY 2011

A month before he was killed, Omaid Khpulwak's picture was used by the Australian Defence Forces (ADF) in a propaganda story. An ADF handout described how Omaid and other local journalists at a 'media shura' at the local PRT<sup>9</sup> had expressed 'their joy at the opportunity to gather together and discuss issues'.<sup>10</sup> The handout said that, 'improved security and the efforts of the Afghan Government to establish a stronger presence in Uruzgan Province has led to a significant increase in local journalists reporting from the province.' The journalists were reportedly 'all in agreement that this should be the first of many such shuras'.

Australian journalist, Tom Hyland, described the story as a 'crass publicity stunt' in which Omaid had been an 'unwitting prop'.<sup>11</sup> It was ironic in many ways. Omaid, as an independent journalist, had been threatened as much by Afghan government figures as the Taliban.<sup>12</sup> Only a month later, the Taliban would show just how fragile security was in Tirin Kot and, in the end, it would be a foreign soldier who would kill the journalist.

---

<sup>9</sup> Provincial Reconstruction Team.

<sup>10</sup> A PDF copy of the untitled and undated ADF handout was emailed to the author by the Australian journalist, Tom Hyland. He refers to the shura in his report on Omaid's death, Tom Hyland, 'Afghan reporter finds no safety in Diggers' zone', *The Sydney Morning Herald*, 31 July 2011, accessed at [www.smh.com.au/world/afghan-reporter-finds-no-safety-in-diggers-zone-20110730-1i5fi.html](http://www.smh.com.au/world/afghan-reporter-finds-no-safety-in-diggers-zone-20110730-1i5fi.html). Hyland, like other reporters, initially accepted the claims that the Taliban had killed Omaid, although when he revisited the story three weeks later, it was to report on the possibility that he had been shot by foreign soldiers in the counter-attack. Tom Hyland, 'An Afghan Reporter's Untold Story', *The Sunday Age*, 21 August 2011, accessed at [www.theage.com.au/world/an-afghan-reporters-untold-story-20110820-1j3t5.html](http://www.theage.com.au/world/an-afghan-reporters-untold-story-20110820-1j3t5.html).

<sup>11</sup> Personal email communication with author.

<sup>12</sup> Author interviews with his friends, colleagues and family during August 2011. See also Hyland, 'Reporter's Untold Story' (see FN9).

To address continuing confusion about how Omaid was killed, a short summary of events, garnered largely from the US military's investigation, is presented here. It fits with the results of AAN's own investigation, conducted in September.<sup>13</sup> There is a full time-line at the end of the paper with more detail, and a map of Tirin Kot and photographs of Omaid's body, his grave, bullets found at the scene, and the site of the attack can be seen online.<sup>14</sup>

## 1.1 How Omaid was Killed

On 28 July 2011, while almost everyone else working in the building of Afghanistan's national broadcaster, Radio Television Afghanistan (RTA), in Tirin Kot, had gone out to lunch, Omaid stayed to file a report. He was working when, just after midday, a Taleb blew up the car he was driving, breaching the outer compound wall and allowing two other Taleban into the compound. Their actual target<sup>15</sup> was the adjoining headquarters of the provincial strongman and close ally of US and Australian Special Forces, Matiullah Khan.<sup>16</sup> He is

<sup>13</sup> See Clark, 'Death of an Uruzgan Journalist' (FN4). The Afghan government's own investigation found that Omaid was killed by the Taleban; it has not been publically released, and officials would not discuss the details except to say it was impossible that he could have survived the suicide bombs. The investigation team was made up of representatives from the Ministries of Interior, Defence and other related ministries. Author interview with governor's spokesman, 20 August 2011.

<sup>14</sup> These were taken by Omaid's brother and posted, with his permission, by AAN at: [www.aan-afghanistan.com/uploads/Omaid\\_pictures\\_pdf.pdf](http://www.aan-afghanistan.com/uploads/Omaid_pictures_pdf.pdf). Some of the pictures are disturbing.

<sup>15</sup> Qari Yousuf Ahmadi, 'Around 100 Invaders and Puppets Killed and Wounded in Uruzgan Operation', *Voice of Jihad*, 28 July 2011, accessed at [shahamat-English.com/index.php?option=com\\_content&view=article&id=9760:around-100-invaders-and-puppets-killed-and-wounded-in-uruzgan-operation&catid=1:news&Itemid=2](http://shahamat-English.com/index.php?option=com_content&view=article&id=9760:around-100-invaders-and-puppets-killed-and-wounded-in-uruzgan-operation&catid=1:news&Itemid=2).

<sup>16</sup> For biographical detail and allegations of criminality and corruption, see Tom Hyland, 'Our Mate, the Bloody Warlord', *The Age*, 8 October 2010, accessed at [www.theage.com.au/world/our-mate-the-bloody-warlord-20100807-11pd8.html](http://www.theage.com.au/world/our-mate-the-bloody-warlord-20100807-11pd8.html); also Dexter Filkins, 'Rule of the Gun: With US Aid, Warlord Builds Afghan Empire', *New York Times*, 5 June 2010, accessed at [www.nytimes.com/2010/06/06/world/asia/06warlords.html?fta=y&pagewanted=1](http://www.nytimes.com/2010/06/06/world/asia/06warlords.html?fta=y&pagewanted=1). See also a report by the US Congress, *Warlord, Inc: Extortion and Corruption Along the U.S. Supply Chain in Afghanistan*, Subcommittee on National Security and Foreign Affairs, Committee on Oversight and Government Reform, U.S. House of Representatives (majority report), 22 June 2010, pp 31-32, accessed at [www.cbsnews.com/htdocs/pdf/HNT\\_Report.pdf](http://www.cbsnews.com/htdocs/pdf/HNT_Report.pdf).

now the provincial chief of police, but in July, he was the head of his own militia, known as the Uruzgan Security Battalion (*kandak-e amniat-e Uruzgan*), usually referred to in English as the KAU or Matiullah's *kandak*. ISAF pays the KAU to guard convoys supplying its bases, and it also takes part in military operations.

The two Taleban tried and failed to enter Matiullah's compound and, instead, stormed the RTA building. A second Taleban attack targeted the governor's compound just over one kilometre away. Fighting there lasted until about 16:30.

Omaid decided to hide in a bathroom in the building and, according to his brother, texted him at 12:26: 'I am hiding. Death has come.'<sup>17</sup>

At around 12:30, Lieutenant Colonel David Oeschger,<sup>18</sup> the US commander of 4-70 Armor Battalion, which is deployed to Uruzgan, set out from the multi-national base in Tirin Kot with soldiers in four vehicles. He was flagged down at the RTA compound by uniformed Afghan National Security Forces (ANSF), although whether they were KAU or Afghan National Police (ANP) remains unclear. (More soldiers from the 4-70 battalion arrived later.) The ANSF were not responding to the Taleban threat in 'any organised manner, and Oeschger took command. The two Taleban who were still in the RTA building fired on Afghan and US security forces with small arms and lobbed hand grenades at them. US soldiers responded first with small arms and then 'crew-served weapons' (ie, heavy weapons that are too large for one person to use).

At 12:52, according to his brother, Omaid sent another text message: 'Pray for me if I die.'<sup>19</sup> The investigation report describes how at 13:00, Oeschger ordered 'additional forces' to attack the RTA building itself, using 30 mm rounds. The nature of the additional forces is redacted, but, as only Apache helicopters in Afghanistan use this calibre of ammunition, we can conclude that Oeschger ordered an Apache helicopter<sup>20</sup> to attack the building.<sup>21</sup> It made three runs. After the first,

<sup>17</sup> Author interview, 17 August 2011.

<sup>18</sup> His name is redacted in the investigation report but appears in press reports, as well as in Wesley Morgan, 'Coalition Combat Forces in Afghanistan: Afghanistan Order of Battle', *Institute for the Study of War*, July 2011, accessed at [lignesdedefense.blogs.ouest-france.fr/files/AfghanistanOrbat\\_July11.pdf](http://lignesdedefense.blogs.ouest-france.fr/files/AfghanistanOrbat_July11.pdf).

<sup>19</sup> See FN17.

<sup>20</sup> The investigation report elsewhere refers to 'an [redacted]' attacking the building, so it is clear only one helicopter was involved.

<sup>21</sup> Author interviews with two former officers who served in Afghanistan regarding the 30mm ammunition

the Taliban managed to shoot and wound one of the US soldiers in the neck and biceps. After the second, firing from the Taliban ceased.

