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NO ESCAPE

WAR CRIMES AND CIVILIAN HARM DURING THE FALL OF
AFGHANISTAN TO THE TALIBAN

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Cover photo: Anas Haqqani, center right, gets a tour of the military vehicles seized by Taliban fighters after the militant group seized the Hamid Karzai International Airport, in the wake of the American forces completing their withdrawal from the country in Kabul, Afghanistan, Tuesday, Aug. 31, 2021.

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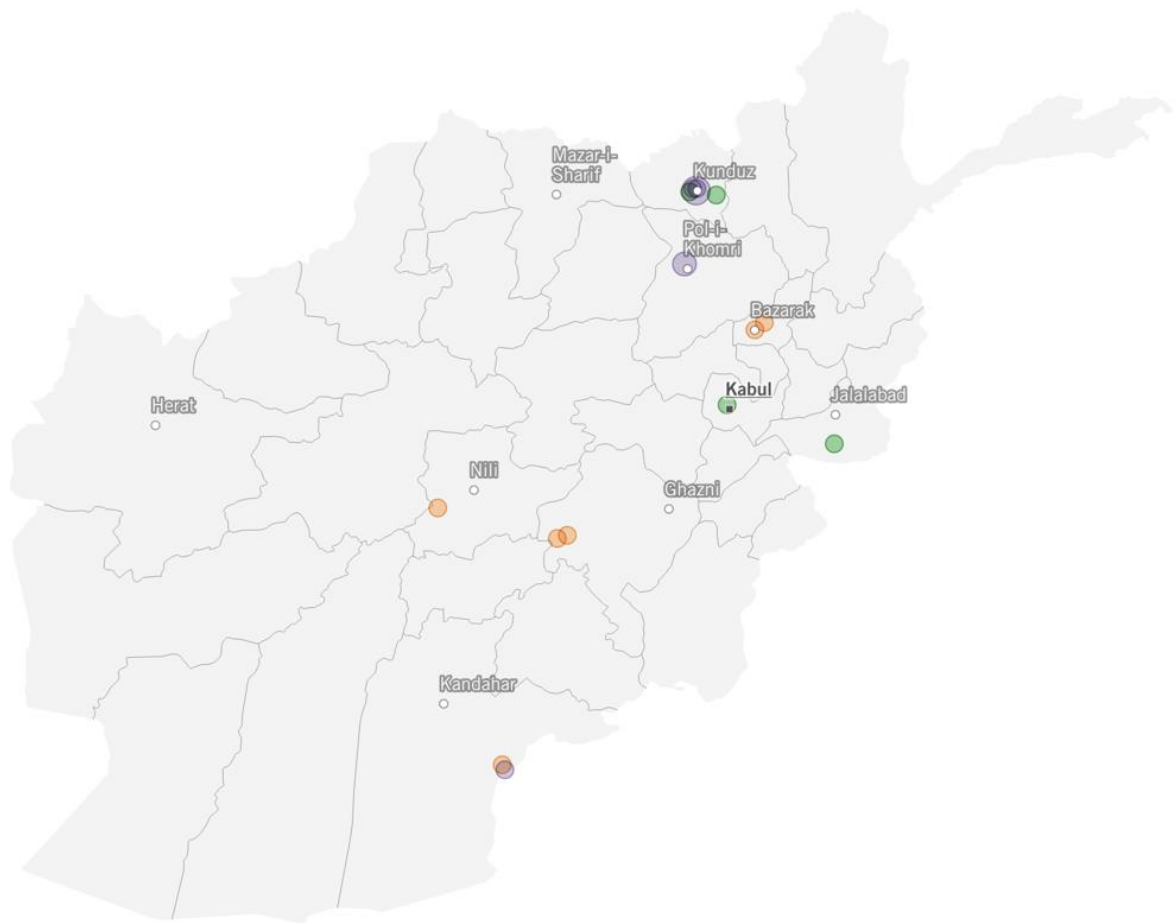
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MAP

Incidents documented by Amnesty International

■ Air strike ■ Ground attack ■ Killings and other crimes



EXECUTIVE SUMMARY

“The only thing we want is for this bombing of civilians to stop.”

A 34-year-old farmer from Kunduz Province, describing the aftermath of an Afghan Air Force strike on a hospital in Basoz.

The fall of Kabul to the Taliban on 15 August 2021 caught the world by surprise. It should not have. Afghanistan's two decades of armed conflict, which had always taken a massive and disproportionate toll on civilians, reached a new intensity after the US announced a full withdrawal in April 2021. The Taliban, sensing victory, launched a countrywide assault. The beleaguered Afghan security forces—who through their own corruption, harassment, and use of lethal violence against average civilians had long ago lost legitimacy in the eyes of the people of Afghanistan—fought a grim war of survival. Listen to the international news media, and it would seem that Afghanistan fell overnight. The civilians caught in the fighting knew differently.

The urban combat in Kunduz was especially fierce in June 2021. In Zakhail, a western suburb, government forces launched mortars into densely populated civilian neighbourhoods, while Taliban forces gained ground by using schools and mosques to launch attacks, and demanding food from families trapped in their homes. One mortar landed in a home, and a family member rushed a 12-year-old girl, Manizha, to the hospital, a metal piece of frag stuck in her spine. It took her over a week to die of the injury. “That day was the 1st of Saratan [22 June], there were many mortars,” said the man. “I recognized my fellow villagers in the hospital. There were Taliban in our neighbourhood, they stayed in the mosques but not people's houses. [Later] I moved to the airport road because it is the only place in Kunduz that is safe now. Anyone with jobs and money have moved there.” But even that last refuge in Kunduz was soon captured by the Taliban.

Until the fall of the former Afghan government, there was a non-international armed conflict (NIAC) in Afghanistan. The three largest parties to this conflict were the Taliban, the Afghan National Defense and Security Forces (ANDSF), and the United States. This report documents crimes under international law, including war crimes, and human rights violations and abuses committed by the belligerents, and civilian deaths caused by all three parties during the fighting that led to the overthrow of the former Afghan government. In total, the report investigates 12 cases of civilian casualties, in which at least 40 people were killed and at least 21 were injured. To conduct the research, Amnesty International interviewed survivors, victims' family members, and witnesses—both in-person in Kabul, and remotely via encrypted communications—between July and December 2021. In addition, investigators reviewed available open-source information, including satellite imagery, government documents, and digital videos and photos.

The incidents in this report fall into several broad categories. The United States conducted air strikes that killed large numbers of civilians because they dropped explosive weapons in densely populated areas. As the Taliban gained control of new districts, war crimes followed. Ethnic and religious minorities, former ANDSF soldiers, and supporters of the former government were all targeted for torture and execution. The full scale of the slaughter remains unknown, as the Taliban cut mobile phone service, or severely restricted internet access, in many rural areas. And finally, through a combination of negligence and seeming disregard for international law, the ANDSF launched mortar attacks on homes, and conducted an air strike on a hospital, all of which killed civilians hiding in fear. In some cases, the sheer recklessness of the attacks may rise to the level of war crimes, so flagrantly did they fail to properly distinguish between civilian and military targets.

The attacks investigated in this report represent a small and fractured, yet still important, glimpse into the suffering visited upon Afghans during the last stage of US intervention in the country. To be sure, the scope of the civilian harm in Afghanistan is much larger than the sum of the individual cases described in this report. The United Nations Assistance Mission in Afghanistan (UNAMA) reported 1,659 civilians killed and another 3,524 injured in just the first six months of 2021, an increase of 47% from the prior year. May and June of 2021 were the most violent May and June for civilians since UNAMA began keeping systematic records in 2009.

The inability of the former Afghan government to adequately address this civilian harm was significant, longstanding, and ultimately helped to undermine the stability of the state itself, as people lost faith in the ability of Kabul to address their needs. Many people who spoke to Amnesty International expressed a weary relief that the Taliban's takeover at least meant an end to bribes on the street and indiscriminate mortar attacks on their homes.

As this and other research shows, children have faced particular risks during the conflict. Hundreds of schools have been destroyed or damaged in attacks, some deliberately targeting students and teachers, and there has been little accountability for these attacks or reparations for survivors. Even in rare cases where there have been compensation payments, such as after the high-profile attack in May 2021 outside the Sayed ul-Shuada school in western Kabul, some children, and in particular girls, were excluded, in violation of international law.

Although further research is needed, Amnesty International's documentation also suggests that people with disabilities, and in particular some people with psychosocial disabilities, have faced elevated risks, including during Taliban attacks this year. For example, in the case in the village of Mundarakht in Malistan district, the Taliban executed two men with severe mental health conditions, simply because they were left behind in a village when it was overtaken.

While the government of Afghanistan is no more, its failure to properly protect its own nationals during the course of the conflict with the Taliban provides a lesson for other states around the world. The killing of its own civilians, inability to apologize and make compensation payments to its citizens, or even to explain to civilians how to file claims, all helped contribute to the delegitimization of the central government. States involved in non-international armed conflicts against armed groups within their own territory would do well to learn the lesson that protecting civilians, and fulfilling human rights obligations, are central to maintaining legitimacy and stability. Similarly, NATO, the United States, and the other 35 member states of Operation Resolute Support need to consider how the civilian harm caused by the ANDSF, a force created and trained by those states, contributed to the fall of the Afghan government.

Fighting is sure to endure in Afghanistan, as forces from the Taliban and the Islamic State Khorasan Province (ISKP) clash, and both groups continue to target ethnic and religious minorities. There is a high likelihood that the United States will continue operations against ISKP as well, and the world has already gotten a peek at this future. On 29 August 2021, a drone strike carried out by the United States killed 10 civilians, including seven children, at a home in western Kabul. The US authorities claimed they were aiming for an ISKP facilitator, and in an initial statement, CENTCOM reported: "We are confident we successfully hit the target. Significant secondary explosions from the vehicle indicated the presence of a substantial amount of explosive material. We are assessing the possibilities of civilian casualties, though we have no indications at this time." Each of these statements would in turn be proven false.

In Afghanistan, Iraq, Syria, Yemen, and Somalia the United States has failed to live up to obligations to protect civilians during air strikes and provide fair reparations when there is harm. A few high-profile cases of civilian casualties, such as the Kabul air strike in August, gain international attention. But lesser-known cases, such as ones documented in this report, often go unacknowledged. International news stories should not be required to get the United States to fulfil its duties under international law.

And as the crisis in Afghanistan continues—a conflict to which the United States is no longer a party—international human rights law, rather than international humanitarian law, should now be the framework guiding future US operations, under which protection of the individual's right to life is paramount.

In light of the information in this report, Amnesty International calls upon the Taliban authorities to immediately cease killing civilians, investigate the cases presented in this report, and where warranted hold fair trials without recourse to the death penalty. The International Criminal Court must conduct full investigations into all parties to the conflict, including cases documented in this report. And the Taliban and United States should fulfil their international obligations and establish clear and robust mechanisms for civilians to request reparations for harm sustained during the conflict.

METHODOLOGY

This report is based on field and remote research conducted by Amnesty International between June 2021 and December 2021, and focuses primarily on crimes under international law, including war crimes; human rights violations and abuses; and attacks that caused civilian harm during the final twelve months of fighting that led to the fall of the Afghan government in Kabul. In multiple case studies, this report documents torture, extrajudicial executions, and killings by the Taliban, and civilian casualties during ground and air operations by the Taliban, ANDSF, and United States military. An additional case of a US air strike from 2017 is included to provide context for ongoing operations against ISKP. Finally, this report discusses the legal framework for understanding these cases, the obligations of states, and the evolving legal context as the Taliban controls the country.

Amnesty International investigators conducted on-the-ground research in Kabul on 1-15 August 2021, and completed remote phone interviews with victims and witnesses via secure video and voice calls from August to December 2021. Nearly all of the cases documented in this report occurred in districts that were under Taliban control or where there was active fighting during the time Amnesty International investigators were in the country. Afghanistan is an environment extraordinarily hostile to human rights research, and security concerns and access restrictions prevented Amnesty International researchers from leaving the city of Kabul and conducting on-site investigations to gather physical evidence. To overcome this restriction on movement, in some cases witnesses travelled from their homes in other provinces to Kabul to meet with Amnesty International in a secure location.

Amnesty International conducted face-to-face interviews with a total of 65 persons from the provinces of Baghlan, Ghazni, Kabul, Kandahar, Kunduz, Nangarhar, and Takhar. Demographically, 42 of the interviewees were men, 12 were women, six were boys, and five were girls. The gender disparity in interviewees was due to travel restrictions, as culturally fewer women were able to travel long distances from their rural districts, and researchers were unable to visit those districts for security reasons. Some of the interviews were conducted exclusively in Dari or English. Most, however, were translated, either from Dari or Pashto to English. An additional 36 men from Bamian, Daykundi, Kunduz, and Panjshir provinces were interviewed later (either in Dari, or in Dari or Pashto that was translated to English) remotely through encrypted mobile apps. All potential interviewees were informed about the nature and purpose of the research, as well as how the information they provided would be used, before deciding whether to agree to an interview. No incentives or monetary compensation were provided in exchange for their accounts. Oral consent was obtained from each interviewee, and all were given the option to not have their names included in the report.

In nearly all cases, interviewees requested that their names not be used, for fear of reprisals from the Taliban, ISKP, or the now-defunct Afghan government. Amnesty International assesses that this risk is real and significant. No pseudonyms are used anywhere in this document. The few cases where interviewees specifically requested that their names be used are footnoted.

To conduct this research, Amnesty International also reviewed satellite imagery, video and photographic material, and medical and ballistics information, consulting relevant experts as required. For certain case studies, the Crisis Response Programme's Evidence Lab completed an open-source investigation of available social media material, and Amnesty International interviewed analysts from international organizations, journalists, humanitarian workers, and local human rights monitors, and consulted academic articles and reports from NGOs and international bodies.

On 17 September 2021, 6 October 2021, 12 October 2021, and 30 November 2021, Amnesty International requested an official response from the Taliban to allegations in this report. At the time of publication, they had not replied.

On 18 November 2021 and 1 December 2021, Amnesty International requested an official response from the United States regarding two air strikes documented in this report. At the time of publication, they had not provided a substantive reply.

1. BACKGROUND

Afghanistan has been mired in armed conflicts since the former Soviet Union invaded the country in December 1979. Over the years the belligerents have changed but the devastating effects of the violence upon civilians has not. The mujahideen wars replaced the Soviets; the Taliban bested rival warlords; US and coalition forces defeated the Taliban. Or so the US thought. Instead, an insurgency reignited across the country.

During the period covered by this report, there was a non-international armed conflict (NIAC) in Afghanistan. A NIAC arises when there are protracted armed confrontations in the territory of a state between governmental authorities and one or more organized armed groups, or between such groups.¹ For the armed confrontations to be classified as a NIAC they must reach a requisite level of intensity and the parties involved must have a requisite degree of organization, which was clearly the case in Afghanistan.² (For more on the legal framework governing parties to a NIAC, as well as an analysis of whether a NIAC exists in Afghanistan after the Taliban takeover and the withdrawal of US forces, see section 5 of this report.)

The parties to the conflict include the Afghan National Defense and Security Forces (ANDSF), the United States and other member states of Operation Resolute Support, the Taliban, and various armed non-state actors, including the Islamic State in the Khorasan Province (ISKP). This report focuses on violations by the three largest parties: the Taliban, the ANDSF, and the United States.

1.1 TRENDS IN THE FIGHTING

Numerically, the US presence in Afghanistan peaked in 2011, during President Barack Obama's so-called "surge," when there were approximately 100,000 US soldiers on the ground, part of a 130,000 strong NATO force.³ Those troop levels fell significantly, down 90% over the next five years, as a new NATO-led operation, named Resolute Support, took over the ANDSF training mission in 2015.⁴ Still, the armed conflict continued.

In May 2018, the Taliban controlled only 42 of Afghanistan's approximately 400 districts,⁵ but another 203 were considered "contested," with periods of active fighting, killings, air strikes, and suicide attacks. Over 10,000 civilians were killed or injured every year between 2014 through 2019.⁶ During this time, the Taliban made some gains, largely in rural areas in the centre of the country, and the Kabul government did not have

¹ Based on the relevant international treaties (Article 3 Common to the Four Geneva Conventions of 1949 and Protocol II to the Geneva Conventions) and jurisprudence of international tribunal, the International Committee of the Red Cross (ICRC) defines non-international armed conflicts as: "protracted armed confrontations occurring between governmental armed forces and the forces of one or more armed groups, or between such groups arising on the territory of a State [party to the Geneva Conventions]. The armed confrontation must reach a minimum level of intensity and the parties involved in the conflict must show a minimum of organisation." ICRC, *How is the term "Armed Conflict" defined in international humanitarian law?*, Opinion Paper, March 2008. <https://www.icrc.org/en/doc/assets/files/other/opinion-paper-armed-conflict.pdf>

² For list of indicative factors for each of these criterion, see *Prosecutor v. Ljube Bošković* (IT-04-82-T), ICTY Trial Chamber, Judgment, 10 July 2008, paras 175-206.

