Force: 
OP name: 
Start of mission: 
End of mission: 
OP PAKULA
s33(a)(ii), 33(b)
**Detailed Info:**

Some cloud about today, mild conditions for the next four days.

Over the next 15 days there is poss rain and drizzle Mon Feb 09 (PM) and possible Thunderstorms on 19 Feb. No other precipitation events forecast for the 15 day outlook.
<table>
<thead>
<tr>
<th>Date</th>
<th>Weather Condition</th>
<th>High Temperature</th>
<th>Low Temperature</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 Feb</td>
<td>Clear</td>
<td>-</td>
<td>-5 to 10</td>
</tr>
<tr>
<td>7 Feb</td>
<td>Partly Cloudy</td>
<td>-</td>
<td>-2 to 14</td>
</tr>
<tr>
<td>8 Feb</td>
<td>Clear</td>
<td>-</td>
<td>-2 to 16</td>
</tr>
<tr>
<td>9 Feb</td>
<td>Rain</td>
<td>-</td>
<td>-3 to 12</td>
</tr>
<tr>
<td>10 Feb</td>
<td>Partly Cloudy</td>
<td>-</td>
<td>-2 to 13</td>
</tr>
<tr>
<td>11 Feb</td>
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<td>-</td>
<td>2 to 17</td>
</tr>
<tr>
<td>12 Feb</td>
<td>Overcast</td>
<td>-</td>
<td>-2 to 16</td>
</tr>
<tr>
<td>13 Feb</td>
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<td>-</td>
<td>2 to 13</td>
</tr>
<tr>
<td>14 Feb</td>
<td>Clear</td>
<td>-</td>
<td>-4 to 14</td>
</tr>
<tr>
<td>15 Feb</td>
<td>Clear</td>
<td>-</td>
<td>-3 to 14</td>
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<tr>
<td>16 Feb</td>
<td>Clear</td>
<td>-</td>
<td>1 to 16</td>
</tr>
<tr>
<td>17 Feb</td>
<td>Partly Cloudy</td>
<td>-</td>
<td>1 to 16</td>
</tr>
<tr>
<td>18 Feb</td>
<td>Partly Cloudy</td>
<td>-</td>
<td>1 to 17</td>
</tr>
<tr>
<td>19 Feb</td>
<td>Rain</td>
<td>-</td>
<td>1 to 9</td>
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SERVICE POLICE INVESTIGATION REPORT

INV-ADF01-ADFIS-2009-08

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(Reports are to be handled on a 'need to know' basis)

| Date Investigation Commenced: | 10 August 2009 |
| Date Investigation Completed: | 25 November 2009 |
SECRET AUTSEO
INVESTIGATION IN CONFIDENCE

SERVICE POLICE REPORT
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<table>
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<tr>
<th>Investigator(s):</th>
<th>Reference No:</th>
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<td>347F</td>
<td>INV-ADF01-ADFIS-2009-8</td>
<td>Final Report</td>
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<tr>
<td>OFFICE OF THE DIRECTOR OF MILITARY PROSECUTIONS</td>
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<th>Report in the Matter of:</th>
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<tr>
<td>CIVCAS INCIDENT ON 12 FEB 2009 - SPECIAL OPERATIONS TASK GROUP,</td>
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Introduction

1. On Mon 10 Aug 09, at the request of the Director of Military Prosecutions (DMP), ADFIS commenced an investigation into a CIVCAS incident that occurred about 0300 h (local) on Thu 12 Feb 09 within the Urzgan Province of Afghanistan. It was established that members of the Special Operations Task Group (SOTG) comprising mainly of personnel, were conducting a search and clearance operation of a Compound of Interest (COI) in the vicinity of Sorkh Morghab, approx 12 km from Tarin Kowt. During this action there was an exchange of small arms fire and the use of personnel. This resulted in the death of six local nationals; one adult male and five children and injury to two adult females and two children.

2. Prior to ADFIS involvement, in addition to an SOTG Quick Assessment (QA), CJOPS appointed an Inquiry Officer (IO), in accordance with Defence (Inquiry) Regulations, to inquire into the events. This involved the interviewing of ADF personnel in Afghanistan during Mar 09 in an attempt to establish the facts of the incident. The IO report and findings were passed to the DMP in Jul 09 where it was decided the matter justified a Service Police investigation. Whilst the IO findings were relevant, and provided excellent background information as to the course of events surrounding this incident, the details had been established as a consequence of questioning under the auspices of Defence (Inquiry) Regulations and therefore could not be used as evidence by the ADFIS Investigation Team.