When Oeschger arrived, he had been, 'informed by the KAU leadership that two suicide bombers were in the RTA building, and they were not aware of any civilians present.' The investigation report gives no further detail as to who from the KAU spoke to him or what exactly they said. It seems Oeschger made no further attempt to check whether there were, indeed, no civilians in the RTA building (for example, he did not contact the director of RTA to see if all his people were safely out of the building). He appears to have both heeded and not heeded the information from the KAU. He assumed an absence of civilians, but at the same time, did not fully take on board the continuing threat of the suicide bombers. Possibly, he had been tricked by their silence following the helicopter fire into believing they had been killed. Whatever the reason, Oeschger decided to lead a team to clear the building.

As soon as the team went in, at 13:30, the two Taliban blew themselves up, and the seven US servicemen were left wounded and trapped under 'heavy brick debris' in the courtyard. Oeschger was so badly injured he had to be evacuated to Germany for treatment and was not interviewed for the investigation.

At this point, whoever took over command (his rank and name is not known), decided to send in a second, four-man team to clear the building while other soldiers stayed outside in over-watch positions or were busy clearing the rubble and evacuating their seven comrades. Again, the commanding officer did not check to see if any civilians were in the building.

One of the soldiers on the clearing team sighted Omaid and, suspecting him of being an insurgent, fired at his vicinity, hoping to induce the suspected insurgent – if that is what he was – to fire back. In

---

only used by Apache helicopters, 8 February 2012. Both locals and journalists reported helicopters at the scene and as having fired rounds; author interview with an international worker in Tirin Kot, 20 August 2011; see also Bashir Ahmad Naademon, 'Khpalwak's Prayer in His Dying Moments', *Pajhwok Afghan News*, 30 July 2011, accessed at [it.pajhwok.com/en/2011/07/30/khpalwaks-prayer-his-dying-moments](http://it.pajhwok.com/en/2011/07/30/khpalwaks-prayer-his-dying-moments), and Schmeidl 'Death of an Uruzgan Journalist' (see FN5). In addition, the BBC quotes NATO as saying it was 'providing air support to Afghan forces' in 'Afghanistan: Deadly Attack in Tarin Kowt, Uruzgan', *BBC*, 28 July 2011, accessed at [www.bbc.co.uk/news/world-south-asia-14325486?print=true](http://www.bbc.co.uk/news/world-south-asia-14325486?print=true).

other words, the soldier did try to establish whether Omaid was a civilian or not. Another soldier who was in an over-watch position across the courtyard also saw Omaid and fired into the room, but did not hit him. Several soldiers then believed these shots had come from Omaid and concluded he was an insurgent. The man leading the clearing team shot three rounds into the bathroom and then one soldier was directed to move up to the broken wall to 'neutralise the threat':

[He] . . . saw a military aged male with a beard and what appeared to be tan clothing . . . [with] something clinched in his fist; as soon as the individual made eye contact [with the soldier], he reached for something on his person with his other hand. Believing he may be another suicide bomber, [the soldier] fired at him.<sup>22</sup>

The soldier ran out of ammunition and reloaded while one of his comrades provided suppressive fire; he then leaned over the bathroom wall and 'fired again until he believed the individual no longer posed a threat'. This was the fifth time Omaid had been shot at and, although he certainly survived the first three shootings, he died, according to his brother who washed his body, with more than eleven bullet wounds.

As Omaid was dead and they feared IEDs,<sup>23</sup> the US soldiers did not retrieve his body, but withdrew once their last soldier had been rescued from under the rubble. This detail explains one of Omaid's family's bitterest concerns, that after killing him, the foreign soldiers left his body behind.

One of Omaid's friends, a fellow reporter who had left the RTA building minutes before the attack, managed to telephone Omaid immediately after the first blast. He tried to return to RTA twice. He could have told those in charge about Omaid's presence, but was stopped, first by uniformed Afghan forces, and at the second attempt by the Afghan National Police and ISAF. He finally got into RTA after the end of the operation, only to find Omaid's body in the courtyard where it had been moved by the KAU and ANP.

---

<sup>22</sup> Department of Defence, *Khpalwak Investigation*, p 10 (see FN7).

<sup>23</sup> Improvised explosive devices.

## 2. WHO WAS TO BLAME?

### 2.1 Tactical Patience and Civilians

The commander of multinational forces in Afghanistan, General John Allen, in a memorandum also released under the Freedom of Information request said, 'The tragic shooting of Omaid Khpulwak was not a violation of the Law of Armed Conflict or Rules of Engagement.' However, in his endorsement of two of the investigator's recommendations, Allen indicated his recognition that mistakes were made.<sup>24</sup>

I approve the recommendations . . . that address the need to establish whether civilians are present at the scene of any potential engagement and the need to continue to emphasize guidance to exercise tactical patience in operations.<sup>25</sup>

All parties to the conflict in Afghanistan are legally required, at all times, to distinguish between civilians and military targets and to take all feasible precautions to protect civilians. For their part, the Taliban's attacks on 28 July were carried out without regard for whether civilians might be killed, a clear breach of the laws of armed conflict; they killed 17 civilians, including ten children, at the simultaneous attack on the governor's compound (most died when a suicide bomb collapsed a wall onto a neighbouring clinic and school). At the RTA building, the US commander who took charge, Lt. Col. Oeschger, failed to establish whether civilians were present or not before he commenced a counter-attack, as did the officer who sent in the second clearing team. The principle that, 'in case of doubt, military forces must presume a target is civilian' is found in IHL<sup>26</sup> and was in the tactical directive in operation at the time.<sup>27</sup>

<sup>24</sup> He also approved the payment of compensation to Omaid's family (if it had not already been paid), directed that lessons learned be incorporated into the Lessons Learned Review Board for quarterly distribution, and expressed his condolences. Other recommendations are referred to in the text.

<sup>25</sup> Allen, 'Memorandum for Record' p 1 (see FN7).

<sup>26</sup> Additional Protocol I (53.3). Although this is not binding in a 'non-international conflict' such as Afghanistan's, it can be argued by analogy to be applicable.

<sup>27</sup> Author discussion with senior officer, 21 April 2012. Assuming civilians are present has also been explicitly written into the latest Tactical Directive. General John R Allen, *COMISAF's Tactical Directive* (unclassified version), 30 November 2011, accessed at [www.isaf.nato.int/images/docs/20111105%20nuc%20ta](http://www.isaf.nato.int/images/docs/20111105%20nuc%20ta)

To assist soldiers in interpreting and implementing the laws of armed conflict and their rules of engagement within wider counter-insurgency doctrine, the term, 'tactical patience' has appeared increasingly in various ISAF tactical directives<sup>28</sup> and advisories, including the following:

By avoiding unnecessary violence, tactical patience can help ensure our enemy is targeted accurately, while we minimize CIVCAS [civilian casualties] and property damage during operations, and win the support of the local population. . . .

In the absence of an immediate threat to friendly forces, take time to develop a better understanding of the situation, particularly in cases where units are determining positive identification (PID) of perceived hostile intent.<sup>29</sup>

One of the senior US officers in Uruzgan quoted in the investigation report puts it succinctly when he describes the changes to the Standing Operating Procedures recommended after the events of 28 July: 'Obtain as much standoff as possible and avoid rushing in to similar situations'.<sup>30</sup>

The part of the report which might have provided more detail on why the investigator highlighted these two issues – the need to establish whether or not civilians are present at the site of an operation, and tactical patience – is heavily redacted. Even so, for this author, they raise two questions:

- If the commander had assumed civilians might have been present, would he have made the same decisions?
- Was there an immediate imperative for the commander to clear the RTA building?

ctical%20directive%20revision%204%20(releaseable%20version)%20r.pdf.

<sup>28</sup> These include Allen, *COMISAF's Tactical Directive* (FN27) and General David Petraeus, *COMISAF's Guidance Concerning Civilian Casualties*, 15 May 2011, accessed at [www.isaf.nato.int/article/isaf-releases/comisafsguidance-concerning-civilian-casualties.html](http://www.isaf.nato.int/article/isaf-releases/comisafsguidance-concerning-civilian-casualties.html).