³ *BBC News*, "Afghanistan war: Trump's allies and troop numbers," 22 August 2017. Retrieved on 2 November 2021 from <https://www.bbc.com/news/world-41014263>

⁴ NATO, "Resolute Support Mission in Afghanistan (2015-2021)," 13 September 2021. Retrieved on 9 November 2021 from https://www.nato.int/cps/en/natohq/topics_113694.htm

⁵ *Long War Journal*, "Mapping Taliban Control of Afghanistan," 2021. Retrieved on 1 November 2021 from <https://www.longwarjournal.org/mapping-taliban-control-in-afghanistan>. The number of districts in Afghanistan is a matter of dispute, and varies between 387 and 421, depending on whether provincial capitals and areas of Kabul are considered separate districts. *Afghanistan Analysts Network*, "Official list of Afghanistan's districts," 7 July 2020. Retrieved on 1 November 2021 from <https://www.afghanistan-analysts.org/en/resources/afghan-government-documents/list-of-afghanistans-districts/>

⁶ UNAMA, "Afghanistan: 10,000 Civilian Casualties for Sixth Straight Year," 22 Feb 2020. Retrieved on 1 November 2021 from <https://unama.unmissions.org/afghanistan-10000-civilian-casualties-sixth-straight-year>

full control over two thirds of districts. By 29 February 2020, when the Taliban and the United States signed the Doha Agreement, providing for the withdrawal of US forces from Afghanistan, the Taliban had increased their proportional share of control, and governed approximately 70 districts.⁷

Fighting accelerated significantly, though, once President Joe Biden announced in April 2021 that the US military would leave completely by that September. The Taliban launched a major offensive soon after, pressing their advantage against the ANDSF. By the end of June 2021, they controlled 139 districts, and at the beginning of August they had increased that tally to 223.⁸

Predictably, it was civilians who continued to pay the highest cost during this nationwide assault. The United Nations Assistance Mission in Afghanistan (UNAMA) reported 1,659 civilians killed and another 3,524 injured in the first six months of 2021, an increase of 47% from the prior year.⁹ May and June of 2021 were the most violent May and June for civilians since UNAMA began keeping systematic records in 2009.¹⁰ The organization further reported that hundreds of civilians were killed and injured during attacks in Kandahar and Lashkar Gah in July.¹¹

As this report demonstrates, heavy fighting continued in many other areas of the country as well, such as Kunduz and Baghlan provinces, through July 2021 and into August, up until the last days of the former Afghan government and the fall of Kabul on 15 August 2021.

1.2 THE TALIBAN

The Taliban are an armed group that is now considered the de facto authority in Afghanistan. Founded in 1994, the religious and largely Pashtun political movement gained control of Afghanistan in 1996, losing their hold on power after Al Qaeda's attack on the United States on 9/11 and subsequent 2001 US invasion and search for Osama Bin Laden. Over the past quarter century, they have established a bloody record of executions, beatings, arbitrary detentions, kidnappings, and other crimes under international law.¹² Religious and ethnic minorities, such as the Hazara, who are mainly Shia, were at considerable risk of targeting by Taliban forces.

As the Taliban took over districts across the country, they established their own bureaucratic functions and agencies, including shadow governments in contested areas of the country. The Taliban demanded what they framed as taxes, both in the form of traditional *usher*, the tax on farming, but also food and lodging for fighters. "Taliban ask for *usher* and food anywhere they have control," said one resident of a rural area near Kunduz. "They ask by house, they come up and say dinner for ten people, or lunch for ten people."¹³ Residents from the provinces of Baghlan, Ghazni and Kunduz all reported that the Taliban demanded food for its fighters from local civilians.¹⁴ This system of living off the local population allowed the Taliban great flexibility and solved a logistical supply-line challenge that hampered the ANDSF. In cases where the Taliban may have consumed all of the food in a given region, the civilians' right to food would have been negatively impacted.¹⁵

People interviewed by Amnesty International related that the Taliban were easily distinguishable from other armed actors because of the combination of ubiquitous white flags with black writing, black turbans, style of dress, and heavy use of motorbikes.¹⁶

⁷ Long War Journal, "Mapping Taliban Control of Afghanistan," 2021. Retrieved on 1 November 2021 from <https://www.longwarjournal.org/mapping-taliban-control-in-afghanistan>

⁸ Ibid.

⁹ UNAMA, "Afghanistan: Protection of Civilians in Armed Conflict Midyear Update: 1 January to 30 June 2021," 26 July 2021. Retrieved on 1 November 2021 from: https://unama.unmissions.org/sites/default/files/unama_poc_midyear_report_2021_26_july.pdf

¹⁰ Afghanistan Analysts Network, *New UNAMA Civilian Casualties Report: The human cost of the Taleban push to take territory*, Kate Clark, 26 July 2021. Retrieved on 1 November 2021 from <https://www.afghanistan-analysts.org/en/reports/war-and-peace/new-unama-civilian-casualties-report-the-human-cost-of-the-taleban-push-to-take-territory/>

¹¹ UNAMA News, 30 July 2021 and 3 August 2021. Retrieved on 29 November 2021 from <https://twitter.com/UNAMAnews/status/1421046364335706112> and <https://twitter.com/UNAMAnews/status/1422488483323650051>.

¹² Amnesty International, "The Fate of Thousands Hanging in the Balance: Afghanistan's Fall Into the Hands of the Taliban," 21 September 2021, ASA 11/4727/2021. Retrieved on 4 November 2021 from <https://www.amnesty.org/en/documents/asa11/4727/2021/en/>

¹³ Amnesty International in-person interview, 7 August 2021.

¹⁴ Amnesty International in-person interviews, 3, 8, 11, 12 August 2021.

¹⁵ Pejic, Jelena. "The right to food in situations of armed conflict: The legal framework." *International Review of the Red Cross*: Vol. 83, No. 844, December 2001, pp. 1097-1109. Retrieved on 2 November 2021 from <https://www.icrc.org/en/doc/assets/files/other/irrc-844-pejic.pdf>

¹⁶ Amnesty International in-person interviews, 2 and 8 August 2021.

1.3 AFGHAN NATIONAL DEFENSE AND SECURITY FORCES (ANDSF)

ANDSF is a catch-all term that refers to all security forces operating on behalf of the former Afghan government, including all military forces, such as the Afghan National Army (ANA), under the Ministry of Defense, the Afghan National Police (ANP) and Afghan Border Police (ABP) under the Ministry of Interior, and the National Directorate of Security (NDS) forces that formed an intelligence and security service that reported to the president, among others. These various units wore a variety of uniforms, were equipped with a variety of equipment and weapons, including both NATO and Soviet-standard arms, and operated with various degrees of competence.

In a broad pattern, people interviewed by Amnesty International said that local ANDSF forces were engaged in petty corruption and harassment that, over years, became intolerable. In many locations, members of the communities expressed relief that the Taliban had seized their territory, if only because the fighting had ceased and ANDSF soldiers no longer were there to hassle or extort them.

One man, who was the father of three and worked as a tailor in Khanabad, said:

Since the Taliban have taken over, what we want is to be in peace, and it is peaceful now. We can sleep with an empty stomach, but we just want peace. I go to the shop at 1am, I come back, no one robs me, no one bothers me. Before it was theft. Government and local militias and police and Talib and everyone. We never knew who was doing what. There was always robbing. Now, it is one government, and one flag, and now nothing is happening.¹⁷

In addition, the increased capacity of the Afghan Air Force (AAF), especially the deployment of A-29 Super Tucano light attack aircraft in 2016,¹⁸ created an atmosphere of fear in communities affected by the fighting, because civilians did not trust the ability of the force to differentiate between military and civilian targets. “The government should be able to identify between Talib and local people. They have weapons and we don’t. Sometimes planes come and I hide my bike because I’m scared. If there are two guys here, why not go kill them? Why send aircraft and bombs that kill civilians too? Why fight like this?” said one man from Khanabad.¹⁹ At last count, among attack aircraft the AAF had 23 A-29 Super Tucanos, 10 AC-208 Combat Caravans, and 50 MD-530 helicopters,²⁰ all prop-driven and relatively low flying during almost-exclusively daylight hours, making them distinguishable from US jet aircraft that flew at higher altitudes and at night.

1.4 US FORCES

While the United States cut its ground forces following the Doha Agreement, and had below 10,000 troops in the country by mid-2020,²¹ the US continued to conduct air strikes in support of the ANDSF up until the last days of the government and the final withdrawal in August 2021. Aircraft that completed these operations included Navy fighters, such as the F-35,²² launching from aircraft carriers in the Arabian Sea, and Air Force fighters, drones, and B-52 bombers flying from Al Udeid Air Base in Qatar.²³

There is a significant body of literature about the persistent negative effects of air strikes on communities, far and beyond the actual civilian casualties, including restricting the right to education, adverse impacts on economic, social and cultural rights, and severe mental health impacts.²⁴

¹⁷ Amnesty International in-person interview, 2 August 2021.

¹⁸ *Flight Global*, “First of 20 A-29 Super Tucanos arrive in Afghanistan,” James Drew, 19 January 2016. Retrieved on 2 November 2021 from <https://www.flightglobal.com/first-of-20-a-29-super-tucanos-arrive-in-afghanistan/119378.article>

¹⁹ Amnesty International in-person interview, 2 August 2021.

²⁰ Special Inspector General for Afghanistan Reconstruction, “Quarterly Report to the United States Congress,” 30 Jul 2021, pp. 70. Retrieved on 2 November 2021 from <https://www.sigar.mil/pdf/quarterlyreports/2021-07-30qr.pdf>

²¹ *Associated Press*, “Taliban make big changes ahead of expected talks with Kabul,” Kathy Gannon, 6 July 2020. Retrieved on 3 November 2021 from <https://abcnews.go.com/International/wireStory/taliban-make-big-ahead-expected-talks-kabul-71839905>

²² *Voice of America*, “US Intensifies Airstrikes to Support Embattled Afghan Forces,” Ayesha Tanzeem, 26 July 2021. Retrieved on 3 November 2021 from https://www.voanews.com/a/us-afghanistan-troop-withdrawal_us-intensifies-airstrikes-support-embattled-afghan-forces/6208714.html

²³ *U.S Air Forces Central Public Affairs*, “Additional B-52 aircraft arrive at Al Udeid,” 4 May 2021. Retrieved on 3 November 2021 from <https://www.afcent.af.mil/News/Article/2595407/additional-b-52-aircraft-arrive-at-al-udeid/>

²⁴ International Human Rights and Conflict Resolution Clinic at Stanford Law School and Global Justice Clinic at New York University School of Law, *Living Under Drones: Death, Injury, and Trauma to Civilians From US Drone Practices in Pakistan*, September 2021. Retrieved on 3 November 2021 from <https://www-cdn.law.stanford.edu/wp-content/uploads/2015/07/Stanford-NYU-LIVING-UNDER-DRONES.pdf>. PAX,

These US strikes, especially when conducted against “terrorist” targets, are commonly referred to in the media as drone strikes. However, Amnesty International research has shown that manned aircraft, including massive AC-130 gunships designed to support infantry in ground combat operations, often conduct these attacks.²⁵ If US continues strikes against targets in Afghanistan in the future, it will likely be from a variety of platforms under the inaccurate label of “drone.”

Human Rights and Realities: Local perspectives on drone strikes and international law, 24 October 2018. Retrieved on 3 November 2021 from <https://paxforpeace.nl/what-we-do/publications/human-rights-and-human-realities>

²⁵ Amnesty International, *The Hidden US War in Somalia: Civilian Casualties from Air Strikes in Lower Shabelle*, 20 March 2019, AFR 52/9952/2019. Retrieved on 3 November 2021 from <https://www.amnesty.org/en/documents/afr52/9952/2019/en/>

2. CRIMES UNDER INTERNATIONAL LAW, INCLUDING WAR CRIMES, BY THE TALIBAN

“We asked the Taliban why they did this, and they told us, when it is the time of conflict, everyone dies, it doesn’t matter if you have guns or not. It is the time of war.”²⁶

27-year-old construction worker from Malistan, describing the killing of nine civilian men.

As the Taliban quickly seized control of new areas of the country in July and August 2021, some units began a series of killings of captured ANDSF and former high-ranking government officials. In the cases documented by Amnesty International, the people targeted for retaliatory killings bear a certain profile: all were supporters (or were accused of being supporters) of the former government, and were either high-profile leaders or members of ethnic minorities. In the examples presented below, this intersection of vulnerabilities—a combination of government position, rank, and/or being a member of a traditionally persecuted minority—appears to explain why some were killed and not others. “Anyone who is *actually* loyal to the government will be killed,” said one former general.²⁷

By early November, dozens of videos began to appear on social media, depicting executions by Taliban fighters.²⁸ Based on the number of witnesses visible videotaping the executions with their own mobile phones, these videos are apparently being recorded and distributed by Taliban fighters themselves. In addition, since the fall of Kabul, Afghans fearful for their lives and desperate to flee the country have shared with news media and NGOs organizing potential evacuations the details of their cases and the threats against them. Even so, it is extremely likely that the cases emailed to journalists, appearing on social media, and documented here in this report represent a small fraction of the total killings that took place during the fall of the former government. Surely many significant cases of human rights violations are unknown and unreported, due to Taliban restrictions of monitoring by news media and human rights organizations, and a lack of reliable

²⁶ Amnesty International in-person interview, 11 August 2021.

²⁷ Amnesty International in-person interview, 12 August 2021.

²⁸ See, for example, <https://twitter.com/bsarwary/status/1457313747991683072> and <https://twitter.com/Afghanistanlandcom/status/1454562858226708481>

mobile phone and internet service across the country. In some places, the Taliban have either cut or severely restricted this service; many rural areas are limited to supporting voice-only 2G mobile networks.²⁹

2.1 KILLINGS IN SPIN BOLDAK

On the evening of 18 July 2021, several nights after the Taliban seized control of Spin Boldak, a border town in Kandahar province, fighters from the armed group entered the compound of Haji Fida Mohammad Afghan, a three-term representative of the town on Kandahar's Provincial Council, and abducted two of his sons at gun point.³⁰ The two men were Sher Mohammad, a 37 year old who managed the family's land holdings, and Mahmoud Khan, a 34 year old who organized sporting events in Spin Boldak.

According to eyewitnesses, family and guests had gathered at the compound in anticipation of Eid, which began the next day. When the Taliban gunmen entered the guest house, within the compound, they targeted Sher Mohammad and Mahmoud Khan for abduction, but did not give a reason why. Haji Afghan was not at the home at the time. That same evening, a brother to Sher Mohammad and Mahmoud Khan called a member of the Taliban who he deemed trustworthy and requested that the two men be returned.³¹

The next morning, the bodies of the two brothers were discovered dumped on the street near a former-military checkpoint. According to witnesses who saw and buried the bodies, both bore signs of abuse and execution via gunfire.³² The two men left behind a total of seventeen children.³³

Amnesty International obtained photos of the bodies of Sher Mohammad and Mahmoud Khan—showing their heads and upper chests, the rest of their bodies covered in a shroud—and sent them to a forensic pathologist for analysis, who confirmed execution by close-range gunfire.³⁴ In the photos, Sher Mohammad has a broken front tooth and bears a long wound from the left corner of his mouth to his jaw line. Mahmoud Khan's left eye is missing and his right eye is bruised, likely from pooled blood caused from a skull fracture. Based on these photos, the forensic pathologist indicated it was most likely that Sher Mohammed was killed via a gunshot to the mouth, and similarly Mahmoud Khan killed from a gunshot to the left eye.

While Haji Fida Mohammad Afghan said that he and his sons were currently unconnected with the government, for many years he served with General Abdul Raziq, a former militia commander and police chief in Kandahar who was accused by Human Rights Watch of committing war crimes, including torture, and disappearances of both civilians and Taliban fighters.³⁵ It is most likely that the Taliban committed these abductions and killings in retaliation for past actions by government authorities in Spin Boldak.

However, no matter the previous actions of either Haji Fida Mohammad Afghan or his sons, wilful killing of a protected person in the context of an armed conflict, either international or non-international, constitute a war crime under the Rome Statute of the International Criminal Court³⁶ and also under customary international law. These killings happened in the context of the Taliban takeover of Spin Boldak. Estimates of the number killed in those days vary widely, from several dozen into the hundreds.³⁷ The Afghan Independent Human Rights Commission documented a total of 40 people killed.³⁸

An eyewitness in the hospital in Spin Boldak told Amnesty International that in the days before the Taliban seized the city, there was a large number of battle-wounded fighters brought to the hospital for medical care, and on the night the Taliban took control they sent their own District Health Officers and other administrators to become the hospital's new management.³⁹ According to this witness, those Taliban officials brought in their own physicians to treat Taliban fighters, and only allowed the women who worked as medical staff to treat female civilians. Many civilian men, and anyone associated with the ANDSF, were not allowed to receive treatment at all. Denying medical care is violation of common Article 3 to the Geneva Conventions,

²⁹ Amnesty International in-person interviews, 10,11 August 2021, remote interviews, 31 October 2021, 1,2 November 2021.

³⁰ Amnesty International in-person interview, 5 August 2021.

³¹ Amnesty International in-person interviews, 5 August 2021.

³² Amnesty International in-person interviews, 5 August 2021.

³³ Amnesty International in-person interview, 5 August 2021.

³⁴ Report on file at Amnesty International, 4 December 2021.

³⁵ Human Rights Watch, "HRW Submission to the Committee against Torture: Afghanistan," March 2017. Retrieved on 4 November 2021 from https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/AFG/INT_CAT_CSS_AFG_26972_E.pdf

³⁶ War crime of wilful killing, Article 8(2)(a)(i) and (c)(1).

