



Lesson 28

Mitigating Civilian Harm

Learning Objectives:

At the end of the lesson, participants will be able to:

1. Identify at least three causes of civilian harm from security operations
2. Identify the ethical and strategic impacts of civilian harm
3. Identify at least five aspects of setting up a civilian harm incident management system

The first two lessons in this module focused on the responsibilities and roles that security forces and civil society have in protecting civilians from harm. This lesson addresses a related problem of how to respond to accusations of civilian harm. Security forces and civil society can coordinate efforts to prepare for and mitigate civilian harm that results from a security operation. This lesson outlines the steps for managing a civilian harm incident.

This lesson draws the specific methodology and guidance for mitigating civilian harm developed by the *Center for Civilians in Conflict (CIVIC)*. This text is copied and adapted from their written materials.

1. Causes of civilian harm

Military and police actions can unintentionally cause harm to civilians. In the past this was referred to as “collateral damage.” Today security forces increasingly use the “civilian casualties.” Civilians may be harmed in a variety of ways, including the following:

- **Inaccurate gunfire or bomb attacks:** Security forces cannot be assured that their weapons will hit their targets. Some attacks are not accurate and harm civilians who happened to be near the attack.
- **Raids:** Civilian harm may result from military or police raids.

- **Mistaken identity:** Civilians may be mistakenly targeted if intelligence wrongly identifies them as a legitimate target
- **Force protection:** Civilians may be harmed as security forces attempt to protect their own
- **Direct contacts:** In some contexts, civilians may be seen as collaborators with security forces if there is direct contact between civilians and military or police. Armed groups may view civilians who have had direct contact as soft targets, easy to harm and punish for their collaboration.

2. Civilian casualties are an ethical and legal issue

Three principles relate to protection of civilians:

Principle of Distinction: Armed groups should distinguish at all times between civilians and civilian assets and military and police and their vehicles, buildings, and other assets.

Principle of Proportionality: Armed groups are required to weigh the military benefit of an operation to harm it is likely to inflict on civilians. Any harm to civilians requires legal and ethical decision-making to determine the proportionality of benefit to harm.

Principle of Precaution: Armed groups should make every effort to prevent harm to civilians in their operations.

3. Civilian casualties are a strategic issue

Civilian harm impacts public perceptions about the legitimacy of security forces and the government for which they work. The greater the levels of civilian harm, the more likely the public will question or turn against the security forces and the government. Consider these two quotes from the former President of Afghanistan and from a Taliban commander in the armed opposition to the government.

“Civilian casualties are undermining the support in the Afghan people for the war on terrorism. ... How can you expect the people who keep losing their children to remain friendly?”

[President Karzai, 2009]

“The people who are fighting with the Taliban are the brothers, uncles and relatives of those killed by the foreign soldiers. They have joined the Taliban and are fighting the foreigners because they want to avenge their brothers, fathers and cousins.”

[Taliban Commander in Uruzgan, 2008]

4. Civilian Harm Incident Management

All military and police operations need to have a standing policy and set of procedures for mitigating civilian harm. For example, in Afghanistan, NATO nations agreed on the following set of non-binding policy guidelines for how to respond to alleged cases of civilian combat-related harm—including death, injury and property damage.

- Promptly acknowledge combat-related cases of civilian casualties or damage to civilian property.
- Continue to fully implement the ISAF standard operating procedures for investigating possible cases of civilian casualties, or damage to civilian property, and endeavour to provide the necessary information to the ISAF civilian casualties tracking cell.
- Proactively offer assistance for civilian casualty cases or damages to civilian property, in order to mitigate human suffering to the extent possible. Examples of assistance could include ex-gratia payments or in-kind assistance, such as medical treatment, the replacement of animals or crops, and the like.
- Offers of such assistance, where appropriate, should be discussed with, and coordinated through, village elders or alternative tribal structures, as well as district-level government authorities, whenever possible. Assistance should also, where possible, be coordinated with other responsible civilian actors on the ground.
- Offering and providing such assistance should take into account the best way to limit any further security risk to affected civilians and ISAF/PRT personnel.
- Local customs and norms vary across Afghanistan and should be fully taken into account when determining the appropriate response to a particular incident, including for potential ex-gratia payments.
- Personnel working to address cases of civilian casualties or damage to civilian property should be accessible, particularly, subject to security considerations, in conflict-affected areas, and local communities made fully aware of the investigation and payment process.
- The system by which payments are determined and made should be as simple, prompt and transparent as possible and involve the affected civilians at all points feasible.