<sup>29</sup> Counterinsurgency Advisory and Assistance Team, *Coin Advisory Number 20100512-001: Tactical Patience* (undated), accessed at [www.isaf.nato.int/images/stories/File/COIN/COIN%20Advisory%2020100512-001%20\(Tactical%20Patience\).pdf](http://www.isaf.nato.int/images/stories/File/COIN/COIN%20Advisory%2020100512-001%20(Tactical%20Patience).pdf).

<sup>30</sup> The officer, who was the commander of the Headquarters and Headquarters Company, Armor 4-70, Multinational Base, Tirin Kot, also said the recommendations would include: 'Continually reiterate ANP first, even if they need a nudge from US forces to act.' Department of Defence, *Khpulwak Investigation*, p135, (FN7).



The answer to both would have to be no.

Lt. Col. Oeschger ordered 'crew-served weapons' to return fire against the Taleban and an Apache helicopter to fire 30mm rounds at the RTA building – both potentially dubious commands, given that he had not established whether there might still be civilians trapped in the building. Moreover, he appears to have shown a lack of tactical patience when he decided to clear the building in the absence of pressing need or immediate threat and when two suicide bombers were still inside. By contrast, at the governor's compound, US and Australian officers, according to the investigation, did work out a plan (which, in the end, was not used) for extricating any trapped civilians.

While Oeschger cannot be criticised for lack of bravery, officers formerly serving in Afghanistan were bewildered as to why he chose to lead the clearing operation himself. It was, they said, outside normal procedures and 'tactically stupid' for the battalion commander, a person responsible for 300 or more soldiers and one of the most senior officers deployed to the province, to put himself in harm's way. More importantly, they also said the obvious response would have been to exercise tactical patience and wait the Taleban out:

You have dominating weapon power. You have the assets – the crew-served weapons, the Apache, probably a drone – so you can locate the suicide bombers with thermal imaging. You can return fire. And if there are no civilians in the building, you immediately de-escalate. The urgency goes way down. It is time to step back. You put a 300 metre cordon on, evacuate any neighbours and let them [the suicide bombers] get tired and hungry and then go in at 2:00 in the morning when you have your night vision.<sup>31</sup>

The clearing teams were not expecting to encounter any civilians and, according to the investigation, the second team only shouted to each other and did not try to alert civilians potentially trapped inside. However, it should be

<sup>31</sup> They also thought the presence of a lieutenant colonel on the team, an 'old man' in comparison with the other soldiers, would have impaired the team's efficiency: 'When you're clearing rooms regularly, your actions become automatic – you build up muscle memory and you build up team work – and that happens over time. When someone else is on the team, you would lose that edge, and to have the 'old man' on the team would be jarring. You'd be worried about his safety and you'd lose seconds re-thinking decisions which should be automatic.' Author interviews with two former serving officers, 8 February 2012.

noted that the soldier who eventually killed Omaid did initially fire a warning, rather than a lethal shot.

By the time the second clearing team had gone in, with bombs having exploded and injuries taken, and with the ranking officer himself under the rubble, Omaid was in an immensely risky position. Six months previously, during a training session for local journalists on how to best stay safe during conflict,<sup>32</sup> another participant<sup>33</sup> said the trainer described this very situation as, 'the most dangerous time for a male Afghan'. The trainer taught the Afghan journalists that if they were caught up in such a Coalition attack, they should find a place of safety, wait and when – hopefully – they were found, raise their hands, stay still and speak in English. However, they were warned that, faced with potential suicide bombers, 'foreign soldiers tend to assume that anyone local must be hostile.'

Such situations have been complicated by Taleban tactics, which deliberately muddy the distinction between themselves and those who are not fighting. Taleban dress as civilians, and instances have occurred when fighters have pretended to surrender or used wounds to gain the confidence of their opponents, only to resume fighting, detonate suicide vests or use mobile phones to trigger Improvised Explosive Devices (IEDs) when their opponents fail to fire at them. Experience of such perfidy<sup>34</sup> has meant that when split-second judgments are required, soldiers – often reasonably – err on the side of self-defence.<sup>35</sup>

This indeed is what happened. The soldier who killed Omaid saw a 'military aged male' with a beard, a description which covers not just insurgents, but the majority of the adult male

<sup>32</sup> Such courses are known as 'hostile environments training' and are routinely taken by journalists, NGO workers and other civilians.

<sup>33</sup> Author interview, 17 August 2011. The interviewee asked not to be named.

<sup>34</sup> There is a ban on perfidy, defined as, 'acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence,' in *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts*, 8 June 1977, Article 37(1); ICC Statute, Article 8(2)(e)(ix).

<sup>35</sup> This point was made by a US Special Operations Forces commander when discussing when and whether a wounded insurgent can be judged *hors de combat* in the Afghan theatre. See Kate Clark, 'The Takhar Attack: Targeted Killings and the Parallel Worlds of US Intelligence and Afghanistan', *AAN*, May 2011, accessed at [www.aan-afghanistan.com/index.asp?id=1691](http://www.aan-afghanistan.com/index.asp?id=1691), pp 32-33.

Uruzgani population; he had something clenched in his hand (his mobile phone?) and was reaching for something else – probably trying to show the soldier his press card which was on a lanyard round his neck. Omaid was a journalist in his place of work, with a BBC ID card and able to speak English, but by this point, especially as the commanding officer had not established whether civilians might be present, to be male and Afghan was enough to be deemed to have ‘hostile intent’. Distinguishing between civilian and combatant had become next to impossible, and Omaid became a legitimate target in the eyes of the military.

One of the recommendations of the investigator, rejected by General Allen, is pertinent here:

Consider educating Afghan civilians on actions to take if they are caught in an incident, in order to prevent them from being considered combatants. In SERE [Survival, Evasion, Resistance and Escape] training, service members are taught what actions to take and not take if being rescued so they will not be considered hostile. Similar education of Afghans may help ISAF and ANSF forces [Afghan National Security Forces] discriminate between insurgents and non-combatants during engagements.

According to one senior ISAF officer, however, part of their current drive to reduce civilian casualties includes educating Afghan civilians on what to do if they are caught in similar operations.<sup>36</sup>

## 2.2 The Dismal Performances of the ANSF

The abysmal performance of the Afghan National Security Forces (ANSF) at the RTA building comes across very clearly in the report. In the battle for the governor’s compound, the ANSF, by all accounts, fought well and professionally. At RTA, their response was negligible.

When US forces arrived at RTA, they found Afghan forces already there, but it was, and still is, unclear whether the men were all Matiullah Khan’s militia – the KAU – or whether Afghan National Police (ANP) were also present. It was difficult to tell them apart, said the investigation report, because the militiamen wore ANP uniforms. The KAU, it says, is ‘primarily considered a militia but elements are also part of the ANP tashkil (i.e. subsumed under the local policing quota and structure); there is a grey area regarding who is a militia and who is

<sup>36</sup> Author interview, senior ISAF officer, 12 December 2011.

ANP’. Although ISAF does not recognise the KAU as part of ANSF, the KAU has a close operational relationship with US and Australian special forces and guards ISAF convoys. It is also present at the Command Coordination Centre on the multinational base in Tirin Kot, along with the various international forces, ANP, ANA and Afghan intelligence.

It seems strange that the problem of distinguishing the KAU should have been a surprise to US forces on the ground or to the military investigator. Matiullah Khan and his militia are the most powerful Afghan force in Uruzgan and, whereas the Dutch military sought to sideline them because of repeated and credible allegations of human rights abuses, criminality and paying off insurgents, US and Australian Special Operations Forces regularly fight alongside the KAU. The dangers of blurring the distinction between government forces and irregular militias – their chain of command, who they answer to and where they fit in with international and Afghan forces operating in Uruzgan – has long been recognised.<sup>37</sup> It was demonstrated once again by the events of the 28 July. When clear lines of command and control and communication became vital, such as in the RTA operation, informal relationships with an irregular militia were found wanting.