³⁷ *Tolo News*, "Sources Allege 100 Civilians Killed After Fall of Spin Boldak," Anisa Sheheed, 22 July 2021. Retrieved on 4 November 2021 from <https://tolonews.com/index.php/afghanistan-173674>. *Al Jazeera*, "Taliban Accused of 'massacring civilians' in Afghan border town," 2 August 2021. Retrieved on 4 November 2021 from <https://www.aljazeera.com/news/2021/8/2/taliban-accused-of-massacring-civilians-in-afghan-border-town>

³⁸ Afghanistan Independent Human Rights Commission, "Violations of International Humanitarian Law in Spin Boldak District of Kandahar Province," 31 July 2021. Retrieved on 4 November 2021 from <https://www.aihrc.org.af/home/thematic-reports/91121>

³⁹ Amnesty International in-person interview, 9 August 2021.

which provides that “The wounded and sick shall be collected and cared for.” Likewise, it is also a rule under customary international law, applicable in international and non-international armed conflicts, that “the wounded, sick and shipwrecked must receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. No distinction may be made among them founded on any grounds other than medical ones.”⁴⁰

2.2 KILLINGS AND TORTURE IN MALISTAN

Between 4 and 6 July 2021, in one small village of 30 homes—the hamlet of Mundarakht, in the Hazara-dominated Malistan district of the province of Ghazni—nine men were executed by the Taliban.⁴¹ The men ranged in age from 23 to 75 years old. According to 10 eyewitnesses and family members interviewed by Amnesty International, three of the men were tortured to death and six were shot.⁴²

On 3 July 2021, fighting intensified between government security forces and Taliban fighters, and the Taliban took control of Mundarakht. The civilians fled into the mountains to their traditional *iloks*, the summer grazing land, where they have small shelters for refuge. But having not had time to bring food, five men and four women chose to return to the village to gather supplies, while most of the villagers stayed in a place of safety.⁴³

The next morning, on 4 July, after the fighting had ceased, small groups of civilians returned to their homes to find them looted of their furnishings, rugs and other expensive goods. While gathering food, a 45-year-old man named Wahed Qaraman was taken from his home by Taliban fighters. They broke both of his legs and both of his arms, shot him in the right leg, pulled his hair out of his head, and beat his face with a blunt object, disfiguring him.⁴⁴

At the same time, another man, named Jaffar Rahimi, 63 years old, was pulled out of his home with his wife and another person. The Taliban searched them and found a wad of cash in Rahimi’s pocket, his life savings. They began to beat Rahimi and the other person with wooden sticks, accusing both of working for the government, and said that the cash belonging to Hakim Shojae, a notorious Hazara warlord who had fought with US Special Forces in nearby Uruzgan province, and has been accused of torture, killings, and other human rights violations.⁴⁵ The Taliban let the other person and Rahimi’s wife go, but later strangled Rahimi to death with his own scarf.⁴⁶ Three people who were involved in the burial of Rahimi confirmed to Amnesty International that there were individual bruises all over Rahimi’s body, and that the muscles of his arms had been carved off and were hanging like meat.⁴⁷

The Taliban also took Sayed Abdul Hakim, aged 40, from his home, beat him with sticks and the butts of their rifles, bound his arms with his scarf, and then shot and killed him. He was hit twice in the leg and then twice in the chest, and his body was dumped next to a nearby creek.⁴⁸

Such treatment of all three men amount to the war crimes of torture and wilful killing, as provided by the Rome Statute of the International Criminal Court, common Article 3 of the Geneva Conventions and also customary international law.

At the *iloks* were three other men, Ali Jan Tata (65), Zia Faqeer Shah (23), and Ghulam Rasool Reza (53), who were from a different nearby village, Wuli.⁴⁹ They also wished to get food for the families that had fled, but due to the geography of the mountain passes, to reach their homes they had to pass through Mundarakht. While walking down the road in Mundarakht they were stopped at a Taliban checkpoint, questioned, executed, and had their bodies tossed at the creek with Sayed Abdul Hakim. Ali Jan Tata was shot in the chest, Rasool in the neck. According to those who dug his grave, Zia Faqeer Shah’s chest was so riddled with bullets that he was buried in pieces.⁵⁰

Others were killed at the same time as well. Sayeed Ahmad, who was 75 years old, said to people at the *ilok* that because he was an older man he believed the Taliban would not harm him, and he intended to return to

⁴⁰ ‘Rule 110, Customary International Humanitarian Law, Volume I, Rules, ICRC, Cambridge, 2005.

⁴¹ This killing was first reported by Amnesty International on 19 August 2021. <https://www.amnesty.org/en/latest/news/2021/08/afghanistan-taliban-responsible-for-brutal-massacre-of-hazara-men-new-investigation/>

⁴² Amnesty International in-person interviews, 10, 11, and 12 August 2021.

⁴³ Amnesty International in-person interviews, 10, 11, and 12 August 2021.

⁴⁴ Amnesty International in-person interviews, 10 August 2021.

⁴⁵ *Tolo News*, “Khas Residents Demand Prosecution of IAG Commander,” 26 August 2013. Retrieved on 8 November 2021 from <https://tolonews.com/afghanistan/khas-residents-demand-prosecution-iag-commander>

⁴⁶ Amnesty International in-person interviews, 9 and 11 August 2021.

⁴⁷ Amnesty International in-person interviews, 9, 10, and 11 August 2021.

⁴⁸ Amnesty International in-person interview, 10 August 2021.

⁴⁹ Amnesty International in-person interview, 12 August 2021.

⁵⁰ Amnesty International in-person interview, 10 August 2021.

the village to feed his cattle.⁵¹ Sayeed Ahmad was killed with two bullets to the chest and another in his side.⁵²

Not everyone fled Mundarakht during the initial attack, however. Zia Marefat, aged 28, was known to live with severe depression, and rarely left his home. The day after the Taliban took control of the village, his mother returned to find him, desperate to bring her son to safety. Zia Marefat did eventually leave at the urging of others, but he walked alone to the *ilok*, and on the way he was captured by the Taliban. They shot him in the temple.⁵³

Likewise, Karim Bakhsh Karimi, aged 45, who was believed to have an undiagnosed mental health condition, possibly schizophrenia, for which he was not receiving appropriate health care. Neighbours said that he acted erratically at times and did not flee with the rest of the villagers. He was also shot, execution-style, in the head.⁵⁴

"We asked the Taliban why they did this, and they told us, when it is the time of conflict, everyone dies, it doesn't matter if you have guns or not. It is the time of war," said an eyewitness, who also helped bury the bodies.⁵⁵ One resident estimated that the nine dead represented one quarter of the total adult male population of the villages.⁵⁶

People with mental health conditions are particularly at risk of human rights violations during armed conflict, as they may be less willing or able to flee and often face social stigma and discrimination that increases the likelihood of being targeted.⁵⁷ IHL provides special protection to persons with disabilities, including persons with psychosocial disabilities, like Zia Marefat and Karim Bakhsh Karimi.⁵⁸ Under the Convention on the Rights of Persons with Disabilities (CRPD), state parties, like Afghanistan, have an obligation to take "all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict."⁵⁹ Additional research is required to understand whether there has been a pattern of unlawful killings of people with psychosocial disabilities like Zia Marefat and Karim Bakhsh Karimi, as well as the wider impact of the conflict and Taliban takeover on people with disabilities, particularly given the reportedly high percentage of the Afghan population living with a disability.⁶⁰

Several weeks later, on approximately 16 July, the Taliban attacked Miradina, another village in Malistan, with similar consequences for civilian men. Ramazan Mohamadi, 31 years old, and Isak Ali Mohamadi, 29 years old, both Hazaras, were extrajudicially executed by Taliban fighters at a checkpoint while trying to flee with their families to nearby Jaghori district of Ghazni province.⁶¹

Three days after the Taliban seized the village, after a brief clash with ANDSF, members of the Mohamadi family decided that they needed to flee, as their home was across the street from a government office and they may be targeted as government supporters. Four brothers and their wives and children all attempted to leave together, driving along a road that they believed was safe and still secured by the government. They were wrong, and instead encountered a Taliban checkpoint in Qaladam.

"The four men get out and the Taliban say the women must get out too," said an eyewitness. "The seven year old girl screams 'They have tied my father's hands, what will they do?' The Taliban asked for ID cards, but only two men have the cards. The two with the cards go home... and the Taliban say the women need to go home and stay there."⁶²

The two brothers who had the required identification returned home, retrieved the cards of Ramazan

⁵¹ Amnesty International in-person interview, 11 August 2021.

⁵² Amnesty International in-person interview, 10 August 2021.

⁵³ Amnesty International in-person interview, 10 August 2021.

⁵⁴ Amnesty International in-person interview, 11 August 2021.

⁵⁵ Amnesty International in-person interview, 11 August 2021.

⁵⁶ Amnesty International in-person interview, 10 August 2021.

⁵⁷ For example, Amnesty International has documented people with severe mental health conditions being unavoidably left behind by their families while fleeing fighting in Yemen. Amnesty International, *Excluded: Living with Disabilities in Yemen's Armed Conflict*, 3 December 2019, MDE 31/1383/2019. Retrieved on 29 October 2021 from <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE3113832019ENGLISH.pdf>. See also Human Rights Watch, "Persons with Disabilities in the Context of Armed Conflict", 8 June 2021, <https://www.hrw.org/news/2021/06/08/persons-disabilities-context-armed-conflict>; and UN Security Council Resolution 2475, 20 June 2019.

⁵⁸ See ICRC, Customary International Humanitarian Law: Rule 138. The Elderly, Disabled and Infirm, https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule138.

Psychosocial disability relates to the interaction between psychological differences and socio-cultural limits for behaviour as well as the stigma, discrimination, and exclusion that society attaches to persons with mental impairments.

⁵⁹ CRPD, adopted by the UN General Assembly in resolution 61/106, 13 December 2006, UN Doc. A/RES/106, entered into force on 3 May 2008, Article 11.

⁶⁰ See, for example, Human Rights Watch, *"Disability Is Not Weakness": Discrimination and Barriers Facing Women and Girls with Disabilities in Afghanistan*, April 2020; Human Rights Watch, "Afghanistan: Little Help for Conflict-Linked Trauma," 7 October 2019.

⁶¹ Amnesty International in-person interview, 9 August 2021.

⁶² Amnesty International in-person interview, 9 August 2021.

Mohamadi and Isak Ali Mohamadi, their two brothers who had remained in custody, and sent the paperwork to the checkpoint with other family members. “We trusted the Taliban that they wanted the ID cards. They said ‘Send the cards in the hands of two elders.’ They said they wanted to make sure [Ramazan and Isak Ali] were not policemen, because they are against the police,” said another family member.⁶³ But the two men did not have a chance to prove they were not police. Upon return, the family members who had retrieved the cards discovered Ramazan and Isak Ali were missing, and the family was informed by a Taliban sympathizer they had already been killed, shot in the head.

“The elders of our village went to the elders of the Taliban and asked why this happened, and they said this is war, this is why it happened,” said a family member.⁶⁴

The men were buried at approximately 11pm on the evening of 19 July. Later that night, Taliban fighters came to the house of the family and demanded food. The family complied, and the Taliban returned to the home for every meal for the next three days.⁶⁵

The deliberate killings of Ramazan Mohamadi and Isak Ali Mohamadi are war crimes.

2.3 KILLINGS IN DAYKUNDI

On 30 August 2021, in Kahor village of Khidir district in Daykundi, Taliban forces unlawfully killed 11 ethnic Hazaras. Nine of those unlawfully killed were former members of the ANDSF who were attempting to surrender, and two were civilians, including a 17-year-old girl.⁶⁶

When the Taliban took control of Daykundi province, an estimated 34 ANDSF members sought safety in Khidir district. After the fall of Kabul, they contacted Taliban officials and agreed to surrender and turn in their military equipment and weaponry.⁶⁷ Mohammad Azim Sedaqat, who was leading the surrender, arranged to decommission the group’s weapons in the presence of the Taliban, and on 29 August the men negotiated final terms.⁶⁸

The next day, an estimated 300 Taliban fighters came to the district in a convoy, arriving in Dahani Qul village, where some of the ANDSF members were staying with family members. The ANDSF members attempted to leave the area with their families, heading west to Kahor village, where one of their vehicles got stuck.⁶⁹ When the Taliban fighters caught up with them, they opened fire on the crowd and killed two civilians, including a 17-year-old girl named Masuma. One of the ANDSF members then fired back, killing one Taliban fighter and wounding another.⁷⁰ The Taliban continued to shoot as the families scattered, killing two ANDSF members fleeing the scene. After nine more ANDSF members turned themselves in, the Taliban promptly took them to a nearby river basin and executed them.⁷¹

There was no military necessity for the Taliban to open fire on a group of nine surrendering ANDSF members, making the killings unlawful, as murder is prohibited (Rule 89). In addition, the extrajudicial executions of persons deprived of their liberty for reasons related to a non-international armed conflict is a war crime.

The names and estimated ages of the 11 ANDSF members are: Musa Amiri, 46; Khudad Jawahiri, 33; Esmatullah Zarigh, 34; Noor Ali Ibrahim, 34; Habibullah, 33; Amanullah, 32; Reza Karimi, 31; Dawran, 26; Dur Mohammad, 41; Abdul Hamid Fahimi, 28; and Reza Joya, 33.

Amnesty International obtained and verified a video of the killed ANDSF members, as well as photographs of the bodies of the dead and burial locations with gravestones. The video shows villagers carrying bodies up an incline, believed to be at the river basin near Kahor, to a single location for future burial. Amnesty International has been unable to independently geolocate this video, but its content is consistent with eyewitness testimony describing the location as close to Kahor. Photographs show the same eleven men, many individual close-ups that reveal execution-style gunshots to the head, as confirmed by a forensic pathologist.

⁶³ Amnesty International in-person interview, 9 August 2021.

⁶⁴ Amnesty International in-person interview, 9 August 2021.

⁶⁵ Amnesty International in-person interview, 9 August 2021.

⁶⁶ Amnesty International remote interviews, 18 and 24 September 2021.

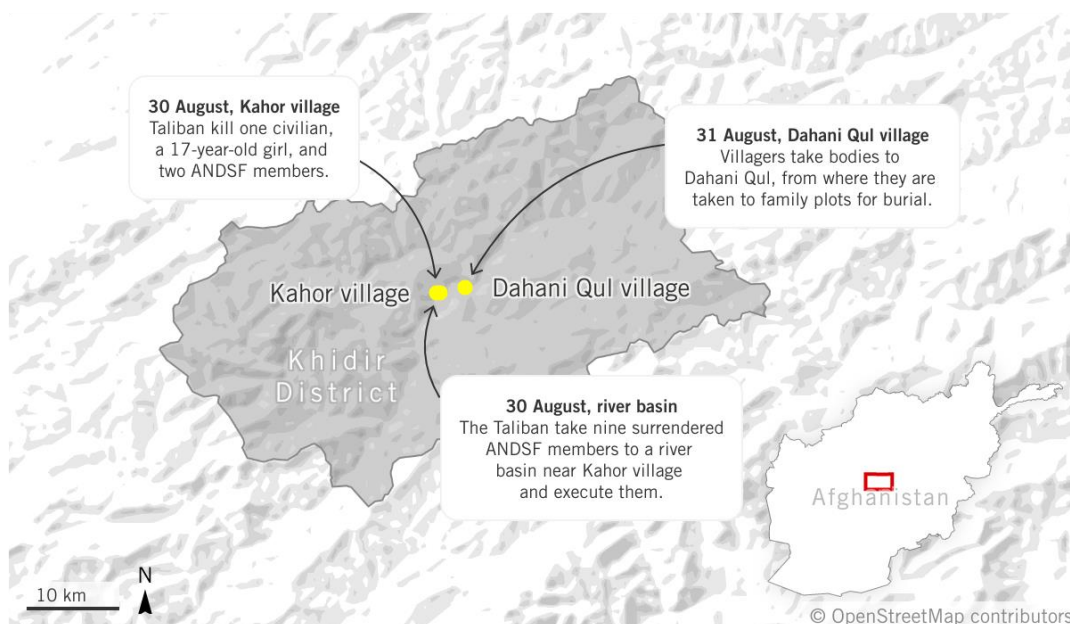
⁶⁷ Amnesty International remote interview, 18 September 2021.

⁶⁸ Amnesty International remote interview, 18 September 2021.

⁶⁹ Amnesty International remote interview, 24 September 2021.

⁷⁰ Amnesty International remote interview, 24 September 2021.

⁷¹ Amnesty International remote interview, 24 September 2021.



On 31 August, the day after the killings, villagers took the bodies to Dahani Qul, where they were then brought to family plots for burial. Amnesty International reviewed and verified photographs confirming the locations of two of the graves, and the identities of the people buried there.

The Taliban then told remaining family members that anyone who had fled should return and surrender within three days. Interviewees told Amnesty International that one senior Taliban official warned: “I have killed people for the past 20 years. Killing is easy for me. I can kill again.”⁷²

On 1 September, Sadiqullah Abed, the Taliban-appointed chief of police for Daykundi province, denied any killings had happened and instead only confirmed to local media that a member of the Taliban had been wounded in an attack in Daykundi.⁷³

2.4 KILLINGS AND MISTREATMENT OF DETAINEES IN PANJSHIR

On the morning of 6 September 2021, as part of a campaign to remove the last remaining resistance following the fall of Kabul, Taliban forces attacked Badqul, a village adjacent to the town of Bazarak in Panjshir province.⁷⁴ Upon seizing the village later that day, they held approximately twenty men in custody, who they inhumanely mistreated over the next several days of their detention.

When Taliban forces moved north, up the main highway through Panjshir, and attacked Bazarak, many civilians fled east, through the village of Badqul, to move to safety in the mountains overlooking the town.⁷⁵ A small group of local men, along with some former ANDSF members from other parts of the country,⁷⁶ had formed an armed opposition group to confront the Taliban, but were quickly overwhelmed by the larger force’s heavy machine guns, rockets, and mortars.⁷⁷ Several members of the local security force were killed in the fighting,⁷⁸ but approximately twenty men were detained, at least five of whom were wounded. Some of their wounds were quite serious, including gun shots to the face and chest, that required medical attention.