- i. Payments are made and in-kind assistance is provided without reference to the question of legal liability.

5. CIVIC's 7-Step Process

Civil society organisations such as the CIVIC also have a role in civilian harm mitigation. CIVIC began working on behalf of civilians during the wars in Afghanistan and Iraq when it became evident that the international coalition of military forces did not have adequate procedures for or an understanding of the necessity to and acknowledge and make amends for harm to civilians. Today they work in a variety of conflicts from Syria to Somalia.

CIVIC has a method for helping security forces prepare for, investigate, and appropriately respond to cases of civilian harm. While discussed in a generalised setting here this method can be adjusted and applied to many different types of conflicts and to various armed actors. The method begins by identifying the civilian harm mitigation practices that currently exist within a government and their military or other armed actor. CIVIC consults with civilians themselves to assess protection challenges, to garner information on whether current mechanisms are working, and if not, what local civil society leaders see as necessary in order for civilian harm mitigation systems and programmes to work effectively. The ultimate aim is to ascertain challenges in preventing and addressing civilian harms and recommend specific policy and practice to address gaps.

The following 7-step process describes how security officers can effectively manage allegations or incidents of civilian harm. The process ensures respectful treatment of civilians and can decrease the negative impacts of combat operations on the population. This in turn has a positive effect on the perceived legitimacy of security forces. While the CIVIC's method focuses on national level military operation, the 7-step process is also relevant to police operations that may cause civilian harm.

Step 1: Be Prepared

Military and police operations pose a risk to civilians. Preparation before an operation begins and before incidents of civilian harm occur is important, as it can be difficult to discern valid incidents from false allegations of civilian harm, especially in the midst of a crisis in a complex environment. Put systems in place in advance to take these preparatory steps:

- a. Publicly acknowledge risk of civilian casualties & outline response measures including how civilians can report alleged harm. Military and police should communicate with the public on the following issues:
 - Describe the precautions being taken to prevent civilian harm
 - Identify the reasons that security operations may endanger civilians and let the public know that civilian casualties may still happen, despite precautions;
 - State that allegations of civilian harm will be taken seriously but must be investigated;
 - Identify the procedures for raising concerns, complaints or reports of civilian harm, including what is expected of the public in filing such a claim of civilian harm
- b. Draw up Standard Operating Procedures (SOPs) including timelines for investigation & response
- c. Identify and develop relationships with community leaders to assist in incident management as part of regular community liaison work
- d. Set up and maintain regular liaison structures with the United Nations' Human Rights Commission (if applicable) and the local human rights commission within the country.
- e. Designate officers to be in charge of incident handling.
 - Preferably senior level military and police leaders who are well trained on civilian harm mitigation policy and practice and have access to relevant military and police personnel who were involved in an incident or understand the broader context in which it happened
 - Able to spend sufficient time addressing civilian harm, without too many other responsibilities
 - If staff change, make sure there are institutionalised training and preparation for new staff to take on the responsibilities of preparing for incidents of civilian harm

Step 2: Listen to the Initial Complaint/Allegation

Reports on civilian harms can come from a variety of sources.