The Afghan uniformed forces present, whoever they were, said the investigation report, ‘did not appear to be actively responding to the situation in an organised manner.’ Indeed, while ‘most TTPs [tactics, techniques and procedures] were followed in clearing the building,’ the investigation noted, ‘normally, the ANP would be out in front.’ On 28 July, the Afghan forces stood around watching the Americans go in. The investigation detailed how the senior Afghan officers were elsewhere, their attention focussed on the governor’s compound, not RTA, and how there were multiple and overlapping problems with both communications (the police who primarily use mobile phones found the network blocked by ISAF) and Afghan command and control.<sup>38</sup>

<sup>37</sup> Matiullah’s close relationship with foreign forces (as well as with the Afghan president), for example, has helped protect him from criminal investigation (for sources, see FN16). For a detailed look at this issue, see Kate Clark, ‘War Without Accountability: The CIA, Special Forces and Plans for Afghanistan’s Future’, *AAN*, 10 February 2012, accessed at [www.aan-afghanistan.com/index.asp?id=2502](http://www.aan-afghanistan.com/index.asp?id=2502) and Kate Clark, ‘The Trouble with Torture: NDS, Special Forces and the CIA’, *AAN*, 29 March 2012, accessed at [www.aan-afghanistan.com/index.asp?id=2628](http://www.aan-afghanistan.com/index.asp?id=2628).

<sup>38</sup> The investigation notes that the Co-ordination Centre uses radio, mobiles and runners to communicate with

Four out of the investigator's seven recommendations concern the ANSF:

Continue to emphasize guidance to partner with Afghans; have Afghans lead operations whenever feasible. Seek means to enable this partnering in all situations.

Mentor ANSF on effective C2 [command and control] arrangements that allow them to understand the situation, and maintain control of forces, across their entire area of operations.

Mentor ANSF in establishing plans and SOPs [standard operating procedures] for immediate reaction to incidents that facilitates [sic] coordinated responses between forces.

Mentor ANP to document events and collect evidence at the scene following an attack and before the site is disturbed. This will make it simpler to investigate incidents and quickly assess the facts of what occurred.<sup>39</sup>

If Afghan forces had been involved in clearing the RTA building, they might have been able to make contact with Omaid in Pashto or indeed recognised him. He read the RTA television evening news every other evening; his was a famous face in Uruzgan.

### 3. THE ROLE OF COMMUNICATION AND ISAF PUBLIC AFFAIRS

No Afghan forces took part in the counter-attack on the RTA building. Yet, one would not have concluded this from reading the account of the operation written up by the ISAF Public Affairs office. It issued a press release that was glutinously adulatory of the ANSF:

Afghan Commandos and a combined team of Afghan National Security Forces responded unilaterally to insurgent attacks in Tarin Kowt resulting in two suicide bombers killed in action and ten hostages freed, July 28.

---

ANSF; but, while it 'did act as a coordination centre, it is not currently intended to be an element that issues orders'. It also notes that 'even the police HQ is not considered an ideal place to link up with ANP, because key leaders may leave that location in times of crisis action'.

<sup>39</sup> Department of Defence, *Khpalwak Investigation*, p 23 (see FN7).

Coordinated attacks occurred at the Uruzgan provincial governor's compound, the provincial police headquarters, and a radio station located near the Tarin Kowt city center. 'The insurgents were equipped with suicide vests and rocket propelled grenades,' said Major Safiulla Nijrabi, Executive Officer of the 8th Commando Kandak. 'But we were prepared to quickly and effectively secure the premises where the attackers were.'

Nijrabi said a total of 40 Commandos were dispatched into the city of Tarin Kowt as part of a quick reaction force, where they began to take charge of the situation by killing insurgent fighters and freeing hostages without causing further suffering or casualties to local citizens. 'My guys went into a burning building to save the local citizens,' said Nijrabi. 'I could not be more proud of them.'

After sustaining no Commando casualties, Nijrabi believes that the Commando's [sic] have earned the respect and trust of the citizens in Tarin Kowt. 'We showed the people that we are going to stand against insurgent threats, because we take our duties very seriously,' said Nijrabi. 'Nothing makes me more proud than to know that we help protect the citizens of Afghanistan.'<sup>40</sup>

Propaganda-wise, the half-truth (Afghans did take the lead at the governor's compound, although even there, they had international support) fits in with the overarching ISAF narrative of Transition, the handover of responsibility for security from international to Afghan forces, and the near readiness of the ANSF to take on the fight against the Taleban.<sup>41</sup>

However, the gap between what happened on the ground and what ISAF said had happened created confusion and helped spark suspicions among Omaid's family and friends of a cover-up. Those who saw Omaid's body and the place of his death and heard police saying that foreign forces had stormed RTA understood there was something

---

<sup>40</sup> 'Afghan Commandos Respond to Insurgent Attacks in Tarin Kowt', ISAF Press Release # 073, 29 July 2011, accessed at [www.isaf.nato.int/article/isaf-releases/afghan-commandos-respond-to-insurgent-attacks-in-tarin-kowt.html](http://www.isaf.nato.int/article/isaf-releases/afghan-commandos-respond-to-insurgent-attacks-in-tarin-kowt.html).

<sup>41</sup> The Australian military's account of events took the same line; for details of discrepancies between their account and what actually happened, see Hyland, 'Our Afghan Partners Go Missing' (see FN8).



wrong with the official account. His brother, Jawed, explained:

In the area where he was, near the wall, there were dead bodies and body parts mixed in with the mud. It was clear they had been killed by the blast of a suicide bomb. But my brother's body was intact, clean, whole. All he had was gun-shot wounds and bleeding. When we washed him, we could see the gunshot wounds. There were more than eleven.<sup>42</sup>

At the place where Omaid had been killed, his brother found bullet casings, with numbers stamped on them; the calibre and shape differ from those fired by the Kalashnikov rifles mainly used by Taleban and ANSF, and he believed they had been shot from American-made rifles.<sup>43</sup>

The family's suspicions of a cover up were augmented by the difficulty of getting anyone to discuss the presence of foreign forces during the counter-attack. An Australian Ministry of Defence press release, which praised the ANSF for 'responding quickly and professionally to the insurgent action', also let slip that US troops had entered Matiullah's compound.<sup>44</sup> The following day, in an attempt to assert that Australian forces had not been involved (the investigation report reveals that this assertion was not true), Australia issued a second press release with 'updated information'; all mention of US forces was dropped.<sup>45</sup> It proved impossible to get confirmation of the US military presence from the ISAF Public Affairs office, which even several weeks later in an interview with AAN, was tight-lipped about which foreign forces had been present. The spokesman has remained adamant the counter attack on RTA had been 'Afghan-led'.<sup>46</sup>

At this time, the Afghan government was insisting – following its own, still classified, investigation – that Omaid had been killed in the Taleban bomb

blasts. Yet only the spokesman for the Uruzgan governor would speak to the author on record and he said it was 'definitely, the case' that the Taleban had killed Omaid.<sup>47</sup> Other provincial officials, including those who were on the government investigation team, either refused to speak to AAN or were clearly frightened to discuss the case.<sup>48</sup> Omaid's family was threatened in anonymous phone calls to keep quiet about their suspicion that it was US soldiers who had killed him. The calls were suspected of coming from men connected to local strongman and US ally, Matiullah Khan.<sup>49</sup> Despite this pressure, Omaid's family and friends gave interviews and supplied evidence to support their concerns.

These were seen to be fully justified when, on 8 September 2011, ISAF published the Executive Summary of the investigation confirming that an American soldier had killed Omaid. Yet, even at this point, someone decided to change some of the details of the Executive Summary. The original, classified version (released under the Freedom of Information request) said, 'The battalion commander led a building clearing operation.' When it was published in September, this had been changed to (emphasis added): '*US forces* led a building clearing operation.' The change in wording implied incorrectly that US forces had led other forces. Indeed, journalists came away with the false impression that Afghan forces had participated in the operation.<sup>50</sup>

Even now, the ISAF spokesman will still not address why ISAF issued inaccurate information in August 2011. Although he accepts that the RTA building was cleared by the QRF (Quick Reaction Force), which, he said, is made up of Australians and Americans (eliding over the fact that Australians were not involved in the counter-attack at RTA), and that it was a US soldier who killed Omaid – something which he admitted was not an Afghan responsibility – he still continues to insist that the counter-attack on RTA was 'Afghan-led':

They [the QRF] were in comms [communications] with the Afghans who were in charge of the overall response.

If you're controlling movements, if you're synchronising movements, you don't always have to be physically there. You don't need Afghan forces actually involved

<sup>42</sup> Author interview, 17 August 2011.

<sup>43</sup> For detail on the ballistics, see Clark, 'Death of an Uruzgan Journalist' (FN4).

<sup>44</sup> See Australian Department of Defence 'Insurgent Attacks in Uruzgan Fail to Kill Officials', 29 July 2011, accessed at [www.news.defence.gov.au/2011/07/29/insurgent-attacks-in-uruzgan-fail-to-kill-officials/](http://www.news.defence.gov.au/2011/07/29/insurgent-attacks-in-uruzgan-fail-to-kill-officials/).