The men who were detained were threatened with execution and denied medical treatment. “[The] Taliban had taken a knife which was with one of the wounded, and he was saying he wanted to behead the

⁷² Amnesty International remote interview, 24 September 2021.

⁷³ *Ufugh News Agency*, “War in Khedir Daykundi; Fourteen people were killed, including two civilians,” 30 August 2021. Retrieved on 4 November 2021 from <https://ufuqnews.com/archives/185539>

⁷⁴ Amnesty International remote interviews, 26, 27 and 28 October 2021.

⁷⁵ Amnesty International remote interview, 26 October 2021.

⁷⁶ Amnesty International remote interview, 27 October 2021.

⁷⁷ Amnesty International remote interview, 26 October 2021.

⁷⁸ Amnesty International remote interviews, 26 and 27 October 2021.

wounded,” said one man who was captured. “We told them that since you have arrested us, please let the wounded to be treated. The Talib who was speaking in Pashtu did not allow it. He was saying that he wants to behead the wounded. The Taliban was saying I want to behead them because they are infidels and Jews.”⁷⁹ At this point another Taliban intervened and stopped the execution. One fighter said the Taliban made special note of men who they believed to be ANDSF members. “The Taliban had called them hundred per cent infidel. They hate the ANA most of all,” he said.⁸⁰

The fighters were kept in custody for two days, at times jailed in a pigeon coop,⁸¹ during which time they were tortured and denied food and water.⁸²

“They beat us with the backside of the weapon. They were abusing us... they were kicking us,” said a man who was captured. He continued:

They kept us underground. When we were asking for medical treatment of the wounded, the Taliban were saying “let them die.” If they are alive, they will fight again. There was no food and water, and no support to the wounded. They had brutal relations with us. For two days, we had no food and water. When we were asking for water, they were saying die of thirst.⁸³

Eventually the detainees were turned over to the new district governor in Bazarak.

Torture and cruel or inhuman treatment and wilful causing of suffering and serious injury to those deprived of liberty constitute a war crime.⁸⁴

Later in the afternoon on the day of the assault on Bazarak, 6 September 2021, the Taliban also attacked the village of Umarz, about 15 kilometres further up the main Panjshir highway. After a brief skirmish they seized control of the village and began house-to-house searches. Three eyewitnesses stated that a special “second group” of Taliban fighters, separate from the main body, was tasked with identifying and removing people from their homes.⁸⁵ At least six civilian men were executed over a period of 24 hours.⁸⁶

The Taliban entered one home and commandeered it for use in treating their wounded. The owner of the home, a man named Ghulam Ishan, was removed from the house with his hands tied, then led about 25 meters away and shot from behind.⁸⁷ “Bullets had hit on his left shoulder. A bullet had hit on his neck. Another bullet had hit above his ear. This bullet had destroyed his face,” said the man who buried him.⁸⁸

Mohammad Iqbal was about 38 years old, with a wife and two daughters, and had formerly worked for the NDS. His hands were tied behind his back and he was taken to the roadside and shot in the back.⁸⁹ Two other men who lived nearby were killed at the same time. Massaud, a farmer about 20 years old, owned a home that shared a wall with the house of Mohammad Iqbal. He was shot in the face.⁹⁰ Another man, Noor Mohammad, who was 25 years old and newly married, was shot in the heart. Both men were killed behind Iqbal’s home.

Mahidun, about 60 years old and the father of Noor Mohammad, was the last to be killed that night. It was after dark, and he had just come out of his house with a torch [flashlight] in his hand when he was stopped by the Taliban and shot in the chest.⁹¹

Mahammad Jabir, a 23-year-old former member of the ANDSF, was taken away by the Taliban during the house-to-house search.⁹² “They found Jabir with an old weapon,” said a witness. “A hunting weapon from the Russian time. We saw Jabir taken alive, and his hands were tied.”⁹³ The next day, the Taliban dumped his body at the bridge in the center of town.

⁷⁹ Amnesty International remote interview, 27 October 2021.

⁸⁰ Amnesty International remote interview, 26 October 2021.

⁸¹ Amnesty International remote interview, 27 October 2021.

⁸² Amnesty International remote interviews, 26, 27 and 28 October 2021.

⁸³ Amnesty International remote interview, 27 October 2021.

⁸⁴ Article 3 common to the four Geneva Conventions of 12 August 1949; Article 8(c)(ii), Rome Statute of the International Criminal Court.

⁸⁵ Amnesty International remote interviews, 31 October 2021, 2 November 2021.

⁸⁶ Amnesty International remote interviews, 31 October 2021 and 1, 2 November 2021.

⁸⁷ Amnesty International remote interview, 31 October 2021, 1 November 2021.

⁸⁸ Amnesty International remote interviews, 2 November 2021.

⁸⁹ Amnesty International remote interviews, 31 October 2021, 1, 2 November 2021.

⁹⁰ Amnesty International remote interviews, 31 October 2021, 2 November 2021.

⁹¹ Amnesty International remote interviews, 1, 2 November 2021.

⁹² Amnesty International remote interviews, 31 October 2021.

⁹³ Amnesty International remote interviews, 2 November 2021.

Eyewitnesses said that while some of the men had served previously in the ANSDF, none were currently in the government security forces or were taking part in the hostilities in any way. The deliberate killing of civilians is a war crime.

3. CIVILIAN CASUALTIES DURING AFGHAN AND US AIR STRIKES

“I saw women and children lying inside, some injured and some dead. These bombings have had such an effect on people, I cannot explain. When I hear planes I become a different person. I can’t think. Because first you hear it, the sound of the bombs is heavy and horrible and no one knows where it will hit. People around die or it damages the mind.”⁹⁴

A 38-year-old tailor from Khanabad, recalling a US air strike that killed five civilians.

Amnesty International has documented four air strikes, three most likely carried out by the United States, and one conducted by the Afghan Air Force (which was trained by the United States). In those cases, a total of 28 civilians were killed (15 men, five women, and eight children) and another six civilians were injured (three men, one woman, and two children).

In an overall pattern, the civilian casualties caused by US strikes resulted from a failure to properly identify the presence of civilians at a location believed to be a military target. This is a trend Amnesty International has identified in US air strikes conducted in many locations, from Syria to Somalia.⁹⁵

3.1 AN AFGHAN GOVERNMENT ATTACK

On the morning of 19 May 2020, an air strike conducted by the Afghan Air Force killed at least four civilians and an unknown number of Taliban fighters at a government clinic in the village of Basoz, in Chardara

⁹⁴ Amnesty International in-person interview, 2 August 2021.

⁹⁵ Amnesty International, *War in Raqqa: Rhetoric Versus Reality*, 25 April 2019. Retrieved on 5 November 2021 from <https://raqqa.amnesty.org/>; See also Amnesty International, “Somalia: Zero accountability as civilian deaths mount from US air strikes,” 1 April 2020. Retrieved on 5 November 2021 from <https://www.amnesty.org/en/latest/news/2020/04/somalia-zero-accountability-as-civilian-deaths-mount-from-us-air-strikes/>

district west of the city of Kunduz.⁹⁶ The civilians killed were Habib Turkman, Faisal Rhaman (about 32 years old), Khaled the son of Mohmad Gul (about 34 years old), and Sayed Aminullah, (42 years old).⁹⁷

The village of Bazos was controlled by the Taliban, and at the time of the attack, about 9:30am, the clinic and a nearby bazaar were operating normally; there was no fighting in the area. However, heavy fighting was ongoing between Taliban and government forces several kilometres to the east, near the city of Kunduz. At the time, the Taliban allowed Afghan government-administered medical services to continue in areas the armed group had captured. The clinic was owned by the government but operated by a local Afghan NGO called Just for Afghan Capacity and Knowledge (JACK).⁹⁸ Khaled, one of those killed in the strike, worked as a vaccinator at the facility.⁹⁹

An eyewitness heard the sound of the explosion while shopping at the nearby bazaar. “After the dust is over, I go to the clinic and I see my [family] were there,” he said. “A lot of women and children were inside the clinic, but we don’t know if they died. We only took the bodies that belonged to us.”¹⁰⁰

According to family members, one of the civilians killed in the strike, Sayed Aminullah, was farming in a nearby field the night before and had come home that morning, exhausted, to go to bed. However, the Taliban soon came to his home and woke him. “The Taliban came to our house and said he must donate blood for the mujahideen in the clinic,” said a family member.¹⁰¹ Sayed Aminullah was providing blood for wounded fighters who were receiving medical treatment when the bomb struck the health centre.¹⁰²

One eyewitness described hearing and seeing two small propeller-driven aircraft flying low and circling the clinic before and after the strike. This observation is consistent with the capabilities and tactics of the A-29 Super Tucano, flown by the Afghan Air Force, but not aircraft in the US or NATO inventories deployed to Afghanistan at the time.

A *New York Times* report on the strike quoted Ihsanullah Fazli, the director of health for Kunduz province, who confirmed that the clinic had been hit but denied that anyone had been killed.¹⁰³ This was incorrect. In addition, a spokesperson for the Ministry of Defense incorrectly claimed that they had not struck the building. The *New York Times* collected internal Afghan government documents indicating that an Afghan Air Force A-29 aircraft had hit “a center for treatment of wounded Taliban in Chardara District,” which is consistent with testimony collected by Amnesty International. The Armed Conflict Location and Event Data Project (ACLED) reports that, according to *Voice of Jihad*, two civilians were killed in the air strike.¹⁰⁴

International humanitarian law also affords special protection to specific persons and objects, including medical personnel and medical units, including hospital and clinics. Facilities and personnel used solely for the purpose of providing medical care should be protected from attacks in all circumstances.¹⁰⁵ Failure to differentiate between military objectives and civilian objects or protected objects, such as hospitals, can be a war crime.¹⁰⁶

3.2 US GOVERNMENT ATTACKS

NANGARHAR PROVINCE

On 23 July 2017, while conducting air strikes during fighting against ISKP, the United States armed forces killed nine civilians (six men and three women), and wounded another man, who were attending a funeral in the village of Mariz, in Haska Mena (which is also known as Deh Bala) district of Nangarhar province. The deaths occurred inside of a gated compound where no ISKP fighters were present.

The owner of the gated compound was Sayed Zahir Pacha.¹⁰⁷ At the time of the strike he was about 45 years old, a father of three sons and four daughters.¹⁰⁸ His uncle, Haji Aman Pacha, had recently died, and Sayed Zahir called family—including his son Sayed Bahrullah, who had moved to Kabul—to his home for a funeral

⁹⁶ Labeled Basoz-i-Bala on many international maps. <https://reliefweb.int/sites/reliefweb.int/files/resources/1575.pdf>

⁹⁷ Amnesty International in-person interviews, 6 and 11 August 2021, and remote interview, 3 December 2021

⁹⁸ *New York Times*, “Clinic Bombed as Afghan Forces Fend Off Taliban Attack on Kunduz,” Mujib Mashal, Najim Rahim, and Fahim Abed, 19 May 2020. Retrieved on 5 November 2021 from <https://www.nytimes.com/2020/05/19/world/asia/afghanistan-taliban-kunduz.html>

⁹⁹ Amnesty International remote interview, 3 December 2021.

¹⁰⁰ Amnesty International in-person interview, 6 August 2021.

¹⁰¹ Amnesty International in-person interview, 11 August 2021.

¹⁰² Amnesty International in-person interview, 6 and 11 August 2021.

¹⁰³ *New York Times*, “Clinic Bombed as Afghan Forces Fend Off Taliban Attack on Kunduz,” Mujib Mashal, Najim Rahim, and Fahim Abed, 19 May 2020. Retrieved on 5 November 2021 from <https://www.nytimes.com/2020/05/19/world/asia/afghanistan-taliban-kunduz.html>

¹⁰⁴ ACLED Afghanistan database via Data Export Tool: <https://acleddata.com/data-export-tool/>

¹⁰⁵ ICRC, Customary IHL Study, Rules 25 and 28.

¹⁰⁶ ICRC Customary IHL Study, Rule 12; Protocol I, Article 51(4)(a).

¹⁰⁷ Amnesty International in-person interview, 8 August 2021. The interviewees in this case specifically asked that their names be used.

¹⁰⁸ Amnesty International in-person interview, 8 August 2021.

service. The family stayed in a guest house, inside the walled compound where Sayed Zahir also lived in a separate home.

At about 10 am on 23 July 2017, Sayed Zahir and others began to hear gunfire outside the compound. They knew it to be a continuation of ongoing fighting between Afghan and US forces and ISKP fighters who had a significant presence in the area at the time. When the shooting began, Sayed Zahir ordered the gate to the compound be closed and locked, so no one could get in. Soon, he heard rockets and mortars detonating, and the children in the main home began screaming.¹⁰⁹ As Sayed Zahir moved towards the house to quiet the children, he heard and felt a massive explosion inside the compound.

The first strike hit the center of the guest house, killing eight civilians and destroying a large portion of the home and Sayed Zahir's vehicle parked next to the building. A second strike hit a wing of Sayed Zahir's main home, across the courtyard, killing another civilian.



*Sayed Bahrullah, 25 years old, who was killed in the attack.
© Private*

Three people from inside the guest house were thrown outdoors by the blast, where their bodies were discovered in the rubble. These civilians were Sayed Zahir's son-in-law, Mobarez Khan (20 years old), his cousin Sayed Atiquallah (30), and Atiquallah's brother-in-law Massoud (18). Others who were killed were out in the yard, near the guest house, when the bomb hit. These included Sayed Zahir's son, Sayed Bahrullah (25), his father's uncle, Mia Mohammad Ajan (60), his cousin Qari Najbullah (26), and Qari Najbullah's mother and sister, Wahed Bibi (70) and Rubina (30), who had travelled from out of town from the funeral. Sayed Zahir's daughter, Khadija (18), was killed in the main home.¹¹⁰ Another man was injured, losing his hand and no longer able to work.¹¹¹

Sayed Sher Agha—a 55-year-old father of ten, and the son of Wahed Bibi—was at his home, about a 10-minute walk away, when the air strike occurred.¹¹² He had seen jet aircraft flying in circles above his village prior to the detonation, and this worried him. “[My children] are so scared of the airplanes, they stick to your body and won’t let go,” he said.¹¹³ All morning, he was in hiding with his family due to the fighting between ISKP and ANDSF, backed by US aircraft and SOF on the ground. One mortar had already struck his home, and ISKP fighters were moving throughout his village.

“The conflict [in Nangarhar] was both Taliban and the government fighting Daesh, but never at the same time. This time it was government fighting Daesh,” he said. “Daesh had come on motorbikes... [and] were coming close to the house that was bombed.”¹¹⁴

On the morning of the strike, Sayed Zahir's son, a 20-year-old man named Tahirullah, left his father's home to drive his aunt from the village of Mariz to Kotomiran. Then the battle started. “The government was in Kotomiran, moving towards Mariz because Daesh was in Mariz,” he said.¹¹⁵ “I saw guns, mortars, RPGs. We drove straight and very fast because no way to tell Daesh we are civilians, but the government sees we are civilians and they say to leave the area.” Tahirullah took cover in Kotomiran during the fighting, and about 2:30 in the afternoon returned to his home to see it destroyed.

“I see people dead, I see the houses ruined, and I look for my sister lost in the rubble. [Then] the American forces came in, and they are fighting Daesh,” he said. He further explained:

The Americans came to keep us safe to pull the bodies out. But Daesh comes to fight them. The Americans said: ‘We have the wrong coordination and we have hit your house by mistake.’ In our guest

¹⁰⁹ Amnesty International in-person interview, 8 August 2021.

¹¹⁰ Amnesty International in-person interview, 8 August 2021.

¹¹¹ Amnesty International recorded interview, July 2021.

¹¹² Amnesty International in-person interview, 8 August 2021.

¹¹³ Amnesty International in-person interview, 8 August 2021.

¹¹⁴ Amnesty International in-person interview, 8 August 2021.

¹¹⁵ Amnesty International in-person interview, 8 August 2021

house there were a lot of people sitting on the terrace there. Maybe they think that men with beards are Daesh?

According to Sayed Zahir, because the strike was a major incident covered in Tolo News,¹¹⁶ he was invited to Kabul, where he met President Ghani and former-President Karzai who both offered to help him personally, though neither ever did.¹¹⁷ “Ghani felt sorry for us and shared sympathy. He personally said he would help us but he did not,” said Sayed Sher Agha, adding that he believed Ghani and Karzai likely attempted to send their own money to the families, but a corrupt assistant pocketed the money.¹¹⁸

“So I went to the governor and the local Afghan Army commander and I screamed at them ‘Why did you do this, can’t we have funerals anymore!’” said Sayed Zahir. “The Americans were there, the governor and the commander said they would stop bombing and they stopped. That’s how I know the Americans were doing the bombing. But later the bombing started again. The Americans would only speak to the governor and the commander, not to me.”¹¹⁹ The governor of Nangarhar eventually paid Sayed Zahir 100,000 Afghanis, or about \$1200, per person killed, and 50,000 Afghanis per person injured, though it was not clear to Sayed Zahir whether this was an official government payment or from the governor personally.¹²⁰ However, these payments levels are standard for “Code 91/92” government payments through the State Ministry for Martyrs and Disabled Affairs.¹²¹

Lower resolution satellite imagery of the area indicates that the home was struck between 22 and 25 July 2017. High resolution imagery confirms a large crater and significant damage to a home on the north side of the compound, with additional damage to a structure on the southern side of the courtyard.



High resolution satellite imagery from 17 August 2017 shows the site of two air strikes in Nangarhar Province, Afghanistan. Low resolution satellite imagery (not shown) was used to confirm the air strikes occurred between 22-25 July 2021.

Subsequent reporting has revealed that the US believed the Haska Mena district held the capital of ISKP.¹²² One media report at the time indicated that Haji Aman Pacha, whose funeral was being held, was a high-

¹¹⁶ Tolo News, “Nangarhar Residents Claim Foreign Airstrike Targeted Civilians,” Ziar Khan Yaad, 24 July 2017. Retrieved on 11 October 2021 from <https://tolonews.com/afghanistan/nangarhar-residents-claim-foreign-airstrike-targeted-civilians>

¹¹⁷ Amnesty International in-person interview, 8 August 2021.

¹¹⁸ Amnesty International in-person interview, 8 August 2021.

¹¹⁹ Amnesty International in-person interview, 8 August 2021.

¹²⁰ Amnesty International in-person interview, 8 August 2021.

¹²¹ CIVIC, *Unacknowledged Harm: Hurdles to Receiving Victims’ Assistance in Afghanistan*, December 2020. Retrieved on 6 November 2021 from https://civiliansinconflict.org/wp-content/uploads/2021/03/CIVIC_Afghanistan_Report_Final.pdf

¹²² Donati, Jessica. *Eagle Down: The Last Special Forces Fighting the Forever War*. New York: Public Affairs, 2021. p. 239.

ranking member of ISKP.¹²³ Residents and members of his family deny that this is true.¹²⁴ However, whether the funeral was being held for an ISKP member or not is irrelevant to evaluating the legal merits of the strike. Amnesty International was unable to identify a legitimate military target within the compound or either house that was struck.

About three weeks after the strike, on 11 August 2017, US forces in Afghanistan published a statement alleging that there were two false claims of civilian casualties in Heska Mena district, and *The Bureau of Investigative Journalism* reported that this statement likely referred back to this 23 July 2017 strike on the funeral.¹²⁵ In addition, this strike does not appear on a list of condolence payments made by US Army Central in 2017,¹²⁶ nor specifically on the 2018 DoD Civilian Casualty report to Congress, though the latter provides little transparency and does not list cases individually.¹²⁷ Human Rights Watch conducted an investigation of the strike, determined that at least nine civilians were killed, and reported that a US spokesperson said there were “no indications that civilians were in the area either before the strike or after the strike.”¹²⁸

ISLAMIC STATE KHORASAN PROVINCE (ISKP)

ISKP is an affiliate, or *wilayat*, of the armed group calling itself the Islamic State (IS), that is active in Central and South Asia. The group formed in Afghanistan in 2014 and consists mainly of former Al Qaeda and Taliban fighters who believed that once an Islamic caliphate had been declared it was their religious duty to swear fealty to it. “Khorasan” is a historical term, referring to a region encompassing portions of Afghanistan, Iran, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan.¹²⁹ Some Afghans refer to ISKP as “Daesh,” the phonetic pronunciation of the Arabic acronym for “ISIS” that is widely used in Iraq and other places in the Middle East.

IS now claims dozens of *wilayats* across Africa, the Middle East, and Asia. Amnesty International has documented crimes under international law, including crimes against humanity and war crimes and human rights violations and abuses committed by other *wilayats*, including the Islamic State West Africa Province (ISWAP) in Nigeria,¹³⁰ Islamic State in the Greater Sahara (ISGS) in Niger,¹³¹ the Islamic State Central Africa Province (ISCAP) in Mozambique,¹³² and Southeast Asian *wilayats* in the Philippines.¹³³

ISKP has been responsible for hundreds of gruesome attacks, particularly against ethnic and religious minorities.¹³⁴ One man—a resident of Nangarhar, where ISKP has a powerbase—told Amnesty International: “Daesh treats the people the worst. Daesh would behead people. In our village, farming is the main work, and women and men work together. But if Daesh sees women in the field, they fine you

¹²³ Pajhwok Afghan News, “Death toll in Haska Mena drone strike rises: source,” Yousuf Zarifi, 23 July 2017. Retrieved on 13 October 2021 from <https://pajhwok.com/2017/07/23/death-toll-haska-mena-drone-strike-climbs-source/>

¹²⁴ Amnesty International in-person interview, 8 August 2021.

¹²⁵ The Bureau of Investigative Journalism, “Afghanistan: Reported US Covert Actions 2017.” Retrieved on 13 October 2021 from <https://www.thebureauinvestigates.com/drone-war/data/get-the-data-a-list-of-us-air-and-drone-strikes-afghanistan-2017/p3#strike-logs>

¹²⁶ US Army Central Freedom of Information Act, “FY-17 AFGHANISTAN CONDOLENCE PAYMENTS.” Retrieved on 13 October 2021 from <https://www.usarcent.army.mil/Portals/1/FOIA/FY%2017%20Afghanistan%20Condolence%20Payments.pdf?ver=2020-03-18-112021-480>

¹²⁷ Department of Defense, “Annual Report on Civilian Casualties in Connection With United States Military Operations,” Fiscal Year 2018. Retrieved on 13 October 2021 from <https://man.fas.org/eprint/civcas2018.pdf>

¹²⁸ Human Rights Watch, “Afghanistan: Weak Investigations of Civilian Airstrike Deaths,” 16 May 2018. Retrieved on 13 October 2021 from <https://www.hrw.org/news/2018/05/16/afghanistan-weak-investigations-civilian-airstrike-deaths>.

¹²⁹ Center for Strategic and International Studies, “Examining Extremism: Islamic State Khorasan Province (ISKP),” Catrina Dooxsee, Jared Thompson, and Grace Hwang, 8 September 2021. Retrieved on 6 November 2021 from <https://www.csis.org/blogs/examining-extremism/examining-extremism-islamic-state-khorasan-province-iskp>.

¹³⁰ Amnesty International, “My Heart is in Pain”: Older People’s Experience of Conflict, Displacement, and Detention in Northeast Nigeria, 8 December 2020, AFR 44/3376/2020. Retrieved on 4 November 2021 from <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR4433762020ENGLISH.pdf>.

¹³¹ Amnesty International, “I Have Nothing Left Except Myself”: The Worsening Impact on Children of Conflict in the Tillaberi Region of Niger, 13 September 2021, AFR 43/4627/2021. Retrieved on 4 November 2021 from <https://www.amnesty.org/en/wp-content/uploads/2021/09/AFR4346272021ENGLISH.pdf>.

¹³² Amnesty International, “What I Saw is Death”: War Crimes in Mozambique’s Forgotten Cape, 2 March 2021, AFR 41/3545/2021. Retrieved on 4 November 2021 from <https://www.amnesty.org/en/wp-content/uploads/2021/05/AFR4135452021ENGLISH.pdf>.

¹³³ Amnesty International, *The Battle of Marawi: Death and Destruction in the Philippines*, 17 November 2017, ASA 35/7427/2017. Retrieved on 10 November 2021 from <https://www.amnesty.org/en/documents/asa35/7427/2017/en/>.

¹³⁴ Human Rights Watch has determined that these attacks amount to crimes against humanity. Human Rights Watch, “Afghanistan: Surge in Islamic State Attacks on Shia,” 25 October 2021. Retrieved on 6 November 2021 from <https://www.hrw.org/news/2021/10/25/afghanistan-surge-islamic-state-attacks-shia>.

5000 Afghanis [\$63]. They won't let women go out alone, they would call a man and punish both by hitting them.”¹³⁵

Because ISKP is a mutual enemy of the Taliban, the United States, and the former Afghan government, on occasion the US conducted air strikes in support of Taliban fighters battling ISKP; indeed, the special operations forces who intercepted Taliban radio calls and used the information to target ISKP jokingly called themselves the “Taliban Air Force.”¹³⁶ In 2016 and 2017, as the US ramped up fighting against IS in Iraq and Syria, US military commanders in Afghanistan also increased attacks against ISKP, seemingly lowering intelligence and civilian casualty avoidance standards to conduct strikes, compared to Taliban and Al Qaeda targets. As reported by Wesley Morgan in *Politico*, one top US officer said that ISIS “became the focus because there was pressure from the top to clamp down on their expansion, and it was a target rich environment. With Al Qaeda, it was a lot of long-term developments and surveillance – very labor intensive. [With ISKP] you’d put up a drone, see some activity, and strike.”¹³⁷ The officer reportedly went on to say that during the Trump Administration, they had approvals to conduct strikes quickly: “We have the OK to go after a target set with a lot of low-hanging fruit.”

KUNDUZ PROVINCE

Very early in the morning of 10 November 2020, an air strike, most likely conducted by the United States, killed five civilians and wounded another six at a family’s home in the Mulla Ghulam neighbourhood of the city of Khanabad, in Kunduz Province.

Just after midnight, a witness who was in the home heard planes begin to circle overhead.¹³⁸ About 20 minutes later, the first bomb struck the family compound. The aircraft continued to circle, and the second air strike impacted 15 minutes later.



The home destroyed by the first air strike, looking southwest. © Private

¹³⁵ Amnesty International in-person interview, 8 August 2021.

¹³⁶ *Washington Post*, “Our secret Taliban air force,” Wesley Morgan, 22 October 2020. Retrieved on 6 November from <https://www.washingtonpost.com/outlook/2020/10/22/taliban-isis-drones-afghanistan/>.

¹³⁷ *Politico*, “Whatever happened to Al Qaeda in Afghanistan,” Wesley Morgan, 15 August 2018. Retrieved on 14 October 2021 from <https://www.politico.com/story/2018/08/15/al-qaeda-afghanistan-terrorism-777511>.

¹³⁸ Amnesty International in-person interview, 2 August 2021.

NO ESCAPE

WAR CRIMES AND CIVILIAN HARM DURING THE FALL OF AFGHANISTAN TO THE TALIBAN

Amnesty International



The same home, looking to the northwest. © Private

At the time of the attack, a total of 27 people were sleeping in the compound, 25 from the family who lived there, and two guests visiting from out of town. The first weapon hit the guesthouse, along the outer wall of the compound. The blast killed Mohammad Bashir, a 23-year-old engineer, and Hajra bint Abdul Ghayyur, his 3-month-old niece. After the detonation, people inside the guest house fled out into the courtyard, and met other family members who were sleeping in the main quarters, a long low building consisting of a series of rooms and exterior patio. These civilians took refuge in two small buildings along the compound wall, one that kept goats and other livestock, and another that contained a furnace and wood for heating. “I told the women and children to go to other places, to spread out” said one man, a witness.¹³⁹ “We expected another bomb, because whenever people gather after one bomb they get hit again. The Americans do it.”¹⁴⁰ The second air strike hit the livestock shelter, killing three and wounding another six.

Those killed were two women, Bilqiseh bint Abdul Qadir (21 years old) and Nouriyeh bint Abdul Khaliq (25 years old), and one man, Qader Khan (24 years old). The six injured include one older woman and two children. All were civilians.¹⁴¹

A nine-year-old child who was injured in the attack said:

I was sleeping when the first bomb hit... They were telling us to hide somewhere in case the second bomb happened. My father said I had to find my younger brother. The second bomb killed my mother, my uncle, my aunt, and my sister. All of them.¹⁴²

According to the *New York Times Magazine* and data collected by ACLED, Khanabad was the scene of significant fighting between Taliban and government forces on 9 November 2020.¹⁴³ Residents told Amnesty International that several hours before the strikes they heard clashes, particularly around a checkpoint approximately 700 meters east of the home that was ultimately struck.¹⁴⁴ According to one eyewitness, the Taliban would often ride their motorbikes on the road alongside the house, or take a break along the exterior wall.¹⁴⁵

Another eyewitness said that because of the regular gunfire, he told the women and children to stay inside the main home while they waited for the fighting to stop.¹⁴⁶ About ten or eleven o'clock in the evening, the clashes eased, and the family was able to go to sleep. The air strikes hit soon after. Residents said that two days later the Taliban captured the checkpoint from the government.¹⁴⁷

Amnesty International verified photographs and videos from the scene of the strike, which clearly show the destruction of the main home and smaller out-buildings. Amnesty International was able to use this video to

¹³⁹ Amnesty International in-person interview, 2 August 2021.

¹⁴⁰ Amnesty International in-person interview, 2 August 2021.

¹⁴¹ Amnesty International in-person interview, 2 August 2021.

¹⁴² Amnesty International in-person interview, 2 August 2021.

¹⁴³ *New York Times Magazine*, “Afghan War Casualty Report: November 2020,” Fatima Faizi and Fahim Abed, 2 September 2021.

Retrieved on 29 November 2021 from <https://www.nytimes.com/2020/11/05/magazine/afghan-war-casualty-report-november-2020.html>

ACLED Afghanistan database via Data Export Tool: <https://acleddata.com/data-export-tool/>

¹⁴⁴ Amnesty International in-person interviews, 2 August 2021.

¹⁴⁵ Amnesty International in-person interview, 2 August 2021.

¹⁴⁶ Amnesty International in-person interview, 2 August 2021.

¹⁴⁷ Amnesty International in-person interviews, 2 August 2021. Note that ACLED reports that the checkpoint was seized later that day.

precisely geolocate the home, and satellite imagery corroborates that the compound was struck between 7 and 16 November 2020.



A panorama of a video acquired by Amnesty International shows damage from two air strikes on a compound in Kunduz Province, Afghanistan. The panorama highlights features from the video, that were aligned with the satellite imagery.



The front wing of a GBU-12 500lb Paveway II laser guided bomb that was discovered in the wreckage of the home. © Private

Another photograph provided by the witnesses shows scrap recovered at the scene, including the front wing of a GBU-12 500 pound Paveway II laser guided bomb, with a Commercial and Government Entity (CAGE) code of 96214, indicating that it was manufactured by Raytheon.¹⁴⁸

Amnesty International believes that this bomb was most likely dropped by the United States military. While in 2016 the United States provided both 250lb and 500lb laser-guided bombs to the Afghan Air Force, for use on their A-29 Super Tucano light attack aircraft, there are no reports that the Afghan Air Force was ever able to use the 500lb models in combat.¹⁴⁹ Rather, technical problems prevented the use of the larger weapons, and the Afghan Air Force concentrated on the employment of 250lb laser-guided bombs and 2.75in precision-guided rockets. In addition, the attack involved two precise strikes at night, a challenging capability rarely demonstrated by the Afghan Air Force, and witnesses at the scene reported hearing the sound of a jet,¹⁵⁰ not a propeller-driven engine aircraft, overhead at the time of the strike.

KABUL

On 29 August 2021, a drone strike carried out by the United States killed ten civilians, including seven children, at a home in western Kabul. In an initial statement, CENTCOM stated: “We are confident we successfully hit the target. Significant secondary explosions from the vehicle indicated the presence of a

¹⁴⁸ Commercial and Government Entity Program, <https://cage.dla.mil/Search/Results?q=96214&page=1>

¹⁴⁹ *The Drive*, “Afghan A-29s Aren’t Dropping Laser-Guided Bombs or Engaging Targets at Night,” Joseph Trevithick, 21 December 2017. Retrieved on 6 November 2021 from <https://www.thedrive.com/the-war-zone/17154/afghan-a-29s-arent-dropping-laser-guided-bombs-or-engaging-targets-at-night>

¹⁵⁰ Amnesty International in-person interview, 2 August 2021.

substantial amount of explosive material. We are assessing the possibilities of civilian casualties, though we have no indications at this time.”¹⁵¹ Each of these statements would in turn be proven false.

Several news organizations shared exclusive photos and videos of the scene with Amnesty International's weapons expert, for post-blast analysis.¹⁵² That digital material revealed little damage to the compound surrounding the vehicle, indicating that it was very unlikely that a significant secondary explosion occurred. Instead, the level of damage, and presence of soot and other burn marks, appeared most likely consistent with a single warhead from a Hellfire missile followed by a hot fire, such as a car fire fueled by a petrol tank.¹⁵³

On 17 September 2021, the US admitted that the 10 people killed in the drone strike were civilians, not ISKP operatives or affiliates.¹⁵⁴ Their names were: Zamarai Ahmadi (43 years old), Nasser (30), Zamir Ahmadi (20), Faisal Ahmadi (16), Farzad Ahmadi (11), Arween (7), Binyamin (6), Malika (3), Ayat (2), and Simaiya (less than one year old).¹⁵⁵ A follow-up review by the Air Force Inspector General said that no misconduct or negligence had occurred, and no criminal charges or disciplinary action was recommended.¹⁵⁶

This strike raises serious questions about future potential operations that will be carried about by the United States in Afghanistan, and the legal framework that will guide such activity. This is discussed more below in section 5.

¹⁵¹ U.S. Central Command, “U.S. Central Command statement on defensive strike in Kabul,” 29 August 2021. Retrieved on 6 November 2021 from <https://www.centcom.mil/MEDIA/STATEMENTS/Statements-View/Article/2756206/us-central-command-statement-on-defensive-strike-in-kabul/>

¹⁵² Amnesty International contributed technical expertise to all three major media investigations into the incident. *CNN*, “What CNN found in investigation of US drone strike,” The Lead, 14 September 2021. Retrieved on 5 November 2021 from <https://www.cnn.com/videos/world/2021/09/14/us-drone-strike-afghanistan-isis-k-the-lead-coren-ldn-vpx.cnn>. *Washington Post*, “Examining a ‘righteous’ strike,” Alex Horton, Sarah Cahlan, Dalton Bennett, Joyce Sohyun Lee, Meg Kelly and Elyse Samuels, 10 September 2021. Retrieved on 5 November 2021 from <https://www.washingtonpost.com/investigations/interactive/2021/kabul-drone-strike-questions/>. *New York Times*, “How a U.S. Drone Strike Killed the Wrong Person,” Christoph Koettl, Evan Hill, Matthieu Aikins, Eric Schmitt, Ainara Tiefenthaler, and Drew Jordan, 10 September 2021. Retrieved on 5 November 2021 from <https://www.nytimes.com/video/world/asia/100000007963596/us-drone-attack-kabul-investigation.html>

¹⁵³ Fragments of the Hellfire rocket motor were visible in several photographs provided by media sources.

¹⁵⁴ *Reuters*, “U.S. says Kabul drone strike killed 10 civilians, including children, in ‘tragic mistake,’” Phil Stewart and Idrees Ali, 17 September 2021. Retrieved on 6 November 2021 from <https://www.reuters.com/world/asia-pacific/us-military-says-10-civilians-killed-kabul-drone-strike-last-month-2021-09-17/>

¹⁵⁵ *Washington Post*, “U.S. plans to make condolence payments to families of Afghans killed in mistaken drone strike,” Adela Suliman, 16 October 2021. Retrieved on 6 November 2021 from <https://www.washingtonpost.com/world/2021/10/16/pentagon-payment-afghanistan-drone/>

¹⁵⁶ *Associated Press*, “Watchdog finds no misconduct in mistaken Afghan strike,” Lolita C. Baldor, 3 November 2021. Retrieved on 29 November 2021 from <https://apnews.com/article/afghanistan-kabul-bf24b4a670895ab1cc0b345ee9c90c74>

4. CIVILIAN CASUALTIES DURING GROUND COMBAT

“The people who can afford to leave do but the poor people stay because they will starve if they leave.”¹⁵⁷

A 40-year-old shop keeper, in Kunduz, describing why his family was unable to flee the fighting in the city.

Amnesty International has documented eight cases of civilian casualties as a result of ground combat, in which a total of 12 people were killed (five men, one woman, and six children) and 15 were injured (six men, four women, and five children). These cases—in Baghlan, Kandahar, and Kunduz provinces—represent a tiny fraction of the civilian casualties that occurred during the major Taliban offensive that began in earnest in May 2021.¹⁵⁸ However, they put to bed the lie that the fall of the government in Kabul was bloodless.

The use of mortars in the following cases are particularly problematic, and constitute indiscriminate attacks, which are possible war crimes. Mortars are inherently inaccurate and, therefore, should never be used in populated areas where military objectives are in close proximity to civilians or civilian objects.¹⁵⁹

4.1 AFGHAN GOVERNMENT ATTACKS

KUNDUZ PROVINCE

On the afternoon of 22 June 2021, one man was killed and a woman and a man were injured during a mortar attack on a home in the Zakhail neighbourhood of the city of Kunduz. The mortar was most likely launched by the ANDSF at the First Police District, approximately 2.5 kilometres away from the scene of the detonation.¹⁶⁰

For weeks before the mortar attack, there had been fighting in the neighbourhood nearly every day between Taliban and government forces, the Taliban controlling the fringe outer suburbs of Kunduz and most often moving around on motorbikes, and the government launching mortars from their headquarters at the police checkpoint within the city proper. There had also been sporadic gunfire in the morning before the mortar struck the home between 2 and 3 pm. According to two eyewitnesses, there were no Taliban fighters in or on the street outside the home at the time of the detonation.¹⁶¹ However, according to a witness, the Taliban staged fighters at a nearby mosque and high school, which both lay approximately 200 metres from the home.¹⁶² In particular, the witness said the Taliban used the high school as their “main post.” Using civilian

¹⁵⁷ Amnesty International in-person interview, 2 August 2021.

¹⁵⁸ UNAMA, “Afghanistan: Protection of Civilians in Armed Conflict Midyear Update: 1 January to 30 June 2021,” 26 July 2021. Retrieved on 1 November 2021 from https://unama.unmissions.org/sites/default/files/unama_poc_midyear_report_2021_26_july.pdf

¹⁵⁹ Article 36 and PAX, “Explosive Weapons with wide area effects and risk to civilians,” Background Note, February 2020. Retrieved on 10 November 2021 from <https://www.inew.org/wp-content/uploads/2020/02/wide-area-effects-1.pdf>

¹⁶⁰ Amnesty International in-person interview, 3 August 2021.

¹⁶¹ Amnesty International in-person interview, 3 August 2021.

¹⁶² Amnesty International in-person interview, 3 August 2021.



Abdul Razaq, 20 years old, who was killed in the mortar attack. © Private

objects, such as schools and mosques, for military purposes increases the risk of them being attacked and of any civilians present being harmed, which can be a violation of international humanitarian and human rights law.¹⁶³ The Taliban's use of the high school is also contrary to the global Safe Schools Declaration, which the Afghan government endorsed in 2015 (see text box below).

The man killed was named Abdul Razaq. He was 20 years old and had just been engaged to be married. Fragments from the mortar tore off a portion of his head and opened his chest such that his stomach and intestines fell out, according to the person who recovered his body.¹⁶⁴ The woman who was injured was hit with falling wooden debris in the eyes and has required a number of operations in Kabul to help her recover her sight.

SAFE SCHOOLS DECLARATION

Amnesty International has documented the Taliban's use of at least four schools for military purposes during fighting prior to their takeover of the country.¹⁶⁵ The scale of such use is likely significantly higher, reflecting a longstanding pattern by various parties throughout the conflict.¹⁶⁶ One principal in Kabul, anticipating the fall of the city to the Taliban, said, "Just like they have captured other cities, the first place they go is the school to use it for defence. They take it over."¹⁶⁷

In 2015, the Government of Afghanistan endorsed the Safe Schools Declaration, a political commitment aimed at strengthening the protection of education during armed conflict. The Safe Schools Declaration includes an endorsement of the *Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict*, which call on parties to a conflict to not use "functioning" schools or universities "in any way in support of the military effort," including schools "temporarily closed... during vacation periods."¹⁶⁸ As the de facto authorities in Afghanistan, the Taliban should abide by the commitments in the Safe Schools Declaration, in addition to international humanitarian and human rights law.

The failure to respect schools' civilian character places the schools—as well as students, teachers, and other education officials—at risk of attack. It also undermines children's access to education, with a disproportionate impact on girls. Attacks on schools have occurred repeatedly throughout the armed conflict in Afghanistan and have been carried out by all sides, with little to no accountability.¹⁶⁹

¹⁶³ Under international humanitarian law, parties to a conflict should take precautions to protect the civilian population and civilian objects from military operations; "cultural property" like mosques and schools are entitled to "special care". See ICRC, Customary International Humanitarian Law: Rule 38. Attacks Against Cultural Property; Additional Protocol II, Article 16; and Global Coalition to Protect Education from Attack (GCPEA), *Commentary on the "Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict"*, https://protectingeducation.org/wp-content/uploads/documents/documents_commentary_on_the_guidelines.pdf, pp. 9-13.

¹⁶⁴ Amnesty International in-person interview, 3 August 2021.

¹⁶⁵ Amnesty International, "Afghanistan: Taliban must allow girls to return to school immediately – new testimony," 13 October 2021. Retrieved on 6 November 2021 from <https://www.amnesty.org/en/latest/press-release/2021/10/afghanistan-taliban-must-allow-girls-to-return-to-school-immediately-new-testimony>

¹⁶⁶ Human Rights Watch, "Education on the Front Lines: Military Use of Schools in Afghanistan's Baghlan Province," 17 August 2016. Retrieved on 6 November 2021 from <https://www.hrw.org/report/2016/08/17/education-front-lines/military-use-schools-afghanistans-baghlan-province>

¹⁶⁷ Amnesty International in-person interview, 8 August 2021.

¹⁶⁸ *Guidelines for Protecting Schools and Universities from Military Use During Armed Conflict*, December 2014, Guideline 1.

¹⁶⁹ Global Coalition to Protection Education from Attack (GCPEA), *Education Under Attack 2020*, pp. 98-103 (indicating that GCPEA had "collected reports of over 300 attacks on schools between 2017 and 2019, which injured or killed at least 410 students, teachers, or education personnel"); and GCPEA, *The Impact of Explosive Weapons on Education: A Case Study of Afghanistan* (identifying, between



Manizha, 12 years old, who was paralyzed after being struck with a metal fragment from a mortar. She later died of her injuries. © Private

The same day, on 22 June 2021, also in the Zakhail neighbourhood, one child was killed and two more were injured, when a mortar, most likely launched by the ANDSF, landed on a home where a family was hiding. Manizha, a twelve-year-old girl, was hit in the spine with a heavy metal fragment. She was initially paralyzed, and then died ten days later. A young boy and 16-year-old girl were injured but not hospitalized.¹⁷⁰

Due to the fighting taking place in the neighbourhood, the children had stayed in the basement all day. However, around seven o'clock that evening, when the shooting had seemingly stopped, the children went outside into the yard to play under a tree. The mortar struck soon after. A resident who lived nearby came to the home soon after and saw a fragment of the weapon left behind. He drew a picture for Amnesty International researchers that clearly depicts the tail boom of a mortar.¹⁷¹ The same man went to the hospital afterwards with Manizha. "That day was the 1st of Saratan [22 June], there were many mortars. I recognized my fellow villagers in the hospital. There were Taliban in our neighbourhood, they stayed in the mosques but not people's houses. [Later] I moved to the airport road because it is the only place in Kunduz that is safe

now. Anyone with jobs and money have moved there."¹⁷² The day after Amnesty International spoke to this resident, all of Kunduz fell to the Taliban.

The next day, on the evening of 23 June 2021, one woman and one child were killed, and a man and two other children were injured, by a mortar attack most likely launched by ANDSF during continued fighting against the Taliban, also in the Zakhail neighbourhood of Kunduz.

Bibi Shahnaz, about 30 years old, and her 12-year-old son Faisal were killed while taking shelter in their home. Another child, a boy 16 years old, lost both legs at the knee. At the time of the detonation, there was heavy fighting between Taliban forces, located very close to the home, and government forces launching mortars from a checkpoint near the Spin Zar factory about a half a kilometre away to the east. One witness in the home said there were a series of four detonations, each less than a minute apart, that gradually moved closer to the home, the last striking the central yard directly. This is consistent with a military force "walking" a mortar towards a target. Doing so in an area with civilians is extremely reckless,¹⁷³ and such negligence in failing to distinguish between military objectives and civilian objects can constitute a war crime. Under the Explosive Weapons in Populated Area (EWIPA) framework, such attacks are considered to have "wide area effects," because not only are mortars highly inaccurate, they require multiple rounds to "dial in" on a target. These extra rounds can fall on areas populated by civilians and cause significant harm, as they did in this case.

An Amnesty International researcher examined the legs of the injured man. After removing the bandage on his left leg, bone was still visible in the largest wound. On his lower right leg were a series of smaller wounds

January 2018 and June 2021, more than "200 reported attacks on schools, school students and personnel, and higher education in Afghanistan that involved explosive weapons", with a particularly high number coming in the first half of 2021).

¹⁷⁰ Amnesty International in-person interview, 7 August 2021.

¹⁷¹ Amnesty International in-person interview, 7 August 2021.

¹⁷² Amnesty International in-person interview, 7 August 2021.

¹⁷³ Per the International Committee of the Red Cross' discussion of the "mental element" when determining intent in targeting decisions, "International case-law has indicated that war crimes are violations that are committed wilfully, i.e., either intentionally (*dolus directus*) or recklessly (*dolus eventualis*)."¹⁷⁴ ICRC IHL Database, Rule 156. Definition of War Crimes. Retrieved on 5 November 2021 from https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule156

consistent with the splatter of fragments from explosive ordnance. Another witness drew a picture of the ordnance scrap they found on the ground: a distinct 6-fin tail boom from a mortar, consistent with many models used by ANDSF.¹⁷⁴

One man, who transported the victims to the hospital, said that the Taliban had warned the family about the danger of the fighting, but that they had received no such communication from the government. He said:

The Taliban warn us when they will have operations, they say “we will be fighting tonight” and the people who can afford to leave do but the poor people stay because they will starve if they leave. But there is no use of asking the government when we know they are going to do nothing.”¹⁷⁵

Many residents of Zakhail expressed frustration that they felt trapped in the neighbourhood during the fighting. “A lot of people died that day,” said one victim’s family member, referring to 23 June 2021. “We know the families, but they all flee. One brother doesn’t know where another is. They go to Kunduz city or Kabul, or to relatives in the villages. Some sleep under trees or tents.”¹⁷⁶

EXPLOSIVE WEAPONS IN POPULATED AREAS

Amnesty International has joined with dozens of non-governmental organizations (NGOs) globally in the International Network on Explosive Weapons (INEW) to call for states to agree on a strong declaration opposing the use of explosive weapons in populated areas.¹⁷⁷ This ongoing process for a political declaration will help curb the use of weapons of wide area effects in areas with dense concentrations of civilians, be they cities or rural areas where civilians have gathered.

Weapons with wide area effects are those that have a broad impact either because they are individually very large, like a 2,000lb aircraft bomb, or involve many small detonations across a large geography, such as an artillery salvo. In addition, weapons such as unguided rockets can have wide area effects because they are notoriously inaccurate; the ubiquitous 122mm Grad rocket often misses its target by 300m or more.¹⁷⁸ Amnesty International has documented this disparate impact on civilians in many recent conflicts, including in Syria,¹⁷⁹ Libya,¹⁸⁰ and Armenia and Azerbaijan.¹⁸¹

Under international humanitarian law, all warring parties have an obligation to take all feasible precautions to spare civilians and to ensure that their forces do not carry out direct attacks on civilians or attacks which are indiscriminate or disproportionate. This includes a duty for commanders to choose weapon types and attack methods that reduce the risk of harming civilians and destroying civilian objects.

As part of INEW’s initiative, states should agree on a clearer and stricter commitment against the use of explosive weapons with wide-area effects in populated areas; a clear commitment to address the long-lasting humanitarian impact when infrastructure is destroyed, particularly when it disrupts water and power supplies, which in turn affects hospitals, provision of medical care and services to the wider civilian population; and a stronger provision to assist victims, including those directly affected, their families and communities.

¹⁷⁴ For example, the US supplied 82mm mortars, usually from Eastern European manufacturers, which often have 6 fins on the tail boom. GAO, “Afghanistan Security: U.S.-Funded Equipment for the Afghan National Defense and Security Forces,” 10 August 2017. Retrieved on 10 November 2021 from <https://www.gao.gov/assets/690/687205.pdf>

¹⁷⁵ Amnesty International in-person interview, 2 August 2021.

¹⁷⁶ Amnesty International in-person interview, 7 August 2021.

¹⁷⁷ See INEW, <https://www.inew.org/>. Amnesty International, “States should curb urban slaughter of civilians from explosive weapons,” 3 March 2021. Retrieved on 4 November 2021 from <https://www.amnesty.org/en/latest/news/2021/03/states-should-curb-urban-slaughter-of-civilians-from-explosive-weapons/>

¹⁷⁸ Geneva International Centre for Humanitarian Deming (GICHD), “Explosive Weapons Effects: Final Report,” February 2017. Retrieved on 5 November 2021 from <https://commons.lib.jmu.edu/cgi/viewcontent.cgi?article=1150&context=cisr-globalcwid>

¹⁷⁹ Amnesty International, “*Nowhere is Safe For Us*”: *Unlawful Attacks and Mass Displacement in North-West Syria*, 11 May 2020, MDE 24/2089/2020. Retrieved on 5 November 2021 from <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE2420892020ENGLISH.pdf>

¹⁸⁰ Amnesty International, *Libya’s Relentless Militia War: Civilians Harmed in the Battle for Tripoli, April-August 2019*, 22 October 2019, MDE 19/1201/2019. Retrieved on 5 November 2021 from <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE1912012019ENGLISH.pdf>

¹⁸¹ Amnesty International, *In the Line of Fire: Civilian Casualties From Unlawful Strikes in the Armenian-Azerbaijani Conflict Over Nagorno-Karabakh*, 14 January 2021, EUR 55/3502/2021. Retrieved on 5 November 2021 from <https://www.amnesty.org/en/wp-content/uploads/2021/05/EUR5535022021ENGLISH.pdf>



Shamisa, eight years old, who was killed by a mortar. © Private

On 29 June 2021, at approximately 10.30pm, a father and his young daughter were killed in another ANDSF attack on the outskirts of Kunduz, this time in the Yartin neighborhood of Chardara district. Over the course of approximately seven minutes, three mortars hit a home and surrounding area. The first hit a room occupied by 30-year-old Shair Agha and his 8-year-old daughter Shamisa, who were killed immediately. Family members in other parts of the home were uninjured, and the other two mortars did not cause casualties.¹⁸²

Residents reported that active fighting in that portion of Chardara had resumed the month before, in May, when the Taliban began its larger offensive.¹⁸³ At the time of the attack, the Taliban had seized and occupied the Yartin neighbourhood but the front line had moved towards Kunduz, and the area was not the scene of active gunfire. The nearest government checkpoint was on the other side of the Kunduz River, approximately 2 kilometres away.¹⁸⁴

According to a resident, Taliban fighters in the local mosque asked for a list of who was killed in attacks by government forces. “The Taliban were trying to show that they could bring in NGOs to help, if they had a list,” the witness said.¹⁸⁵ Amnesty International was unable to find an NGO that was provided a list of civilian casualties by the Taliban.

4.2 TALIBAN ATTACKS

KUNDUZ PROVINCE

On 28 June 2021, a mortar attack killed an older man and a two-year-old girl, and injured five others—three women, a man, and a young girl—at a home in Police District 3 on the north side of the city of Kunduz. All of the casualties were civilians.

At approximately 2pm, the mortar struck the interior courtyard of the home, near the family’s well. The munition passed through the body of Imam Qul, a 62-year-old man who was gathering water, and exited the other side, detonating when it struck the ground. His son, Bahran Pahlawan, was inside the house and was hit in the right arm by a metal fragment that passed through the wall. He immediately ran out to see who had been hurt by the explosion. “I come out and I see my father. I go to him and touch his chest and I put my hand inside and I see my father is finished,” Bahran said.¹⁸⁶ His niece, Safia, was in another room adjacent to the detonation, and he discovered that a metal fragment of the mortar had entered her forehead and exited the back. Safia was still alive, and would survive in the hospital several days before dying. Other people wounded in the room were Bahran’s wife, Nasreen (22 years old), who received a mortar fragment in her back and is now disabled, his brother’s wife Habibeh (28), his sister Farzana (20), and his sister Sana (11), who was struck in the spine and now has difficulty moving.¹⁸⁷

Amnesty International analysed photos of the scene, including of weapons fragments left behind, and identified the tail boom with ten fins and a standard Bakelite cartridge, most likely from a Soviet-style M37 82mm mortar. Both the Taliban and ANDSF operated this weapons system.¹⁸⁸ However, Amnesty International believes that this attack was most likely carried out by the Taliban because of the distribution of forces on the day of the incident. According to eyewitnesses, at the time of the detonation there was not active fighting between Taliban and ANDSF forces. There had been heavy fighting the day before, though, when Taliban were pushed from the neighbourhood and forced to retreat. That morning, ANDSF forces had re-occupied the area,¹⁸⁹ and the mortar was most likely fired from Taliban forces towards the *balehasar*, the fortified hilltop 1km away where ANDSF had a base, and fell short.

¹⁸² Amnesty International in-person interview, 4 August 2021.

¹⁸³ Amnesty International in-person interview, 4 August 2021.

¹⁸⁴ Amnesty International in-person interview, 4 August 2021.

¹⁸⁵ Amnesty International in-person interview, 4 August 2021.

¹⁸⁶ Amnesty International in-person interview, 9 August 2021. The interviewees in this case specifically asked that their names be used.

¹⁸⁷ Amnesty International in-person interview, 9 August 2021.

¹⁸⁸ Armament Research Services, “Arms Captured by the Taliban During Their Conquest of Afghanistan,” 14 October 2021. Retrieved on 14 October 2021 from <https://armamentresearch.com/arms-captured-by-the-taliban-during-their-conquest-of-afghanistan/>

¹⁸⁹ Amnesty International in-person interview, 9 August 2021.

Bahran Pahlawan said that his family wished to leave, to escape the fighting, but could not. “If they told us to leave and helped we would and save our lives,” he said. “But I have nowhere to go. I will stay in Kunduz with the Taliban.”¹⁹⁰

KANDAHAR PROVINCE

On 13 July 2021, Taliban fighters in the city of Spin Boldak in Kandahar province opened fire on a car, killing two civilian men and wounding another three men. The five civilians were in a white sedan that was leaving a gas station when it suddenly came upon a Taliban checkpoint. The civilians who were killed were named Haji Hayetollah and Ismatullah.¹⁹¹

The shooting occurred late in the evening, at approximately 11pm, while Taliban forces were making rapid gains in seizing the border town. Although there had been heavy fighting throughout Kandahar province prior to the day of this shooting, fighting had not yet entered Spin Boldak proper, and the five civilians traveling in the car believed themselves safe to move about the city. According to media reports, the Taliban completed capturing Spin Boldak by the next day, 14 July 2021.¹⁹²

According to eyewitnesses, the car had left the pumping station and had turned a corner off the main road, heading down a side street to a residential area, when a Taliban checkpoint ambushed the car as if it was a military vehicle.¹⁹³ Amnesty International reviewed photographs of the scene and the Toyota sedan, and identified at least 10 bullet holes in the front and windshield of the car. Haji Hayetollah was shot in the head, and Ismatullah was shot in the chest. Both civilians died immediately.¹⁹⁴ Of the other three men in the vehicle, one had his left hand removed by the shot, one was hit in the left forearm, and the third in the left side.

After the Taliban stopped firing, they came to the vehicle to question the wounded, and accused them of being part of the government. “The Taliban thought we were government [officials] because we have a big car,” said one of the wounded men. “But we showed them our business card, to prove we were not government. One group [of Taliban] said to kill us, another said to let us go, and the commander said to let us take care of our wounded.”¹⁹⁵ The Taliban did not allow the men to leave the scene or bury their dead until the next morning.

While the vehicle does not resemble standard ANDSF military vehicles, it is also clear that the individuals within the vehicle were not personally targeted. Failure to differentiate between military and civilian targets constitutes an indiscriminate attack and may be a war crime.

4.3 CROSSFIRE

BAGHLAN PROVINCE

On 22 June 21, during a Taliban attack on the Zaman Khail village on the outskirts of Pol-i-Khomri, a nine-year-old boy was killed in the crossfire with government forces. According to eyewitnesses, Taliban fighters had seized the headquarters of Police District 3 and were moving south towards the main city when civilians who lived in the homes in the direction of the assault attempted to escape.¹⁹⁶ They largely fled east, past the edge of the village and towards a ridgeline away from the fighting.

During the attack, the Taliban fired rifles and launched rockets towards the PD2 checkpoint, government forces responded with gunfire and mortar attacks. At approximately 5pm, a boy named Zor Mohammed tried to flee in this way with his relatives when he was hit in the back of the neck with a bullet. Amnesty International was unable to conclusively determine which military force shot the child. One family member said: “After he got shot I took him to the corner of the wall because bullets were still coming. He was alive for two hours. We spent the night at a stranger’s house and buried him in the morning.”¹⁹⁷

¹⁹⁰ Amnesty International in-person interview, 9 August 2021.

¹⁹¹ Amnesty International in-person interview, 7 August 2021.

¹⁹² *Al Jazeera*, “Taliban claims capturing key border crossing with Pakistan,” 14 July 2021. Retrieved on 6 November 2021 from <https://www.aljazeera.com/news/2021/7/14/taliban-claims-capturing-key-afghan-border-crossing-with-pakistan>

¹⁹³ Amnesty International in-person interviews, 7 August 2021.

¹⁹⁴ Amnesty International in-person interviews, 7 August 2021.

¹⁹⁵ Amnesty International in-person interviews, 7 August 2021.

¹⁹⁶ Amnesty International in-person interview, 5 August 2021.

¹⁹⁷ Amnesty International in-person interview, 5 August 2021.



Maroof, 14 years old, who was killed in the crossfire during an attack on his village. © Private

Two days later, on the afternoon of 24 June 2021, as the Taliban front line moved closer to Pol-i-Khomri, a fourteen-year-old boy named Maroof was killed during another gun battle between Taliban and the ANDSF in Zaman Khail village. When the Taliban launched a new attack that morning on the PD2 checkpoint, they used as a base a civilian home which later caught on fire.¹⁹⁸ The owner of the home asked the Taliban to leave, saying “Please let me save my home, then you can start shooting again,” but according to an eyewitness, a Taliban soldier replied, “Your house is not more important than this war.”¹⁹⁹

The boy Maroof was also in the home when it caught on fire. He attempted to flee across the street and past a mosque to the hills in the east. As he ran across the street, a bullet entered his right shoulder, passed through his chest, and exited his left shoulder. A doctor at the Pol-i-Khomri hospital declared him dead several hours later. Based upon where soldiers on both sides were positioned at the time, the bullet could have been shot by either Taliban or government forces.²⁰⁰

After several days of fighting, some families tried to leave the area. “Some went to Pol-i-Khomri,” a resident said, “and some, the wealthy people, went to Baghlan city. But the poor had to stay in Zaman Khail. We have to go to the fields to keep working.”²⁰¹

¹⁹⁸ Verified video of Tolo News broadcast, provided by interviewee, 3 August 2021.

¹⁹⁹ Amnesty International in-person interview, 3 August 2021.

²⁰⁰ Amnesty International in-person interview, 3 August 2021.

²⁰¹ Amnesty International in-person interview, 5 August 2021.

5. INTERNATIONAL LAW

5.1 INTERNATIONAL HUMANITARIAN LAW

International humanitarian law (IHL) sets out legal rules that bind all parties to an armed conflict, whether state armed forces or non-state armed groups. These rules, the most relevant of which to these cases are explained below, aim to minimise human suffering in armed conflicts, and offer particular protection to civilians and those who are not directly participating in hostilities.

Prior to the fall of Kabul, the fighting between Afghan government and allied states, such as the United States, and the Taliban, constituted a non-international armed conflict.

Now that this conflict has ceased, any new attacks in the future launched against Afghanistan government targets—in this case Taliban targets, as the de-facto authority in Afghanistan—by other states may constitute the beginning of a new international armed conflict

Afghanistan is a party to the four Geneva Conventions of 1949, their Additional Protocols I and II²⁰² and the Rome Statute of the International Criminal Court. In any event, most of the rules on the conduct of hostilities of IHL, including all those cited in this report, apply in both international and non-international armed conflict and are binding on all parties, including state and non-state forces.²⁰³

In situations of armed conflict, not all civilian casualties will be necessarily unlawful. However, deaths and injuries of civilians are often an indication that something has gone wrong. This could be the result of a violation of the rules, even of criminal wrongdoing; or it could be the result of an accident, mistake or malfunction of a weapons system, or the incidental result of a lawful attack.

Investigation is necessary to make these determinations, ensure accountability and reparation in the case of violations, and learn lessons and take measures to avoid needless harm to civilians and civilian objects.

The cases presented in this report, in the view of Amnesty International, raise a very strong possibility that civilians were killed and injured (and civilian objects were destroyed or damaged) in violation of international humanitarian law. Amnesty International wrote to both the Taliban and US government seeking additional information about specific means and methods of attack, choice of targets, and precautions taken in planning and execution of attacks. Such information is necessary for a full assessment of the parties' compliance with international humanitarian law.

THE PRINCIPLE OF DISTINCTION

The principle of distinction is one of the cornerstones of international humanitarian law. This requires parties to a conflict to, at all times, “distinguish between civilians and combatants” and to ensure that “attacks may only be directed against combatants” and “must not be directed against civilians.”²⁰⁴ Parties to conflict must also distinguish between “civilian objects” and “military objectives”. Anyone who is not a member of the armed forces of a party to the conflict is a civilian, and the civilian population comprises all persons who are not combatants.²⁰⁵ Civilians are protected against attack unless and for such time as they take a direct part

²⁰² ICRC, Treaties, State Parties and Commentaries. https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=AF&nv=4

²⁰³ For an authoritative list of these rules see International Committee of the Red Cross (ICRC), Customary International Humanitarian Law: Volume 1: Rules, J-M Henckaerts and L Doswald-Beck, eds, 2005 (hereinafter: ICRC, Customary IHL Study).

²⁰⁴ ICRC, Customary IHL Study, Rule 1. See also Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Article 48, and Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Article 12(2).

²⁰⁵ ICRC, Customary IHL Study, Rule 5; see also Protocol I, Article 50.

in hostilities.²⁰⁶ In cases of doubt, individuals should be presumed to be civilians and protected from direct attack.²⁰⁷ Making the civilian population, or individual civilians not taking a direct part in hostilities, the object of attack (direct attacks on civilians) is a war crime.²⁰⁸

Indiscriminate attacks are prohibited.²⁰⁹ Indiscriminate attacks may strike military objectives and civilians or civilian objects without distinction, either because the attack is not directed at a specific military objective, or because it employs a method or means of combat that cannot be directed at a specific military objective or has effects that cannot be limited as required by IHL.²¹⁰ Launching an indiscriminate attack resulting in death or injury to civilians is a war crime.²¹¹

Most of the cases examined in this report involved attacks that struck homes or other civilian objects, killing and injuring civilians. Such attacks could be either direct attacks on civilians or civilian objects, indiscriminate attacks, or lawful attacks with unintended negative consequences.

PROPORTIONALITY

International humanitarian law prohibits disproportionate attacks, which are those “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”²¹² Intentionally launching a disproportionate attack (that is, knowing that the attack will cause excessive incidental civilian loss, injury or damage) constitutes a war crime.²¹³ The Commentary on the Additional Protocols makes clear that the fact that the proportionality calculus requires an anticipated “concrete and direct” military advantage indicates that such advantage must be “substantial and relatively close, and that advantages which are hardly perceptible and those which would only appear in the long term should be disregarded.”²¹⁴

5.2 INTERNATIONAL HUMAN RIGHTS LAW

Afghanistan is also bound by international human rights law (IHRL) and standards, which continue to apply during armed conflict to some extent. It is a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT), under both of which the Taliban, as the de-facto authority in Afghanistan, has a legal obligation to respect, protect, and fulfil the right to life and to prohibit torture and other ill-treatment.²¹⁵ Afghanistan is also a party to the Convention on the Rights of the Child and its Optional Protocol on the Involvement of Children in Armed Conflict. The Optional Protocol prohibits the recruitment or use in hostilities by armed groups of anyone under 18 years of age.²¹⁶

As regards the right to life, the Human Rights Committee, the body responsible for monitoring state compliance with the ICCPR, has explained that it entails not only the state’s “duty to refrain from engaging in conduct resulting in arbitrary deprivation of life.” But that states “must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State.”²¹⁷ This is relevant also in situations of armed conflict, where the state has a duty to protect its population from the threat to life posed by armed groups and other non-state actors. The duty to prevent arbitrary deprivation of life also requires “establishing by law adequate institutions and procedures for preventing deprivation of life, investigating and prosecuting potential cases of unlawful deprivation of life, meting out punishment and providing full reparation.”²¹⁸

Other states have obligations under international human rights law to uphold the right to life for people in Afghanistan. Specifically, now that the non-international armed conflict in Afghanistan between the Taliban and the United States has ceased, and the former Afghan government no longer exists, the United States is

²⁰⁶ ICRC, Customary IHL Study, Rule 6; see also Protocol I, Article 51(3); Protocol II, Article 13(3).

²⁰⁷ Protocol I, Article 50(1).

²⁰⁸ ICRC, Customary IHL, Rule 156, p. 591.

²⁰⁹ ICRC, Customary IHL Study, Rule 11; Protocol I, Article 51(4).

²¹⁰ ICRC, Customary IHL Study, Rule 12; Protocol I, Article 51(4)(a).

²¹¹ ICRC, Customary IHL, rule 156, p. 599.

²¹² ICRC, Customary IHL Study, Rule 14; Protocol I, Articles 51(5)(b) and 57.

²¹³ ICRC, Customary IHL Study, Rule 156, pp. 599-601.

²¹⁴ Yves Sandoz, Christophe Swinarski, Bruno Zimmermann, Commentary on the Additional Protocols, ICRC, 1987, para. 2,209.

²¹⁵ United Nations Human Rights Treaty Bodies, UN Treaty Body Database.

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=1&Lang=EN

²¹⁶ Article 4, Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, U.N. Doc. A/RES/54/263, 25 May 2000.

²¹⁷ Human Rights Committee, General Comment 36, Article 6 (Right to Life), 3 September 2019, CCPR/C/GC/35, para. 7.

²¹⁸ Human Rights Committee, General Comment 36, para. 19.

no longer a party to a conflict within the borders of Afghanistan. This means that international humanitarian law no longer guides any potential US military operations within the country. If, in the future, the United States conducts drone strikes against ISKP, as part of the so-called “Global War on Terror,” it cannot do so under the less demanding protections on civilian life afforded by international humanitarian law, but rather must abide by the stronger protections afforded by international human rights law. In practice, this means that the targeted killings of ISKP operatives are to be considered extrajudicial executions, a crime under international law, and the killing of others caught in such operations also amount to criminal conduct.

OBLIGATION TO INVESTIGATE

Amnesty International recalls that all states are permitted to investigate and, if there is sufficient admissible evidence, prosecute those suspected of criminal responsibility for crimes under international law, including war crimes, and human rights violations and abuses. However, whenever the person suspected of criminal responsibility is found in any territory subject to the jurisdiction of a state, that state is obliged—and not only permitted—to exercise jurisdiction over that person, unless it decides to extradite the person concerned to another state or surrender him or her to an international criminal court. In doing so, all states are required under international law to conduct prompt, thorough, independent, and impartial investigations into allegations of arbitrary deprivation of life and of any war crime, such as those acts described in this report.²¹⁹

Needless to say, the obligation to investigate and prosecute such cases also exists for the United States.²²⁰ Individuals who commit or order war crimes bear individual criminal responsibility.²²¹ Military commanders and civilian superiors may also be responsible for the acts of their subordinates if they knew, or had reason to know, such crimes were about to be committed or were being committed and did not take the necessary measures to prevent them, or to punish those responsible for crimes that had already been committed.²²² Likewise, Afghanistan also has a duty to investigate war crimes and other crimes under international law, like torture, as part of its obligation to protect the rights of anyone under its jurisdiction.²²³ This duty applies not only to allegations of war crimes by its own forces, but also to killings by other states and forces. The US government, the governments of other member states of Operation Resolute Support, and the de facto government in Afghanistan must provide full reparation to victims of violations of international human rights and international humanitarian law.²²⁴

5.3 FAILURES TO ADDRESS CIVILIAN CASUALTIES

FORMER AFGHAN GOVERNMENT

The former Afghan government’s failures to adequately address civilian harm have been significant, longstanding,²²⁵ and ultimately helped undermine the stability of the state itself.

In a broad pattern, family members of victims of military actions reported that they did not receive sufficient reparations from the government. Officials would rarely visit the scene of an attack in the aftermath, and it was incumbent on the family to figure out how to seek the correct office in the State Ministry for Martyrs and Disabled Affairs and fill out the correct forms. A head of a family interviewed by Amnesty International more than nine months after the strike that destroyed their home said:

²¹⁹ ICRC, Customary IHL, Rule 158; Article 2(3) ICCPR. See Human Rights Committee, General Comment 31 on the nature of the General Legal Obligation Imposed on States Parties to the Covenant, CCPR/C/21/Rev.1/Add.13, paras 15, 16 and 18; General Comment 36 on Art 6: The Right to Life (2018), CCPR/C/GC/36, para. 27-28; See also UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principles 9 to 20; UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para 3; Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016) (published by OHCHR in 2017), para. 20.

²²⁰ Law of War Manual, Chapter XVIII.

²²¹ ICRC, Customary IHL, Rule 151.

²²² ICRC, Customary IHL, Rules 152 and 153.

²²³ Human Rights Committee, General Comment 36, paras 27

²²⁴ ICRC, Customary IHL, Rule 150, available at: <https://ihl-databases.icrc.org/customary-ihl/eng/docs/home> and; UN General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* : resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147, available at: <https://www.refworld.org/docid/4721cb942.html> and; Human Rights Committee, General Comment 36, paras 19 and 28.

²²⁵ See, for example, CIVIC, *Unacknowledged Harm: Hurdles to Receiving Victims’ Assistance in Afghanistan*, December 2020. Retrieved on 6 November 2021 from https://civiliansinconflict.org/wp-content/uploads/2021/03/CIVIC_Afghanistan_Report_Final.pdf

NO ESCAPE

WAR CRIMES AND CIVILIAN HARM DURING THE FALL OF AFGHANISTAN TO THE TALIBAN

Amnesty International

No one from the government came afterwards. We went to the district and told them what happened. No one came to us. They said: “This is not good. It should not have happened. We share your pain.” But nothing happened. We just got a little food from the Red Crescent.²²⁶

When another family got no compensation, they followed up with the government.

I went to the district governor, and they said ‘Why didn’t you submit a report?’ And I said ‘[The wounded] were at the hospital and the ministry of health saw them at the hospital, why do I need to file reports? I won’t dishonour [my family] by bringing them in front of you.’ The government people denied that they knew about the [military] operation, so whatever happened they didn’t know about it. After that, no one came.²²⁷

Another family echoed this sentiment. “I myself completed all these files, it’s been two months. They don’t say they will pay compensation, they just say wait. They say ‘People have been waiting one to two years, it’s only been two months for you.’ We don’t want to sell the blood of our family members, but we would like help rebuilding our home.”²²⁸

Many more were simply ignorant of the process to seek redress. “The conflict is going on but our neighbourhood is government controlled,” said a 25-year-old man whose sister was killed by a mortar launched by the ANDSF. “We haven’t had contact with the government at all, and we have no idea about the process with the department of martyrs and disabled.”²²⁹

Another man, related to a boy who was killed in crossfire in Baghlan province, said that he was offered no compensation by the government. The conflict prevented him from going to the government offices, or from government workers to come to his home. But even so, he was suspicious that individual families would receive compensation. “The government, if they have money, they give it to the [tribal] elders,” he said. “Nobody hears a poor person’s voice.”²³⁰

One father, who did manage to submit the proper form with the State Ministry for Martyrs and Disabled Affairs in the provincial capital, said many in his community were unable to properly file their own claims. “Half my village knows how to read,” he said, “so only half can fill out the form.”²³¹ As in many states where literacy is low, private services are available to help people fill out government forms, but that is an additional expense for already impoverished families.²³²

Even when compensation arrived, it was often inadequate. One man, whose family members were injured and killed by a government mortar attack in Kunduz in 2021, said the governor of the province came to the hospital to see those wounded, and paid the man 500 Afghanis (about \$6.50) per person.²³³

Overall, people interviewed by Amnesty International said that they believed they were not taken seriously or fairly compensated because their family members were not killed in a high-profile attack, such as the US 2015 attack on the Médecins sans frontières (MSF) hospital in Kunduz (see more below). But even being a victim of a high-profile attack does not guarantee that payments will be made. On 8 May 2021, a car bomb and several smaller IEDs detonated outside of the Sayed ul-Shuada school in the Hazara-majority Dasta-Barchi neighbourhood of western Kabul, killing at least 85 people. No group claimed responsibility, though it was most likely an attack by ISKP, as it fits the pattern of other attacks by the group in the predominantly Shia area of Kabul. The school taught both boys and girls, but as the IED detonated in the afternoon, when girls attended class, the victims were primarily female students.²³⁴ While reports of the official death toll vary, UNAMA reports that a total of three IEDs killed 42 girls, three boys, 28 women, nine men, and three adults who were not identified.²³⁵ Despite making international news headlines, compensation for some victims never came. “The government said that because they were girls and underage that they could not count as

²²⁶ Amnesty International in-person interview, 2 August 2021.

²²⁷ Amnesty International in-person interview, 2 August 2021.

²²⁸ Amnesty International in-person interview, 2 August 2021.

²²⁹ Amnesty International in-person interview, 7 August 2021.

²³⁰ Amnesty International in-person interview, 3 August 2021.

²³¹ Amnesty International in-person interview, 5 August 2021.

²³² This challenge also exists in Somalia, where US Africa Command has established an online form to report civilian casualties. There are many hurdles to be able to use this form: internet access, the ability to read, and the ability to understand English as the Somalia-language version is extremely-poorly translated. *Just Security*, “AFRICOM’s Improved Civilian Casualty Reporting System Still Leaves Gaps for Somalia,” Abdifatah Hassan Ali, 6 August 2020. Retrieved on 6 November 2021 from <https://www.justsecurity.org/71854/africoms-improved-civilian-casualty-reporting-system-still-leaves-gaps-for-somalia/>

²³³ Amnesty International in-person interview, 2 August 2021.

²³⁴ New York Times, “Bombing Outside Afghan School Kills at Least 90, With Girls as Targets,” Thomas Gibbons-Neff and Najim Rahim, 8 May 2021. Retrieved on 1 November 2021 from <https://www.nytimes.com/2021/05/08/world/asia/bombing-school-afghanistan.html>.

²³⁵ UNAMA, “Afghanistan: Protection of Civilians in Armed Conflict Midyear Update: 1 January to 30 June 2021,” 26 July 2021. Retrieved on 1 November 2021 from: https://unama.unmissions.org/sites/default/files/unama_poc_midyear_report_2021_26_july.pdf

martyrs,” a very senior administrator at the school told Amnesty International, noting that the men were recognized and their families compensated.²³⁶

Such discrimination on the basis of age and gender in upholding the right to reparation is in violation of international law.²³⁷ In any context, but especially in Afghanistan (considering the treatment of women and girls over the last several decades), any reparation must consider pre-existing power imbalances and ensure a fair assessment of the harm inflicted, as well as equal access to and benefit from reparation.²³⁸ Decisions on reparation and the delivery of reparation should similarly not reinforce pre-existing patterns of gender-based discrimination, but rather strive to transform them.²³⁹

The failures of the government to adequately address the issues of civilian casualties, and security in general, is one reason many families that spoke to Amnesty International said that they pragmatically welcomed Taliban rule. After an air strike in Kunduz, one man said: “The only thing we want is this bombing of civilians to stop.”²⁴⁰

A resident of the Zakhail neighbourhood outside the city of Kunduz, who witnessed significant fighting, said:

You can’t trust the Taliban, you can’t trust the government. You can’t trust the government because they hire robbers and thieves. They ask for money, you have to give it or they cut your fingers. The Taliban aren’t better; they can’t provide jobs, but they provide security. The government provides jobs then kills us.²⁴¹

“When the government ruled it was hard to go out at night to do prayers. People would steal. Now it is better. A month and a half, I haven’t heard any fighting or guns,” said another man, from Khanabad.²⁴²

“Both the Taliban and government move into people’s houses. If the Taliban shoot one bullet, the government shoots ten mortars,” said a man from the suburbs of Kunduz.²⁴³ He continued:

What we want from the government is to please take out the corrupt people, like the Arbaki militia. These people, they come and steal everything. This is why Americans failed. They hired Arbaki. The Arbaki say you have to pay money, or they will punish you and say you are Talib and then kill you.²⁴⁴

The Taliban now have the same legal obligation to provide reparation as the former government, and have a new opportunity to take issues of civilian harm seriously. It has not begun well, however. It is also difficult for some families to access the Taliban for compensation and reparations around civilian casualties. “It is obvious that they treat Tajik different than Pashtuns,” said a Tajik man who lost family in the recent fighting. “It is hard for us to talk to them. There are few Tajiks in the Taliban, the Pashtuns are in charge. If we had a Tajik Taliban leader we would be okay. But we don’t have that now.”²⁴⁵

²³⁶ Amnesty International in-person interview, 8 August 2021.

²³⁷ See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, adopted by General Assembly resolution 60/147, 16 December 2005, paras 11, 15-23, and 25. The failure to ensure that children, and in particular girls, have equal access to reparations for gross violations has been a problem across many contexts. See, for example, UNICEF Innocenti Research Centre, *Children and Reparation: Past Lessons and New Directions*, June 2010. Retrieved on 6 November 2021 from https://www.unicef-irc.org/publications/pdf/iwp_2010_08.pdf

²³⁸ For an example of similar context, see Amnesty International, *Legacy of Terror: The Plight of Yazidi Child Survivors of ISIS*, MDE 14/2759/2020, 2020. Retrieved on 9 November 2021 from <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE1427592020ENGLISH.pdf>

²³⁹ Nairobi Declaration on Women’s and Girls’ Right to a Remedy and Reparation, 2007.

²⁴⁰ Amnesty International in-person interview, 6 August 2021.

²⁴¹ Amnesty International in-person interview, 7 August 2021.

²⁴² Amnesty International in-person interview, 2 August 2021.

²⁴³ Amnesty International in-person interview, 7 August 2021.

²⁴⁴ Amnesty International in-person interview, 7 August 2021.

²⁴⁵ Amnesty International in-person interview, 9 August 2021.

US GOVERNMENT

To explain or justify air strikes that kill civilians, generally US officials do not publicly make proportionality arguments.²⁴⁶ Meaning, the United States does not claim that the military advantage of conducting the strike outweighed the predicted civilian harm that they believed would be caused.²⁴⁷ Rather the United States usually claims that it attempted to prevent the civilian casualties and its motives should not be impugned. For example, after the 2015 strike on the MSF hospital in Kunduz, White House spokesperson Josh Earnest said, “[t]here is no country in the world and no military in the world that goes to greater lengths and places a higher premium on avoiding civilian casualties than the United States Department of Defense.”²⁴⁸

Eventually, however, US officials will occasionally admit to individual cases of civilian casualties without admitting to systemic failures of the air strike program overall. In each particular instance, officials identify a specific reason the process broke down in some way, but without impugning the whole program. In the MSF hospital strike, it was a failure to properly identify and communicate a target compound.²⁴⁹ In the 29 August 2021 Kabul strike, Lt. Gen. Sami Said (the Air Force Inspector General) blamed confirmation bias, when the target was observed with a computer bag, matching expected intelligence.²⁵⁰

But after 20 years of air strikes in Afghanistan, Iraq, Syria, Somalia, and other locations under the rubric of the “Global War on Terror,” there is good reason to question the US government’s stubborn unwillingness to put in place more meaningful protective measures, or to conduct genuine investigations. Even its defenders, such as Lt. Gen Said, recognize that the US does not place sufficient resources in a “red-team” that tests bias and assumptions,²⁵¹ or that actively searches for civilians in drone feeds.²⁵²

Furthermore, the US government has lately been increasingly unwilling to pay out compensation for civilian casualties, including in cases where they have admitted conducting the strike. According to the annual report to the US Congress, despite admitting to an additional 85 civilian deaths in 2020 the Department of Defense did not pay a single dollar in compensation, even though US \$3 million had been budgeted for that purpose.²⁵³

This is despite the US being willing to pay claims in the past. Amnesty International interviewed eight victims and family members from the 3 October 2015 attack on the MSF hospital in Kunduz, who described a long and frustrating claims process that ultimately led to an acceptable outcome, at least financially.²⁵⁴ While the family members interviewed remain upset that no sufficient reason has been provided to explain how the strike happened at all, or why no one was charged criminally, the payments (ultimately over 1 million Afghanis, or \$12,500, to the family of each person killed, according to interviewees) were completed, in large part due to the diligence of lawyers by MSF and outside advocacy groups.²⁵⁵ This level of representation is not possible in every case, nor should it be required for any state to fulfil its international obligations.

²⁴⁶ For example, the statement from General McKenzie, about the 29 August 2021 airstrike in Kabul does not use the word “proportional” at all. U.S. Central Command, “General Kenneth F. McKenzie Jr. Commander of U.S. Central Command and Pentagon Press Secretary John F. Kirby Hold a Press Briefing, SEPT. 17, 2021,” 20 September 2021. Retrieved on 16 November 2021 from <https://www.centcom.mil/MEDIA/Transcripts/Article/2781320/general-kenneth-f-mckenzie-jr-commander-of-us-central-command-and-pentagon-pres/>. In a later news conference, Lieutenant General Said was specifically asked by a journalist if the strike was proportional, and Said answered that it was important to focus on the threat that US forces mistakenly believed existed. U.S. Department of Defense, “Pentagon Press Secretary John F. Kirby and Air Force Lt. Gen Sami D. Said Hold a Press Briefing,” 3 November 2021. Retrieved on 16 November 2021 from <https://www.defense.gov/News/Transcripts/Transcript/Article/2832634/pentagon-press-secretary-john-f-kirby-and-air-force-lt-gen-sami-d-said-hold-a-p/>

²⁴⁷ ICRC IHL Database, Rule 156. Definition of War Crimes. Retrieved on 5 November 2021 from https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_cha_chapter44_rule156

²⁴⁸ CNN, “‘Civilians ‘accidentally struck’ in Afghan hospital bombing, U.S. commander says,” Jethro Mullen and Ashley Fantz, 6 October 2015. Retrieved on 5 November 2021 from <https://www.cnn.com/2015/10/05/asia/afghanistan-doctors-without-borders-hospital/index.html>. Similarly, in response to a *New York Times* report on a US strike that killed dozens of civilians in March 2019 in Baghuz, Syria, Pentagon Press Secretary John Kirby repeated that sentiment, almost verbatim: “No military in the world works as hard as we do to avoid civilian casualties.”²⁴⁹ *New York Times*, “Pentagon Chief Orders Briefing on 2019 Syria Airstrike That Killed Dozens,” Eric Schmitt, 15 November 2021. Retrieved on 16 November 2021 from <https://www.nytimes.com/2021/11/15/us/politics/pentagon-syria-airstrike.html>

²⁴⁹ *Just Security*, “Five Years On: Military Accountability and the Attack on the MSF Trauma Center in Kunduz,” Brian L. Cox, 3 October 2020. Retrieved on 5 November 2021 from <https://www.justsecurity.org/72665/five-years-on-military-accountability-and-the-attack-on-the-msf-trauma-center-in-kunduz/>

²⁵⁰ BBC, “Deadly US drone strike in Kabul did not break law, Pentagon says,” 4 November 2021. Retrieved on 5 November 2021 from <https://www.bbc.com/news/world-us-canada-59157089>

²⁵¹ Associated Press, “Watchdog finds no misconduct in mistaken Afghan airstrike,” Lolita C. Baldor, 3 November 2021. Retrieved on 5 November 2021 from <https://apnews.com/article/afghanistan-kabul-bf24b4a670895ab1cc0b345ee9c90c74>

²⁵² *Just Security*, “Hidden Negligence: Aug. 29 Drone Strike is Just the Tip of the Iceberg,” Larry Lewis, 9 November 2021. Retrieved on 10 November 2021 from <https://www.justsecurity.org/78937/hidden-negligence-aug-29-drone-strike-is-just-the-tip-of-the-iceberg/>

²⁵³ Department of Defense, “Annual Report on Civilian Casualties In Connection With United States Military Operations in 2020.” Retrieved on 6 November 2021 from <https://media.defense.gov/2021/Aug/05/2002823939/-1/-1/0/ANNUAL-REPORT-ON-CIVILIAN-CASUALTIES-IN-CONNECTION-WITH-UNITED-STATES-MILITARY-OPERATIONS-IN-2020-FINAL.PDF>

²⁵⁴ Amnesty International in-person interviews, 3, 6 August 2021.

²⁵⁵ Amnesty International in-person interview, 6 August 2021.

A family member of a victim of the MSF strike said: “Five or six percent of Afghans will get a chance to get [paid]. If they are working with an NGO, they get paid. The US wants no media. But others, they don’t give a shit.”²⁵⁶

A similar dynamic is now underway for the family of those killed in the 29 August 2021 strike in Kabul.²⁵⁷ It remains to be seen whether the United States will fulfil its obligations to the families of those killed in less high-profile cases as well, or if it will continue to deny justice, truth, and reparations to the many civilian victims of the US drone strike program.

²⁵⁶ Amnesty International in-person interview, 6 August 2021.

²⁵⁷ NPR, “U.S. will provide condolence payments to families of Kabul drone strike victims,” Deepa Shivaram, 16 October 2021. Retrieved on 6 November 2021 from <https://www.npr.org/2021/10/16/1046712356/u-s-will-provide-condolence-payments-to-families-of-kabul-drone-strike-victims>

6. RECOMMENDATIONS

TO THE TALIBAN AUTHORITIES IN AFGHANISTAN

Amnesty International calls on the Taliban to respect and ensure respect for international humanitarian law and international human rights law and, in particular, to:

- Immediately cease all wilful killings of civilians and comply with the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, as required under international law;
- Conduct prompt, independent, impartial, and thorough investigations into all credible allegations of crimes under international law, including extrajudicial executions, torture and mistreatment of detainees, war crimes and human rights violations. These investigations should include a focus on crimes committed against children, women, and people with disabilities;
- Where there is sufficient admissible evidence of crimes, bring all those suspected of criminal responsibility to justice in fair trials before ordinary civilian courts and without recourse to the death penalty;
- