

[REDACTED]

**- REPORT OF AN INQUIRY OFFICER -
POSSIBLE CIVILIAN CASUALTIES RESULTING FROM
CLEARANCE OF A COMPOUND AT [REDACTED], AFGHANISTAN
ON 2 APR 09**

References:

- A. Chief of Joint Operations (CJOPS), Instrument of Appointment of Inquiry Officer dated 1 May 09
- B. Terms of Reference dated 1 May 2009
- C. ADFP 6.1.4 - *Administrative Inquiries Manual* of Jun 06

Appointment and Terms of Reference

1. I, having been duly appointed by CJOPS LTGEN Mark Evans to inquire into and report upon the circumstances of the incident involving the Special Operations Task Group (SOTG), in accordance with the Terms of Reference (TOR) attached to the instrument, herein submit my report.

Conduct of the Inquiry

2. After my appointment as Inquiry Officer, I met twice with the Appointing Officer and with HQ JOC Legal Branch staff. I received from HQ JOC and HQ CJTF 633 staff documents relevant to the inquiry, which are annexed to this report, as the TOR require [REDACTED]. I put two questions about the conduct of the inquiry to HQ JOC staff and the questions and answers are annexed to this report [REDACTED].

3. I conducted this inquiry simultaneously with the inquiry into another incident which the Appointing Officer also assigned to me. In view of the common evidence relating to organisation, staff process and the operational environment and in order to avoid conducting two or more interviews with witnesses involved in both matters, I interviewed some witness about both matters in one interview. The practical consequence of that is that the record of their evidence annexed to this report includes, in addition to the material obtained for this inquiry, some matters relevant only to the other inquiry [REDACTED].

4. In obtaining evidence from witnesses, I generally spoke briefly with them before beginning my formal interviews and I also received briefings from staff who did not give evidence in the inquiry, to inform myself more fully of the context of the incident. These briefings were consistent with the evidence obtained from witnesses.

5. Sound recordings were kept of the interviews and the Inquiry Assistant was present, except where matters classified [REDACTED] were discussed. This was because the Inquiry Assistant is not cleared above that level. It would also not have been practicable to transmit, have transcribed or incorporate into this report those parts of the evidence with the required degree of security. I consider that this report accurately

[REDACTED]

[REDACTED]

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reflects the effect of that evidence without requiring higher classification. I do not consider that more detailed records of those parts of the witnesses' evidence are required, though I am available to provide more detail, if necessary.

6. Because the witnesses were actively involved in operations, there were occasional interruptions in the interviews, and some of these are not explained in the recorded parts. There was no discussion of the evidence or any other irregularity in these breaks. Otherwise, the procedures required by Reference C have been observed. I waived the formalities of interviewing and sound recording in my discussions with [REDACTED], because of his official position and the nature of the assistance I hoped he would give. The only record of that discussion is notes [REDACTED]. As the notes indicate, the Inquiry Assistant and another officer, who was also a witness in the other inquiry, were also present.

7. I did not consider that the evidence suggested adverse findings against any person involved in the incident and so I did not issue any notices of proposed adverse findings. For security reasons it was not possible either to visit the site of the incident or to meet with local nationals who might have been able to provide information relevant to the inquiry. This limitation was, in my opinion, unavoidable but its effect is ameliorated by the availability of maps, imagery and plans, the information from [REDACTED] and intelligence reporting.

Background

8. The SOTG [REDACTED]. The aim of OP [REDACTED] was to conduct [REDACTED] operations against insurgent (INS) [REDACTED] targets [REDACTED].

9. During the conduct of OP [REDACTED] a mission was carried out against a compound of interest (COI) that intelligence indicated housed a [REDACTED]. The mission resulted in the death of three Fighting Age Males (FAM) and the detention of eight FAM, all of whom were subsequently released. The initial incident report [REDACTED] described the force element (FE) as being engaged by three INS, although this was amended in following reporting once it was established that the FAM had not engaged the FE. The [REDACTED] noted three INS as KIA [REDACTED] subsequently indicated the possibility that the three FAM killed were civilians.

10. As a consequence of the report a [REDACTED] into the incident was carried out and submitted to HQJOC on [REDACTED], with a follow-on request for information (RFI; [REDACTED]) sent on [REDACTED]. In order to clarify issues to do with the incident an inquiry officer was appointed on 1 May 09.

Date, Time and Place of the Incident

[REDACTED]

[REDACTED]

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11. The incident in question took place near the village of [REDACTED], Oruzgan Province on 2 Apr 09 [REDACTED].