<sup>45</sup> 'Update on Insurgent Attacks in Uruzgan', MECC 325/11 Media release by Australian Ministry of Defence, 30 July 2011, accessed at [www.defence.gov.au/media/DepartmentalTpl.cfm?CurrEntId=12194](http://www.defence.gov.au/media/DepartmentalTpl.cfm?CurrEntId=12194). For an analysis of discrepancies between Australia's account of events and that revealed by the investigation, see Hyland, 'Our Afghan Partners' (FN8).

<sup>46</sup> Author interview, 20 August 2011.

<sup>47</sup> Author interview, 20 August 2011.

<sup>48</sup> Author interviews, 20 and 21 August 2011.

<sup>49</sup> Author interview, 17 August 2011.

<sup>50</sup> Listen, for example, to BBC World Service *Newshour*, broadcast at 21:05 GMT on 8 September 2011, accessed at [www.bbc.co.uk/iplayer/console/p00jwvyv4](http://www.bbc.co.uk/iplayer/console/p00jwvyv4).

. . . . The people in charge of what happened at RTA were Afghans.<sup>51</sup>

Actually, even this is an imagined command or consultation chain that simply did not exist on the day – as the US military’s own investigation makes clear. Afghans were not involved in making decisions or issuing orders concerning RTA; those in charge on the Afghan side were not there, had problems with their mobile phones and, anyway, were focussed on the governor’s compound, not the building of the national broadcaster.

While fully accepting that legal issues may make disclosure of information impossible before an investigation is complete,<sup>52</sup> if information has already been put into the public sphere and turns out to have been false or misleading, it would seem only fair to correct it; in Omaid’s case, that would have meant correcting the initial press release and speaking openly about which forces were on the ground. In the first few weeks following his death, accepting that US or other foreign soldiers had been present at the RTA building, even while affirming that an investigation was ongoing into who had killed Omaid, could well have been enough to allay fears among his family and friends of a cover up.

### 3.1 ISAF Public Affairs: Discrepancies in the data

ISAF’s desire to present accounts of events as favourably as possible is to be expected, but sometimes this slips into propaganda, half-truths and, occasionally, cover up. The Public Affairs office, which covers operations by both ISAF and Operation Enduring Freedom, is the public face of the Coalition. To a large extent, the office is only as good as the information it receives from other parts of the military. Even so, Omaid’s is not the first case to raise concerns about its reporting.

Work by Alex Strick van Linschoten and Felix Kuehn looking at ISAF reporting of capture-or-kill missions revealed discrepancies on the numbers of men claimed to have been detained or killed, particularly when it came to what were termed ‘insurgent leaders’ and ‘facilitators’. ISAF subsequently revealed that its definition of an insurgent ‘leader’ could mean a man, ‘leading formations ranging from *a few individuals*, to much larger numbers’ (emphasis added).<sup>53</sup> Few others in

Afghanistan would consider a man with a handful of fighters to be a leader. The research raised the question as to the point of the many ISAF press releases claiming victories in the kill/capture programme. Statistics put forward as evidence in mid-2011 that insurgent attacks were down and the Taliban degraded also sparked concerns that ISAF was cherry-picking the data, especially when other organisations monitoring the conflict had found that violence had increased. Questions revealed ISAF was only counting ‘enemy-initiated attacks’ against international or Afghan forces, not those against civilians.<sup>54</sup>

Discrepancies between accounts of particular operations and what happened on the ground have been uncovered, but usually only after serious investigation. Nick Davies, a reporter with *The Guardian* worked through classified investigation reports (published by Wikileaks) into the unintended killing by Coalition forces of civilians and ANSF between 2007 and 2009 and compared them with the public accounts of the operations. He uncovered major discrepancies. To give one example, a confrontation between Taliban and the Special Operation Forces (SOF) in Paktika in October 2007 led to the SOF calling in air support and the dropping of 500-pound bombs on the house where the firing had come from.<sup>55</sup> However, by this time, the Taliban had retreated and the bombs killed civilians only – nine in total, including a woman and four children. Yet ISAF Public Affairs put out a statement claiming falsely that several militants had been killed and that there was no indication of any dead civilians; later

---

responds-to-use-of-aan-news-release-study.html. The ISAF press release was a response to Alex Strick van Linschoten and Felix Kuehn, ‘A Knock on the Door: 22 Months of ISAF Press Releases’, *AAN*, 12 October 2011, pp 19–23, accessed at [www.afghanistan-analysts.net/uploads/AAN\\_2011\\_ISAFPressReleases.pdf](http://www.afghanistan-analysts.net/uploads/AAN_2011_ISAFPressReleases.pdf). See also Martine van Bijlert, ‘Analysing ISAF Press Releases – AAN Responds to ISAF’s Response’, *AAN*, 14 October 2011, accessed at [www.aan-afghanistan.com/index.asp?id=2162](http://www.aan-afghanistan.com/index.asp?id=2162).

<sup>54</sup> For discussion, see Kate Clark, ‘Civilian Casualties 1: Progress in the war or a ‘perpetually escalating stalemate’? 21 July 2011, accessed at [aan-afghanistan.com/index.asp?id=1957](http://aan-afghanistan.com/index.asp?id=1957). ISAF’s response to such concerns can be seen at ‘ISAF Violence Statistics and Analysis Media Brief’ ISAF 29 September 2011 at [www.isaf.nato.int/article/isaf-releases/isaf-violence-statistics-and-analysis-media-brief-sept.-29-2011.html](http://www.isaf.nato.int/article/isaf-releases/isaf-violence-statistics-and-analysis-media-brief-sept.-29-2011.html).

<sup>55</sup> Calling in air fire in such a situation would no longer be possible; new orders restricting strikes, unless in self defence, have greatly reduced civilian casualties from the international side. See HQ ISAF, ‘Tactical Directive’, 6 July 2009, accessed at [www.nato.int/isaf/docu/official\\_texts/Tactical\\_Directive\\_090706.pdf](http://www.nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf).

<sup>51</sup> Author interview, 18 January 2012.

<sup>52</sup> A point made in discussions with senior officers from Public Affairs, 21 April 2012.

<sup>53</sup> ‘ISAF Responds to Use of AAN News Release Study’, ISAF Press Release # 2011-10-CA-004, 14 October 2011, accessed at [www.isaf.nato.int/article/isaf-releases/isaf-](http://www.isaf.nato.int/article/isaf-releases/isaf-)

in the day, it added that 'several non-combatants were found dead and several others wounded', without giving any numbers or details, or correcting the earlier false information.<sup>56</sup>

Another instance of Public Affairs misleading journalists came in the follow up to an investigation by this author into the killing in Takhar in September 2010 of a parliamentary election agent, Zabet Amanullah, along with nine other civilian election workers.<sup>57</sup> The military claimed they had killed the Taliban shadow deputy governor, a man called Mullah Amin, along with his bodyguards. After going through the intelligence on which this targeted killing had been based with senior US SOF commanders, it was clear the military had mixed up the two men's phone numbers, conflating their identities and coming to believe Mullah Amin was using the name 'Zabet Amanullah' as a pseudonym. They had largely relied on network analysis of phone calls in their decision to launch the targeted killing. Their failure to make even the most basic of background checks ended in ten civilians being killed. This was a breach in IHL and also pointed to systemic errors in intelligence gathering and evaluation with regard to selecting Afghans for targeted killing.

Yet the military continued to assert they had killed Mullah Amin and that a separate individual called Zabet Amanullah did not and had never existed. This was so even after AAN presented evidence of the distinct identities of the two men: Zabet Amanullah, a figure well known personally to the provincial governor and police chief, members of parliament, senior advisors to President Karzai and

this author,<sup>58</sup> who had been living openly for several years in Kabul before he was killed; and Mullah Amin, the Taliban deputy governor who is from a well-known jihadi family in Takhar and is alive and well; indeed he was interviewed in Peshawar several months after he had supposedly been killed.<sup>59</sup>

When journalists tried to follow up the case, an ISAF spokesman falsely claimed intelligence verified they had killed the right man. As proof, he cited intelligence that had actually been gathered before the killing and only proved that Mullah Amin was Mullah Amin, the Taliban deputy governor of the province. Yet, the spokesman presented it as having been gathered *after* the killing, as confirming that the dead man was Mullah Amin. He told the BBC Pashto service, for example, that, 'The man who was targeted in the operation, one of his family members has confirmed that he was the Taliban deputy governor'.<sup>60</sup> This author had gone through the intelligence on which the killings had been based with the SOF and could therefore date it; the interview with the family member (actually an interrogation), for example, had taken place in February 2010, six months before the killing.