- Military or police officers
- Local civilians

- Civil society organisations
 - News media
- a. When local civilians or civil society organisations approach security forces to make a complaint, it is important to make time to hear the allegation so the community sees that the security forces take the complaint seriously. Ensure that the officer in charge of civilian harm incidents can be reached, listens respectfully to document their account of the incident, and takes sufficient time to explain the process for investigating the allegation.
 - Ensure security procedures where civilians will report cases of civilian harm are reasonable and do not unnecessarily frustrate or add to the anger over the situation. Ensure that the personnel at the entry gate have direct contact with the responsible staff on civilian harm mitigation by mobile phone and are instructed to contact the staff promptly if complainants arrive. Be prepared to go to the gate and facilitate entry procedures to avoid unnecessary aggravation.
 - With big groups ask for around 5 to 10 representatives to be identified so a meeting to hear the concerns is manageable.
 - Some allegations and rumours might sound completely ridiculous. The initial test for whether it is worth researching an allegation is not whether a story appears credible to an officer, but whether local people appear to give it any credit.
 - b. Be proactive if the security forces know of an incident, but no one from the community or civil society comes to report the incident, forces should initiate a meeting with community leaders. Civilians may not report an incident because of fear, anger or distrust. Reaching out to community leaders to communicate with them about an incident can defuse tension and build trust.
 - c. Keep track of media reports, gossip in the marketplace, and enemy propaganda, which may build on a real situation, but change key facts. Regularly crosscheck reports against internal military or police records of casualties, weapon discharges or other significant events that indicate civilian harm. If a rumour/ story appears sufficiently serious & damaging, raise it with the relevant community leaders directly to provide information directly to them.

Step 3: Initial Response

If an allegation is clearly well documented, move immediately to stage 6 (making amends.)

- If an allegation requires investigation, explain the relevant procedures and clearly set out timeframes and what kind of assistance is required.
- If an allegation is clearly incorrect, explain why the allegation is seen as false in as much detail as possible (even if this entails “proving a negative”). The more evidence you can rely on the better – many locals can be persuaded of your version of events but are unlikely to give you the benefit of the doubt.
- Be prepared to explain and justify why there are questions or doubts about an allegation, even if the points seem obvious. No one’s credibility can be taken for granted. In a complex environment, diverse stakeholders may have a history of distrust for others. If there is in any doubt, then opt for an investigation of an allegation. Often the process itself will play a major part in addressing local anger and concerns. The worst thing you can do is ignore a grievance.
- If confronted in the immediate aftermath of an incident, be especially sensitive to local anger and to any cultural sensitivity (e.g. avoid touching dead bodies).
- When dealing with people who claim to have lost relatives or have been involved in an incident of civilian harm, show empathy and respect even if you’re not yet sure whether and to what extent the claim is genuine. Remember that people show grief in extremely different ways. Consider how you and your family would want to be treated if the roles were reversed.
- Some complainants will be insulted if they are asked to provide evidence to back up allegations rather than believed outright. The need for evidence can be justified in several ways, such as chain of command requirements to produce backed-up reports / not release any compensation money without evidence, etc. Often though, complainants will be happy to contribute to a serious investigation.

Step 4: Investigation

There may be three separate investigations.

- a. An initial local investigation uses a low standard of proof and works on a short timeframe. The goal is simply to determine if it is likely that civilians were harmed. This type of investigation should occur in most cases after an allegation is made.
- b. An internal investigation has a higher standard of proof and a longer time frame. This investigation assesses who is at fault and if there was misconduct.
- c. An independent investigation by the UN or an independent human rights commission may be useful, specifically if there are serious allegations and potentially serious criminal consequences. Independent investigations are valuable because they can have greater integrity and credibility than internal investigations. This can counter false or misleading information and lead to both short-term and long-term steps to mitigate further civilian harm.

In the Philippines, civil society and the government have set up local councils called “Bantay Bayanihan” to provide oversight on security. Security forces report on civilian casualties directly to the community. Together they discuss how best to respond.

Read more about their work in “Local Ownership in Security” - the companion to this Handbook.

Demonstrating to the community that a serious investigation is taking place is as important as the eventual findings.