The Planning and Decision Process Leading to the Clearance of the Compound

12. The mission was planned and approved as [REDACTED]. Planning for the mission commenced on [REDACTED] once reliable intelligence was received that OBJ [REDACTED] had moved into the [REDACTED] area [REDACTED]. OBJ [REDACTED] had already been the subject of a Deliberate Targeting Legal Target Appreciation [REDACTED]. He was considered an [REDACTED] target [REDACTED]. The CONOPS [REDACTED] was submitted for approval as a [REDACTED] Afghan National Security Force (ANSF)-led [REDACTED] mission on [REDACTED].

13. Reliable intelligence [REDACTED] indicated the presence of OBJ [REDACTED] in the vicinity of the compound of interest (COI) near [REDACTED]. This was confirmed by a [REDACTED] that also indicated the presence of approximately 10 FAM near the COI, consistent with a senior INS personal security detachment (PSD). The decision to execute the mission was taken as a result of the [REDACTED] very reliable intelligence [REDACTED].

Assessment of Civilian Presence and the Risk of Civilian Casualties

14. Given the nature of Afghan culture, SOTG [REDACTED] planning assumes that civilians will be present in COI during these types of operations. In this instance, the presence of civilians was also confirmed via the [REDACTED].

15. The presence and disposition of civilians is taken into account during the planning phase of operations, and during the training of the task elements (TE) [REDACTED]. The TE members who conducted the mission stated that the presence of civilians is at the forefront of their minds when they enter such COI, and cited the fact that eight FAM were detained during the mission as proof that they discern between FAM who display threatening and non-threatening behaviour.

Circumstances of Incident

16. Subsequent to the decision to launch being taken, coverage of the target area [REDACTED] was obscured [REDACTED]. It is likely that OBJ [REDACTED] and some of his associates moved from the compound during this time. [REDACTED]. The FE involved in the mission, however, undertook the task in the belief that OBJ [REDACTED] PSD were present at the target site.

17. The sequence of events for the execution of the mission is as follows (all times local D/E):

[REDACTED]

[REDACTED]

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- a. [REDACTED]: [REDACTED]
- b. [REDACTED]: Insertion complete
- c. [REDACTED]: Clearance commenced [REDACTED]
- d. [REDACTED]: [REDACTED]
- e. [REDACTED]: COI secure – [REDACTED]
- f. [REDACTED]: [REDACTED] – exfil commenced
- g. [REDACTED]: [REDACTED]
- h. [REDACTED]: [REDACTED]
- i. [REDACTED]: Extraction commenced
- j. [REDACTED]: Extraction completed.
- k. [REDACTED]: Detainees transferred to detainee screening facility for [REDACTED] questioning.

18. During the period [REDACTED] three FAM were engaged by the TE and killed. For the purposes of this inquiry, the deceased are referred to as KIAs A, B and C. Their relative positions are shown on a layout at [REDACTED]. The circumstances of their deaths are as follows:

- a. KIA A. On the initial clearance of the southern end of the COI, a TE member cleared a barn and observed a FAM lying in a prone position on a bed of chaff facing the southeast observing the courtyard through a small window. The TE member was to the right rear of the FAM. Believing the FAM had adopted a firing position to engage TE members, he was shot and killed by the TE member [REDACTED]. The chaff pile was not checked for weapons during the exploitation phase due to a lack of time.
- b. KIA B. During the clearance operation a second FAM was observed in a treeline to the east of the compound moving south in tactical bounds and utilizing available cover. Believing that the FAM was moving to a cache to engage the TE, both the [REDACTED] team [REDACTED] team engaged and killed the FAM [REDACTED]. The limited time available to the FE meant that only the KIA was exploited and not the surrounding area. No weapon was recovered.

[REDACTED]

[REDACTED]

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- c. KIA C. Following the engagement of KIAs A and B a TE established a [REDACTED] breach into the next courtyard and, during clearance of one of the buildings a FAM was observed attempting to conceal himself in the hay. Believing the FAM to be in a firing position and observing hand movement another TE member shot and killed him [REDACTED]. No weapon was recovered from the building (including from the loosely packed pile of hay) during subsequent [REDACTED].

Compliance with Rules of Engagement and Other Approved Documentation

19. The ROE issued by [REDACTED] appear to include the relevant domestic and international legal obligations of ADF commanders and members engaged in operations under Op [REDACTED].