Even when the military admits a mistake, to retract does not appear false press. It is difficult to know how often this happens, but one example was a press release trumpeting the killings by an 'Afghan-led combined security force' of 'six Haqqani network fighters including one armed adult female' in a village in Khost in July 2011.<sup>61</sup> After an outcry

<sup>56</sup> Nick Davies, 'Afghanistan War Logs: Task Force 373 – Special Forces Hunting Top Taliban', *The Guardian*, 25 July 2010, accessed at [www.guardian.co.uk/world/2010/jul/25/task-force-373-secret-afghanistan-taliban](http://www.guardian.co.uk/world/2010/jul/25/task-force-373-secret-afghanistan-taliban). See also Nick Davies and David Leigh, 'Afghanistan War Logs: Massive Leak of Secret Files Exposes Truth of Occupation', *The Guardian*, 25 July 2010, accessed at [www.guardian.co.uk/world/2010/jul/25/afghanistan-war-logs-military-leaks](http://www.guardian.co.uk/world/2010/jul/25/afghanistan-war-logs-military-leaks). The leaked investigation reports can be downloaded at [www.guardian.co.uk/world/datablog/2010/jul/25/wikileaks-afghanistan-data#data](http://www.guardian.co.uk/world/datablog/2010/jul/25/wikileaks-afghanistan-data#data). For original press releases, see DVIDS, 'Several Militants Killed in Paktika Province', 5 October 2007, accessed at [www.dvidshub.net/news/12716/several-militants-killed-paktika-province#.T4EonPvd2So](http://www.dvidshub.net/news/12716/several-militants-killed-paktika-province#.T4EonPvd2So) and DVIDS, 'Civilians Found Dead, Injured After Battle Between Militants, Afghan, Coalition Forces', 5 October 2007, accessed at [www.dvidshub.net/news/12724/civilians-found-dead-injured-after-battle-between-militants-afghan-coalition-forces#.T4Eovfvd2So#ixzz1rcV78Scr](http://www.dvidshub.net/news/12724/civilians-found-dead-injured-after-battle-between-militants-afghan-coalition-forces#.T4Eovfvd2So#ixzz1rcV78Scr).

<sup>57</sup> See FN35.

<sup>58</sup> This author met and interviewed Zabet Amanullah in Kabul in 2008; he had just fled from Pakistan after having been released by Pakistani intelligence, the Inter-Services Intelligence or ISI. Amanullah had been a Taliban commander before 2001 and the ISI arrested and tortured him because he was *not* fighting. See Clark, 'The Takhar Attack', p 2 (see FN35).

<sup>59</sup> Mullah Amin was interviewed by Michael Semple of Harvard University in March 2012. See Clark, 'The Takhar Attack' pp 17-18 (see FN35).

<sup>60</sup> He similarly told NPR that '... coalition forces did kill the targeted individual, Muhammad Amin, also known as Zabet Amanullah... in this operation, multiple sources of intelligence confirm that coalition forces targeted the correct person.' Kate Clark, 'Kill or Capture 1: Owing Up to Civilian Casualties', AAN, 17 May 2011, accessed at [www.aan-afghanistan.com/index.asp?id=1721](http://www.aan-afghanistan.com/index.asp?id=1721). For full details on the killings and the investigation, see Clark, 'The Takhar Attack' (see FN34).<sup>61</sup> ISAF, 'Afghan-Led Security Force Conducts Clearing Operation in Khost', 14 July 2011, accessed at [www.isaf.nato.int/article/isaf-releases/afghan-led-security-force-conducts-clearing-operation-in-khost.html](http://www.isaf.nato.int/article/isaf-releases/afghan-led-security-force-conducts-clearing-operation-in-khost.html).

<sup>61</sup> ISAF, 'Afghan-Led Security Force Conducts Clearing Operation in Khost', 14 July 2011, accessed at

by local people and officials, the military investigated the night raid<sup>62</sup> and found it had actually gone disastrously wrong. US forces had killed six civilians who had all been at home or watering their fields at night; they were a businessman and two of his children, a civil servant and his older teenage son, and a retired Afghanistan National Army (ANA) colonel who was then teaching in a high school.<sup>63</sup> A high level delegation visited Khost to ask forgiveness of the survivors of three families, but ISAF did not report the apology or retract the original press release labelling the six as Haqqani fighters. These and other cases<sup>64</sup> have not inspired confidence in the office.

In the immediate aftermath of Omaid Khpulwak's killing, what was important was determining whether he had been killed by Taleban or by ANSF or international forces and whether those in command could have been aware or suspected

---

[www.isaf.nato.int/article/isaf-releases/afghan-led-security-force-conducts-clearing-operation-in-khost.html](http://www.isaf.nato.int/article/isaf-releases/afghan-led-security-force-conducts-clearing-operation-in-khost.html).

<sup>62</sup> The launch of an investigation was announced in a press release, ISAF, 'ISAF Initiates Joint Assessment to Khost Province, 14 July 2011, accessed at [www.dvidshub.net/news/73730/isaf-initiates-joint-assessment-khost-province#.T4VM9Kvd2So](http://www.dvidshub.net/news/73730/isaf-initiates-joint-assessment-khost-province#.T4VM9Kvd2So).

<sup>63</sup> Author interviews with local journalists and survivors, November 2011; interview with senior ISAF officer confirmed details, December 2011. The military investigation into the killings judged that all had been legal, albeit unfortunate.

<sup>64</sup> See also a case in 2010 where ISAF Public Affairs claimed that, after 'intelligence confirmed militant activity' in a compound in Khataba, on the outskirts of Gardez, 'joint forces' engaged in a fire-fight, killing 'several militants' and then found 'the bodies of three women who had been tied up, gagged and killed [and the bodies] hidden'. See ISAF, 'Joint Force Operating in Gardez makes Gruesome Discovery', 12 February 2010, accessed at [www.dvidshub.net/news/45240/joint-force-operating-gardez-makes-gruesome-discovery#.T03A8PHd28A#ixzz1nkTFkami](http://www.dvidshub.net/news/45240/joint-force-operating-gardez-makes-gruesome-discovery#.T03A8PHd28A#ixzz1nkTFkami). *Times* journalist, Jerome Starkey, uncovered the fact that all the dead were civilians – two men, a teenage girl and two pregnant women – and the US SOF who had killed them had tried to cover up the deaths. See Jerome Starkey, 'US Special Forces 'Tried to Cover-up' Botched Khataba Raid in Afghanistan', *The Times of London*, 5 March 2010, accessed at [www.jeromestarkey.com/tagged/Cover-Up](http://www.jeromestarkey.com/tagged/Cover-Up). See also Martine van Bijlert 'Khas Uruzgan violence and ISAF press releases', 26 June 2011, *AAN*, accessed at [aan-afghanistan.com/index.asp?id=1846](http://aan-afghanistan.com/index.asp?id=1846). For more examples, with links to original reports, and further analysis, see Kate Clark, 'Kill or Capture 3: When the International Military Says 'Sorry'', 31 May 2011, *AAN*, accessed at [www.aan-afghanistan.com/index.asp?id=1754](http://www.aan-afghanistan.com/index.asp?id=1754).

that he was a civilian, a journalist in his place of work. Omaid's family and colleagues – as is their right – wanted to get to the truth of the matter and risked much in the highly threatening atmosphere in Tirin Kot by not staying quiet and by getting evidence out to international journalists and researchers.<sup>65</sup> In these circumstances, it was particularly important for ISAF to have been as truthful as possible, as quickly as possible.

#### 4. CONCLUSION: REPORTING WAR

Since July 2011 when General Allen took over command of ISAF and US Special Operations Forces in Afghanistan, and particularly since October 2011, the international military appears to have become more serious about driving down civilian casualties. Allen receives a daily report on civilian casualties and has issued two new directives, one general<sup>66</sup> and one on night operations.<sup>67</sup> The latter is still relevant despite a Memorandum of Understanding signed between Afghanistan and the United States in April 2012 which has further restricted the actions of US troops; all operations involving entry into people's houses must now be signed off by the Afghan authorities and conducted by Afghan special forces, with US soldiers only in a supporting role, if requested.<sup>68</sup>

The new tactical directives emphasise the law of armed conflict more explicitly. They unambiguously state that forces must presume every Afghan is a civilian, compounds are civilian, and that civilians are present in every location where there is evidence of human habitation, 'until otherwise apparent'. What are called 'ground battle damage assessments' must also now be conducted where there is even a '*potential* loss of life or injury to insurgents or Afghan civilians' (emphasis added). The directives reiterate that all allegations of civilian casualties must be investigated. All soldiers coming to Afghanistan must now have training that uses scenarios to explore not just what can legally be done in a given

---

<sup>65</sup> They provided pictures of the body, the place of death, bullet casings, and information and testimony. See Clark, 'Death of an Uruzgan Journalist' (see FN4).

<sup>66</sup> Allen *COMISAF's Tactical Directive* (see FN27).

<sup>67</sup> ISAF, *COMISAF Night Operations Tactical Directive* (releasable version), 1 December 2011, accessed at [www.isaf.nato.int/images/docs/20111105%20nuc%20night%20operations%20tactical%20directive%20\(releasable%20version\)%20r.pdf](http://www.isaf.nato.int/images/docs/20111105%20nuc%20night%20operations%20tactical%20directive%20(releasable%20version)%20r.pdf).

<sup>68</sup> For text and analysis of the Memorandum of Understanding, see Kate Clark, 'Handing over Night Raids', *AAN*, 9 April 2012, accessed at [www.aan-afghanistan.com/index.asp?id=2647](http://www.aan-afghanistan.com/index.asp?id=2647).



situation, but what should be done.<sup>69</sup> The latest directive focuses on two of the factors (presumption of civilian presence and tactical patience) that were disregarded in the counter-attack on RTA and which led it to go so disastrously wrong.

The proof of whether ISAF is serious about this will ultimately be seen in whether fewer civilians are killed during its operations. According to its own assessment, in the latter part of 2011 and the early part of 2012, compared to the same months a year previously, the numbers have fallen markedly.<sup>70</sup> The most recently independently assessed figures from the United Nations Assistance Mission to Afghanistan (UNAMA), which compared the total in 2011 with that in 2010, found that civilians killed by 'pro-government forces', which comprise both international and Afghan forces, were down by 4 per cent.<sup>71</sup>

To show it is truly committed to reducing civilian casualties, ISAF's drive must show greater transparency when operations are difficult or go wrong and, as far as possible, demonstrate honesty and accuracy in dealing with the media and public.<sup>72</sup> This author has, in the past few months, encountered greater cooperation and transparency from senior officers in following up allegations of civilian casualties. However, more generally, the desire to present events in a rosy manner, whether by the ISAF high command<sup>73</sup> or the Public Affairs office, is frequently a cause of confusion and distrust. Particularly when it comes to civilian casualties, when ISAF accounts of operations do not genuinely reflect the truth, locally at least, few will be fooled. The credibility of international forces suffers and anger at civilian deaths and

injuries can be exacerbated by the impression that the foreign military acts with impunity.

In 2009, joint ISAF-Afghan government investigation teams (known as JIATs) were established to follow up the most serious allegations of civilian casualties. UNAMA called the JIATs a 'strong step' forward, but said the results of these and ISAF-only investigations should be published:

Prompt and public release of investigation findings would promote transparency, accountability and better relations with affected Afghan civilians and communities. UNAMA recommends that ISAF and the ANSF form a permanent, professional group to focus full-time on civilian casualty incident investigations and follow up.<sup>74</sup>

For friends, family and colleagues of Omaid Khpulwak, the wait to find out the circumstances of his death has been difficult and upsetting. It is a pity that a Freedom of Information request was required to force the United States military and ISAF to reveal the investigation because, in the end, the publication of this honest account of how and by whom Omaid was killed has been a positive step, a contribution both to accountability for civilian deaths and improvements to the protection of civilians.

However, the fact remains that a journalist was killed in his place of work because he was an Afghan man of 'military age'. The head of Global News at the BBC (one of Omaid's employers), Peter Horricks, was asked on the day the Executive Summary of the investigation was published if US forces should have taken more care to ascertain Omaid's identity. He said, 'I think we should look at this as an example of the many incidents that happen in Afghanistan where civilians, through violence on all sides, get caught up.'<sup>75</sup> He accepted

<sup>69</sup> Author Interview, senior ISAF officer, 12 December 2011.

<sup>70</sup> Author interview, senior ISAF officer, 11 February 2012.

<sup>71</sup> United Nations Assistance Mission to Afghanistan and United Nations Office of the High Commissioner for Human Rights (UNOHCHR), *Afghanistan Annual Report 2011: Protection of Civilians in Armed Conflict*, February 2012, p 2, accessed at [www.unama.unmissions.org/Portals/UNAMA/Documents/UNAMA%20POC%202011%20Report\\_Final\\_Feb%2012.pdf](http://www.unama.unmissions.org/Portals/UNAMA/Documents/UNAMA%20POC%202011%20Report_Final_Feb%2012.pdf).

<sup>72</sup> This should be the case unless the results cannot be released for legal reasons.

<sup>73</sup> See analysis on this, for example, in Kate Clark, 'The Emperor's New Clothes: The Leaked NATO Report on the Taliban', *AAN*, 2 February 2012, available at [www.aan-afghanistan.com/index.asp?id=2481](http://www.aan-afghanistan.com/index.asp?id=2481); and Kate Clark, 'Two Eid Messages from Warring Leaders', *AAN*, 6 November 2011, available at [www.aan-afghanistan.com/index.asp?id=2223](http://www.aan-afghanistan.com/index.asp?id=2223).

<sup>74</sup> UNAMA also noted that JIATs (joint ISAF-Afghan government investigations teams) 'can lack objectivity and appear biased since all fact finders are members of ISAF and ANSF with no oversight or participation of independent individuals or experts'. UNAMA, *Afghanistan Annual Report 2011*, February 2012, pp 26-28 (see FN68).

<sup>75</sup> Following this question from the presenter, 'Do you believe that those American forces, from what you know at this stage, should have taken more care to ascertain Omaid's identity during this situation?', Horricks's response in full was: 'From what we know, there was no indication that they had, that he was a journalist. So, I think we should look at this as an example of the many incidents that happen in Afghanistan where civilians, through violence on all sides, get caught up and I think, it's something we're focussing on this because he's one of our colleagues, but I think it's probably representative



the military's account that it was reasonable for US forces to have assumed there were no journalists trapped in the RTA building. However, he missed the legal point. There is a duty on all parties to the conflict to take all feasible precautions to avoid incidental loss of civilian life; at this point, questioning was needed as to what systems the military had in place to reduce the risk of a civilian, in this case, a journalist, being killed by mistake. Was there training for soldiers and commanders, and Rules of Engagement, for example, which demanded that soldiers and commanders assume civilian presence unless proven otherwise?

Reporters like Omaid are an important, as well as a very vulnerable link in the chain that keeps Afghans and the rest of the world aware of what is happening in this country. He was a courageous and gifted journalist, not just the go-to person for any foreign reporter wanting to cover Uruzgan, but one of the key, independently-minded Afghans working in the south. This is not the first time that international forces, operating under pressure, have killed an Afghan journalist because his age, nationality and gender meant he looked like an insurgent.<sup>76</sup> While no-one can blame the US soldier who killed Omaid, his death raises the important question of whether Afghan reporters working in areas in conflict can be better safeguarded.

---

of the kinds of things which are going on in the conflict that is sadly going on in the country. And I'm treating it in this way. There is no information that we have that there was any knowledge that the US forces had that he was a member of the media.' *Newshour*, 8 September 2011 (See FN49).

<sup>76</sup> The other most notable case was Sultan Munadi, kidnapped along with his US-Irish colleague, the *New York Times* reporter, Stephen Farrel. Farrel was rescued, while Munadi was shot as he ran out shouting in English, 'Journalist, journalist,' during a rescue by UK soldiers (one of whom was also killed). See 'Four Die in Afghan Rescue Mission', *BBC*, 9 September 2009, accessed at [news.bbc.co.uk/2/hi/8245455.stm](http://news.bbc.co.uk/2/hi/8245455.stm).

## TIMELINE, 28 JULY 2011

Quotes are from the investigation report. Portions marked '[redacted]' indicate where words in the investigation report have been inked out and are not readable. If there is no time code, this is generally because the timing was not mentioned in the investigation report.