- Make effective use of internal military records and crosscheck claims against them but do not automatically dismiss claims if no relevant internal records exist.
- Involve the community – gives an opportunity to tell their story/ air grievances & strengthens credibility of findings.
- Interview eyewitnesses separately and check consistency with other accounts/ evidence.
- Locate and, if possible, speak to any injured.
- Take account of the impact of education, social & tribal/ ethnic/ political background, etc. in assessing credibility
- Ask for evidence such as pictures of dead/ wounded/ damage, destroyed items, names of victims, etc. In most parts of the world, people have camera phones. Even if no immediate after-event footage is available, disposable, cheap cameras & GPS can be lent to community leaders to take pictures of graves, damage, etc. and coordinates. These can then be compared to internal footage of the relevant area, and tested in individual interviews.

Investigations face a number of challenges.

- There may be false claims.
- Victims may not want to be named (see reasons for this in the last lesson). Some cultures will not allow photographs of bodies or handling of the dead. Many cultural concerns are not absolute “deal-breakers” but simply require sensitive handling – e.g. assurances how evidence will be treated; pictures of dead females only to be shown to female officers, etc. Identify these cultural sensitivities, keep them documented and ensure replacement staff receives them during rotations.
- Within a security organisation, there may be different goals, multiple chains of command, and a lack of information sharing.
- The organisation may not have enough staff to carry out all the investigations that are needed.
- Witnesses may have a difficult time distinguishing between different types of uniforms. In a complex environment with military forces from different countries, all foreign forces may be blamed for actions carried out by any of them.

Step 5: Sharing Findings

The conclusions of an investigation should be shared with the affected community in a community meeting. Investigators (local, internal to the organisation, and independent investigators) should present evidence.

- Take care to protect individual sources. Recognise that the top priority should be doing no further harm. See the first lesson in this module for specific guidance on protection of civilians while conducting an investigation on human rights abuses or civilian harms.

- Any amends to be made can often be incorporated in the same forum.
- Findings that civilians were harmed need not entail findings of fault and need not be presented as such.
- It might be possible to “agree to disagree” with the findings of an investigation. Attempts should be made to show respect and all a way for all involved to save face by protecting their dignity.
- Credibility will develop if security forces acknowledge real incidents and deny false allegations.

Step 6: Making Amends

Whenever it is likely that civilians were harmed, appropriate amends should be made, which may include:

- Apologies and explanations
- Monetary payments to victims and their families
- In-kind assistance
- Explaining any resulting changes, e.g. new guidelines, etc.

Communities will often be concerned with accountability – if the facts warrant it, it may help to explain that more detailed investigations are on-going and how they tie into the military justice system.

Sharing the outcomes of any relevant courts martial, inquiries, etc. with the affected community often has extremely positive impact.

It is essential that amends are seen to be made, i.e. monetary compensation offered to a family through a tribal elder will often be accompanied with ceremony to show that the amends for losses has been accepted.

Amends may be directed at individual families, at the wider community or at both (e.g. compensation payments for families who lost relatives and a new carpet for the village mosque in their memory). There is a wide range of options at commanders’ disposal that should be fully utilised.

Internal systems of accountability and due process often may not be recognised or respected by local people, who may have different ideas and expectations of accountability. It helps to explain why accountability processes are inevitably slow. If outcomes from court inquiries are available, sharing these even months or years after the relevant event may have a positive impact.