3. Consequently, ADFIS Investigators re-interviewed witnesses from 6 months after the incident in question and it was noted that in some cases the recollection of events and details pertaining to the same were different to the witness statements taken by the CJOPS appointed IO. Some of the key witnesses were unable to recall details provided to the IO which changed the sequence of events and prior knowledge of the presence of non combatants.

4. Due to the 6 months since the incident, at the commencement of the ADFIS investigation enquiries initially centred on those members that had since returned to
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INVESTIGATION IN CONFIDENCE

Australia. Between Mon 26 Oct 09 and Mon 9 Nov 09, ADFIS Investigators deployed into Afghanistan to conduct in-theatre enquiries. Following a risk assessment, due to the security situation in and around the Tarin Kowt and Sorkh Morghab area, CJOPS declined a request to facilitate ADFIS deploying ‘outside the wire’ (OTW) in order to conduct an examination of the incident scene. A copy of the CJTF633 assessment and CJOPS decision is attached.

5. It should be noted that contrary to the IO findings regarding the non-availability of the s33(a)(ii) and 33(b) ADFIS were able to recover a copy of the s33(a)(ii) and 33(b) which assists with reconstructing the events leading up to and after, the incident. Corroborating documentary evidence relevant to the operation was also seized and versions of events were recorded from the two Afghan National Army (ANA) members and the interpreter that were present during the incident. Medical evidence of those deceased and injured, who were medically treated by ISAF, was also obtained. To date in excess of 100 personnel have been interviewed resulting in 78 witness statements being recorded. All 5 identified Persons of Interest (POIs) declined the opportunity to be interviewed after caution.

Background

6. The incident took place about 0300 h (local) on 12 Feb 09 after a s33(a)(ii) . Copies of these documents are attached to this report.

7. s33(a)(ii) . It is worthy of note this s33(a)(ii) .

8. s33(a)(ii) and no s33(a)(ii) were removed from the compound as .

INVESTIGATION IN CONFIDENCE
10. Notwithstanding the above, the intention is clearly articulated in the and whilst it was not formally ISAF approved, no attempt to countermand this decision was made by the .
16. Prior to entering the room two women, each carrying an injured infant, and two children exited. Medical attention was provided by the AME and the two infants and children were later Aero Medical Evacuated (AME) from the scene. The two women although receiving minor injuries, refused to go with the AME. Both the infants later succumbed to severe head trauma at the KAF Role 3 Hospital, Kandahar, whilst the two children recovered from fragmentation injuries and were later discharged from the US Field Surgical Team (US FST) in Tarin Kowt.

17. On entering the room the FAM and the AK weapon were located and removed into the courtyard outside. He too was administered medical assistance, but later died of head trauma following AME to the US FST. As well as fragmentation injuries he had also sustained a gunshot wound which fractured his right forearm. Also located in the room were the deceased bodies of two boys and an adolescent female. The removal of their bodies outside was coordinated by the ADFIS.

18. There is no available medical evidence regarding specific injuries or cause of death to the three children in room six, however, photographic images depicting their bodies in situ are also attached to this report for reference. Exhumation of the bodies and post mortem examinations were considered by ADFIS; however, this was considered as culturally insensitive and not approved by CJTF633 or CJOPS. Although unwilling to include injury details in his evidence to ADFIS, that the adolescent female had sustained gunshot wounds. This was also corroborated by the interpreter when interviewed by ADFIS in Afghanistan.
Investigative Action

20. Numerous personnel were identified by ADFIS as having information relevant to this investigation. For ease of reference, two specific lines of enquiry were pursued and those witnesses are listed below under each area:

a. The Command and Control of the Incident (C2):

b. The \( s33(a)(ii) \) during the \( s33(6) \) incident:
For ease of reporting a synopsis of the key witness evidence, in respect to the is detailed on the attached Witness List.

21. The POIs that were to be interviewed after caution, but refused were:

Observations

22. This investigation essentially concentrates on two main areas of concern; the appropriateness of and the in respect of the decision to and the of the.

23. not ISAF approved nor justified in view of was not prevented or countermanded.
In view of their refusal to be interviewed after caution by ADFIS, neither the 333(a)(i) nor the 333(a)(ii) have offered any contrary admissible argument. It is also of note that the refused to provide witness evidence in respect of this issue.