Please note again the map and photographs relating to the case.<sup>77</sup>

12:11 Omaid makes his last phone call from the RTA building to the Pajwak news agency editor in Kabul to discuss the piece he was about to file on a graduation ceremony for police (time according to the editor). Almost everyone else had gone out to eat lunch, but Omaid stayed to finish his report.

12:16 Taleban launch a complex attack, targeting the RTA compound, which adjoins the compound of Matiullah Khan and his militia, which is known as *kandak-e amniat-e uruzgan* or KAU. At RTA, a Taleb driving a car breaches the compound wall by blowing up himself and the car. Thirty metres of the outer perimeter wall are destroyed. This enables two other Taleban, wearing suicide vests, to enter. Firing with small arms and throwing hand grenades, they try to access Matiullah Khan's compound, but fail and run instead into the RTA building where they continue firing. One uniformed Afghan (whether Afghan National Police or KAU is not clear) is shot dead

An elderly cleaner at RTA flees the building. Omaid hides in a bathroom.

Just after the RTA attack begins, another set of Taleban attack the governor's compound; fighting there lasts until about 16:30.

12:26 Omaid texts his brother: 'I am hiding. Death has come.' (Time according to brother.)

12:30 (approximately) Battalion commander from the multi-national base in Tirin Kot, Lieutenant Colonel David Oeschger, sets out with four vehicles to investigate the cause of the explosions. They have been part of a Personal Security Detail (PSD) made up of personnel from the Mortar Section of 4-70 Armor Battalion, which was escorting a VIP. The vehicles are waved down at the RTA building by uniformed Afghan forces who appear to be ANP. When the soldiers dismount, they come under small-arms fire from the vicinity of RTA. Oeschger is

'informed by the KAU leadership that two suicide bombers were in the RTA building, and they were not aware of any civilians present.'

Scouts (from the Scout Platoon Bravo Section, also of 4-70 Armor) who have been ordered by Headquarters and Headquarters Company (HHC) Command Post to go to RTA, also arrive.

Individuals 'initially identified as ANSF' were in the vicinity but 'did not appear to be actively responding to the situation in an organised manner.'

An insurgent has already lobbed a hand grenade out of the sole door on the west side of the RTA building and there is an order to return fire from 'crew-sized weapons'.

12:52 Omaid texts his brother: 'Pray for me if I die.' (Time according to brother.)

12:55 The other three vehicles which had been part of the Personal Security Detail (PSD) also arrive, along with [redacted]. There is more exchange of fire, with US forces again using 'crew-sized weapons'.

13:00 An Apache helicopter with a 30mm gun makes its first run on the RTA building.

13:10 A soldier is wounded in the neck and bicep and is MEDEVACed by Scout vehicles.

The Scouts who were MEDEVACing link up with 'Alpha Section of Multi-National Base' and return to the RTA site. The PRT platoon group also come, but '[do] not play a key role on the assault of the RTA building'. The Scouts, who normally partner with ANP, do not recognise anyone among those wearing ANP uniforms.

The third and final helicopter engagement on RTA is made. Sustained small arms fire has continued to come from the building after the first run, but ceases after the second and third runs.

The Scout and PSD leadership gather to plan their next actions. Lt. Col. Oeschger decides that members of the PSD will enter and clear the building, with Scouts supporting in over-watch positions.

13:30 The clearing operation begins and a seven-man team, led by Oeschger himself, enters the RTA building. Within seconds, both Taleban detonate their suicide vests, burying the team 'under heavy brick debris.' Oeschger is incapacitated.

<sup>77</sup> See FN14.

Scouts and PSD drivers and gunners rush in to help.

A second clearing team (made up of two men who had been members of the PSD and two Scouts) enter the building. Two other Scouts continue to over-watch. The team bypasses the first remaining room, which is the bathroom where Omaid is hiding, because it is blocked by debris and 'stack up' outside the second remaining room on the north side. One soldier in over-watch to the west of the building sees 'movement of a military aged male' through a hole broken in the wall of the room and assesses if he is 'friend or foe'.

A soldier on the clearing team hears there is someone in the first remaining room and, believing he might be a third suicide bomber, approaches and fires a single round around the corner to induce a response from any potential suicide bomber. His gun does not eject the spent casing and he yells 'malfunction' and the other three soldiers continue the room-clearing procedure.

The soldier in over-watch who saw the 'military aged male' has heard the firing and assesses it to have come from that male and takes a single shot at him from his support position across the courtyard into the RTA building. It goes high and misses Omaid. The single shot passes between another soldier clearing rubble in the courtyard and [redacted]. The soldier ducks and runs out.

The soldier in over-watch shouts: 'Guy in the left corner', and copying him, others shout the same. Another soldier hears this, but does not engage because of the risk of hitting friendly forces who are in his line of fire.

The soldier whose weapon had malfunctioned and the rest of the second clearing team finish clearing the building and move into the courtyard to help the casualties.

However, multiple soldiers are now convinced that the small arms fire (which actually had come from themselves or their comrades) has been coming from the first room (the bathroom) where Omaid is hiding. The soldier leading the 'recovery and security operation' fires three rounds into the bathroom, while the second clearing team again 'stacks up' in the hallway.

The soldier whose weapon malfunctioned is directed to 'neutralise the threat' and looks through a hole in the broken wall and sees a foot sticking out. He realises that whoever is there has a direct line of sight to the courtyard where most of the team is still present dealing with casualties.

He moves round to look into the room and sees a 'military aged male with a beard and what appeared to be tan clothing . . . [with] something clinched in a fist in one hand; as soon as the individual made eye contact . . . he reached for something on his person with his other hand. Believing he may be another suicide bomber, [he] fired at him.' The soldier reloads his weapon while another provides 'suppressive fire' and then fires again until he believes the individual 'no longer pose[s] a threat.'

When the shots are fired inside RTA, an M240 [a crew-served machine gun] in the outer cordon begins firing on the building. The [redacted] calls for a ceasefire and asks for a 'status on the individual in the bathroom' and is told he is dead.

A third clearing team checks the building, except the room Omaid is in because of fears of IEDs. All wounded soldiers are evacuated. Omaid is judged dead and his body is left because of fears of IEDs.

The HHC commander arrives and assumes command. In the latter stages of the 'recovery effort', KAU and/or ANP forces move to the scene help with recovery and the search for equipment. They include an ANP commander who is the first Afghan policeman whom the international forces recognise. He directs the clean-up.

KAU and ANP remove Omaid's body to the courtyard. They tell the investigator that his press card had been in his hand and his mobile phone was found near his body.

14:30 Omaid's brother arrives and finds the body in the courtyard.

15:30 Omaid's body is brought by his brother to the hospital where a doctor examines him and the body is washed. His body, showing the wounds, is videotaped. (Timing from hospital director; reported to Pajwak.)

21:00 Omaid is buried.

## ABOUT THE AFGHANISTAN ANALYSTS NETWORK (AAN)

The Afghanistan Analysts Network (AAN) is a non-profit, independent policy research organisation. It aims to bring together the knowledge and experience of a large number of experts to inform policy and increase the understanding of Afghan realities.

The institutional structure of AAN includes a core team of analysts and a network of regular contributors with expertise in the fields of Afghan politics, governance, rule of law and security. AAN will publish regular in-depth thematic reports, policy briefings and comments.

The main channel for dissemination of the reports is the AAN web site. For further information, please visit [www.aan-afghanistan.org](http://www.aan-afghanistan.org).

## ABOUT THE AUTHOR: KATE CLARK

Kate Clark has worked as senior analyst for the Afghanistan Analysts Network since May 2010. Her involvement in Afghanistan goes back to 1999 when, as the BBC Kabul correspondent, she was the only western journalist based in the country. She was a frontline reporter during the 2001 war and the fall of the Taliban, contributing to award-winning coverage.

After 2002, Clark covered stories in the Middle East and in Britain, but also continued to return to Afghanistan, making radio and television documentaries about the insurgency, the political economy of weapons smuggling and opium, and war crimes. Her previous publications include joint authorship of the Chatham House paper *No Shortcut to Stability: Justice, Politics and Insurgency in Afghanistan*, and for AAN, *The Takhar attack: Targeted killings and the parallel worlds of US intelligence and Afghanistan*, and *The Layha: Calling the Taliban to Account*.