20. In the [REDACTED] authorisation process [REDACTED], OP [REDACTED] and the Direct Targeting of OBJ [REDACTED] appear to have been characterised at the correct levels and to have been authorised by commanders and staff in appropriate positions. Consequently, the [REDACTED] ROE [REDACTED] applied as well as the right to self-defence [REDACTED].

21. The entry into the COI, control of the people inside the COI, searches, seizure of property, questioning and detention were in support of the mission for [REDACTED]. Because of this and because these activities did not involve [REDACTED], these activities in the incident were all clearly authorised by the [REDACTED] ROE [REDACTED].

22. The members involved in the engagement and killing of FAMs identified their targets as threatening themselves and other members of the FE and considered that there was no other way to defeat the danger than by applying lethal force. Accordingly, each acted in self-defence, of themselves or of other members of the FE. [REDACTED].

23. In terms of the [REDACTED] ROE, in the context of the duly approved, ANSF-led operation, the engagement of the FAMs, as action in self-defence, was in accordance with the ROE. [REDACTED], would also have been permitted under the ROE.

24. Each member who engaged the FAMs gave evidence, from training and experience, of the behaviour of the targets which they observed which made them act as they did and the members' observations are reasonably-based and leave no room for any conclusions other than the conclusions they drew and acted on. Each member was also able to give persuasive evidence about the lack of significance of the failure, after they had acted, to find weapons which might have been thought inconsistent with their observations.

Details of Casualties Arising from the Incident

[REDACTED]

[REDACTED]

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25. It has been difficult to determine with any certainty the details of the three FAM KIA, and it is unlikely that their identities will ever be accurately known. Efforts to determine their identity or their activities in [REDACTED] on the night of 2 Apr 09 can be divided into three periods:

- a. During [REDACTED]
 - (1) A complete [REDACTED] of the COI could not be conducted owing to the limitations [REDACTED] on the [REDACTED] exfil window [REDACTED]. No weapons were recovered from the first area of the COI where the two FAM were KIA, nor on the body of the FAM KIA outside the compound. No items of identification were found on the bodies of the FAM KIA. The [REDACTED] uncovered an AK-47 and a rifle (likely Martini-Henri), as well as small amounts of rusty 12.7mm and 7.62mm ammunition from the COI (Annex MM).
 - (2) Eight FAM were detained during the mission (six inside the compound and two approaching the compound from the north after the engagement). During their subsequent [REDACTED] none of the detainees were asked any question regarding the identity of the FAM killed during the mission [REDACTED].
- b. During subsequent [REDACTED]
 - (1) [REDACTED] was difficult to ascertain, and is also contradictory. A [REDACTED] report indicated that the individuals killed were innocent civilians ([REDACTED] refers), while another [REDACTED] report claims that two of OBJ [REDACTED] associates were killed ([REDACTED] refers).
 - (2) [REDACTED] sources provided one [REDACTED] report that claimed the FAM KIA were civilians [REDACTED], and one [REDACTED] report that stated the FAM KIA were INS [REDACTED].
- c. During the course of the inquiry a meeting was held with [REDACTED] on [REDACTED] ([REDACTED] refers). Questioned about the identity of the FAM KIA in [REDACTED].

26. If the FAM KIA were [REDACTED]. PSD. The normal action of FAM who are not involved in insurgent activity is to either [REDACTED] once confronted by coalition forces.

[REDACTED]

[REDACTED]

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27. The issue of civilian casualties is a vexed one in Afghanistan. The willingness of the Taliban to claim INS killed during coalition operations to be local civilians as part of their anti-coalition information operations (IO) campaign, as well as the incidences of actual civilian casualties caused by coalition action, illustrates the need to take all feasible steps to quickly gain intelligence regarding the identity of FAM KIA during operations [REDACTED]. Currently the focus of [REDACTED]. Had the detainees been asked during the [REDACTED] process the identity of the three people killed, it would have been easier (but by no means guaranteed) to establish at an earlier stage whether they were connected to [REDACTED].

Manner in Which ADF Tactics, Techniques and Procedures (TTP) were Applied

28. The operation was planned and conducted in a well-ordered and systematic manner. The correct approval process was followed, and the mission launched on appropriately [REDACTED] intelligence. The TEs conducting the mission had carried out a [REDACTED]. There does not appear to have been any conduct that could be considered to have contravened normal ADF TTP for these types of operations. None of the members of the TE interviewed (all of whom are experienced in targeting COI) considered that there was anything unusual in this COI clearance mission.

Weaknesses or Deficiencies (isolated or systemic) Existing in ADF tactics, Techniques and Procedures, Policies, Equipment, Practices or Training relevant to Operations of this Kind.

29. SOTG [REDACTED]. In the environment where possible civilian casualties are a sensitive domestic and international political issue, every effort should also be made to verify the identity of FAM KIA during the [REDACTED]. This would allow for a quick response to allegations of civilian casualties ([REDACTED] INS's [REDACTED]) and a more complete response to be made to RFI from Australia.

30. For the same reason, in operations of this nature when FAM are killed and there has been no engagement from INS and/or few weapons are recovered at the site the [REDACTED] must be more expansive in describing the actions of the FAM that led to them being killed. This should also include reasons for limited physical exploitation of sites [REDACTED]. More expansive POR will provide higher HQ with a more complete picture of the mission and provide context in which to view claims of civilian casualties if and when they arise.

[REDACTED]

[REDACTED]

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CONCLUSION

30. This inquiry resulted from reports indicating that civilians may have been killed during a 2 Apr 09 mission targeting a COI believed to house [REDACTED], OBJ [REDACTED]. The fact that OBJ [REDACTED] was not at the COI, and that no weapons were found with the FAM KIA added further concerns regarding their identity. Against this claim is the likelihood that OBJ [REDACTED] left the COI during a window where the [REDACTED], the fact that the FAM did not display the reactions typical of uninvolved Afghan FAM when confronted by coalition forces, other intelligence indicating their association with OBJ [REDACTED]

31. The lack of weapons recovered may equally be explained by the hasty [REDACTED] necessitated by the need to exfil [REDACTED] precluded a complete search for weapons caches. While the final identity and affiliation of the FAM KIA is unlikely to ever be known with certainty, on the balance of probability they were likely to have been associates of OBJ [REDACTED] and acted in a manner consistent with taking a direct part in hostilities.

32. It is my belief, based on the facts that I have gathered, that the mission was planned appropriately, the required approvals for its execution were obtained and the mission itself [REDACTED] and executed well. The mission was launched with a belief that OBJ [REDACTED] was at the target location, the subsequent actions of the TE were IAW ADF TTPs, and the FAM KIA during the mission were engaged in accordance with extant ROE.

RECOMMENDATIONS

33. It is recommended that:

- a. **no** conduct warrants further investigation by the Australian Defence Force Investigative Service;
- b. **no** administrative action be taken against any person;
- c. **no** changes are necessary to the methodology for assessing the risk of civilian casualties in operations of this kind;
- d. **no** remedial action is necessary to further minimize the risk of civilian casualties in future operations of this kind, including TTPs;
- e. SOTG SOPs be **modified** to require every effort be made to determine the identity of any KIA resulting from a mission during the [REDACTED] and this be incorporated into [REDACTED];

[REDACTED]

[REDACTED]

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- f. SOTG [REDACTED] be written more expansively in instances where FAM are KIA without an engagement preceding the action and/or when there is an absence of weapons discovered during subsequent [REDACTED]; and
- f. you **note** the attachment of an unclassified executive summary of the findings and recommendations of this report [REDACTED].

R.D. SHANAHAN

Colonel

Inquiry Officer

May 09

Annexes:

- A. Chief of Joint Operations, Instrument of Appointment of Inquiry Officer (with enclosures) of 8 May 2009
- B. [REDACTED]
- C. [REDACTED]
- D. [REDACTED]
- E. [REDACTED]
- F. [REDACTED]
- G. [REDACTED]
- H. [REDACTED]
- I. [REDACTED]
- J. [REDACTED]
- K. [REDACTED]
- L. [REDACTED]
- M. [REDACTED]
- N. [REDACTED]
- O. [REDACTED]
- P. [REDACTED]
- Q. [REDACTED]
- R. [REDACTED]
- S. [REDACTED]
- T. [REDACTED]
- U. [REDACTED]
- V. [REDACTED]
- W. [REDACTED]
- X. [REDACTED]

[REDACTED]

[REDACTED]

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- Y. [REDACTED]
- Z. [REDACTED]
- AA. [REDACTED]
- BB. [REDACTED]
- CC. [REDACTED]
- DD. [REDACTED]
- EE. [REDACTED]
- FF. [REDACTED]
- GG. [REDACTED]
- HH. [REDACTED]
- II. [REDACTED]
- JJ. [REDACTED]
- KK. [REDACTED]
- LL. [REDACTED]
- MM. [REDACTED]
- NN. [REDACTED]
- OO. [REDACTED]
- PP. [REDACTED]
- QQ. Unclassified Executive Summary

[REDACTED]