- Compensation must be clearly distinguished from humanitarian, development or other forms of civic assistance.
- There may be multiple sources to consider for compensation:
 - International Organisations (e.g. the World Bank, for example, set up and helped administer a compensation fund for Nepal)
 - National Government (e.g. programmes created by the government to help victims of terrorism, crime, etc. These programmes should be extended to also help victims of military operations)
 - Military or police (military and police may develop their own systems of making amends including small sums of money to recognise losses).
- Facilitate claims and make procedures as un-bureaucratic as possible
- Importance of standardisation & avoiding double recovery: Consider maintaining a unified database of all payments made in an area of operations.
- Compensation payments must avoid becoming an “opportunity” – principle of fairness. Should be equal in amount and accessibility for all those harmed. A database as mentioned above can help ensure fairness and combat corruption and opportunistic people. Bargaining can be avoided by reference to standardised guidelines and by conducting credible investigations that share their findings with the communities.
- Ensure you have a designated point person who has cultural sensitivity, has connections with the community, understands the strategic imperatives of paying compensation and can work toward mutual trust between the military, police, and the community.
- Consider linking amount & means of payment to local tradition.
- Know the sources of other help for victims, including programmes that may exist through international organisations, the national government, or local groups. Some of these programmes may be will to take referrals from the military and police and may help rebuild the lives of victims following harm with

more than a cash pay-out. Victims should receive all help available, even if it comes from multiple sources.

6. Local Media & Wider Community

Respond promptly to any allegations, even if only to announce an immediate investigation and give a clear timeline for findings.

- a. Never issue broad denials in the immediate aftermaths of an incident if you don't have all the required information. Issuing immediate & broad "knee jerk reaction" denials without having the information to back them up may lead to repeated later changes and/ or retractions and is harmful both in regard of wider public relations credibility and relations with specific victims.
- b. Make findings of any investigations public within the promised timelines.
- c. Cultivate a relationship with local journalists and "opinion leaders" & contact them regularly with updates. Local media works very differently to international media. Professional standards, including investigative skills and corroboration requirements, may differ from country to country.
- d. Do not rely only on centrally issued press releases – at the very least press releases need to be translated & shared effectively. Messages must be carefully tailored to local environments.
- e. In case of major incidents consider holding a dedicated large public meeting or other public response.
- f. At an initial announcement it is perfectly possible to deny elements that are clearly untrue/ acknowledge true parts of a story and promise an investigation into the remaining aspects.
- g. In some contexts, insurgents go to significant lengths to calibrate messages according to the intended audience. They will often utilise local folklore, religious and historical allusions and language to great effect. Messaging from military and police must attempt to compete with this in sophistication. Similarly, insurgents carefully cultivate relations with local media and are extremely responsive to their requests.

REVIEW

This lesson provides civilian, military and police leaders an understanding of the activities required for mitigating civilian harms. It is important military, police, and civilian agencies to have specific people tasked with addressing civilian harm, and to detail the specific steps needed to respond to incidents of civilian harm. This will enable a more systematic approach to mitigating civilian harms.

Lesson 28

Learning Exercises

Anchor

10 minutes

To begin the lesson, anchor the content in this lesson with an open question:

- What are the procedures for addressing civilian harms in your organisation, community or region?

Add

20 minutes

Present the PowerPoint slides or ask participants to discuss the lesson readings in a small group.

Apply

25 minutes

The goal of this exercise is to understand a process for how to handle situations where security forces harm civilians. In each of the scenario groups, the media announces that militia units are hiding amidst IDPs in the camps set up after an earthquake in the country. The police raid the IDP camp. Eighteen IDPs are killed in the gunfire between police and militias. Some stakeholder teams question the legality of the raid.

Each of the scenario stakeholder teams has thirty minutes to propose and then to negotiate or advocate with other groups for how they will investigate and respond to the civilian deaths. Then, each stakeholder team or group of teams is allowed two minutes to outline their plan and/or to oppose the plans of other groups. Debrief with open questions about the challenges and trade-offs in this role-play.

- What strategies to address harm to civilians seemed most successful or possible in their scenario?

See the “Scenario-based Learning” section in the [Handbook on Human Security: A Civil-Military-Police Curriculum](#) for explanation of the scenarios and teams.

Away

5 minutes

To end the lesson, the trainer can ask participants to divide into groups of 2 or 3 people. Participants can share with each other their reflections on this lesson.

This Lesson is part of the *Handbook on Human Security* found at www.humansecuritycoordination.org

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