24. The regarding the threat posed by the armed FAM cannot be confirmed or refuted by ADFIS. He was apparently the only person to see the FAM at the material time presenting the 333(a)(ii) If indeed he saw what he described to the IO then it may be considered this 333(a)(ii) in line with the 333(a)(ii) of him and his 333(a)(ii) in accordance with OP SLIPPER Rules of Engagement (ROE), 333(a) refused interview after caution with ADFIS no further observation can be made.

25. As 333(a) also refused to participate in interview after caution, it cannot be judged what his thought process was at the time of ordering the 333(a)(ii) given the presence of women and children. His order to 333(a)(ii) prior to the knowledge of the presence of non combatants may also be considered 333(a)(ii) with ROE, 333(a) whilst following orders, had the 333(a)(ii) or at least he could have 333(a)(ii) the 333(a)(ii). Evidence adduced suggests all 333(a)(ii) were conversant with the ROE, the ADF 333(a)(ii) Process and the Law of Armed Conflict (LOAC).

26. These observations are based on the evidence obtained specifically in relation to the ISAF approval process and impartial subject matter experts’ opinion on the 333(a)(ii). Whilst it has been offered that the 333(a)(ii) was conducted in accordance with the 333(a)(ii) Tactics, Techniques and Procedures (TTPs). 333(a)(ii) A copy of this TTP extract is attached.

Other Relevant Information

27. Arrangements are in hand to identify and establish the evidential value from the 333(a)(ii) and the four adult females from 333(a)(ii). Liaison via SBS Dateline, who have televised a number of reports into this incident, has led to an independent Afghani point of contact who has agreed to facilitate obtaining accounts from these possible witnesses. Once received an assessment in consultation with DMP will be made as to the evidential content and value. Access to an extract of a journalist’s interview with the 333(a)(ii) suggests he cannot provide reliable evidence as to the sequence and rate of gunfire and explosions. He claimed that 333(a)(ii)

28. Enquiries were also conducted with SOTG to establish the method of accounting and replenishment of ammunition. This was necessary in an attempt to establish how many rounds were expended 333(a)(ii) during the incident. It was ascertained that there is no 333(a)(ii) with SOTG in theatre and therefore there is no 333(a)(ii). In view of this, this line of enquiry was closed.

Findings

29. After reviewing the witnesses’ testimony, 333(a)(ii) photographs and documentation in relation to this incident, the Investigation Team find that the
30. The catalyst for concern over the use of force remains the S33(a)(ii) once there was evidence of women and children in the room. Evidence suggests that S33(a)(ii). In view of this the

31. The investigation was problematic in regard to witness recollection and vagueness. Of S33(a)(ii) confirmed hearing women and children post the S33(a)(ii) were generally vague in their recollection and S33( altered S33 original claim to reflect the presence after the S33(a)(ii). Furthermore the inability to visit the scene prohibited forensic value as to S33(a)(ii) . This would have assisted in establishing S33(a)(ii). These avenues of enquiry have been pursued via S33(a)(ii).

            It was confirmed that S33(a)(ii).

Conclusions

32. There is evidence to support the S33(a)(ii) was inappropriate.

33. There is evidence to support the S33(a)(ii) was in disregard for the potential harm to non combatants.

34. The late involvement of ADFIS in this investigation inhibited the obtaining of credible admissible evidence.

35. The inability to visit the incident scene and conduct a thorough examination impacted on the potential for forensic and scientific evidence.

36. The lack of medical/post mortem evidence in respect to the children who died in situ at S33(a) impacted on proving their causes of deaths especially in respect of gunshot injuries.

37. The SBS media interest in this case is ongoing.

Recommendations

38. It is recommended that:

   a. DMP considers disciplinary action against S47 for Negligence in the Performance of Duty contrary to Sect 35, DFDA 1982; and
b. DMP considers disciplinary action against [REDACTED] for Dangerous Conduct contrary to Sect 36 (1), DFDA 1982 or alternatively Manslaughter contrary to Sect 15, CRIMES ACT 1900 in its application to Sect 61, DFDA 1982.

39. With the exception of paragraph 27 above, enquiries into this case are now complete. Copies of all statements and evidence recovered are attached, the originals can be provided when required.

ADFIS

25 Nov 09

Annexes: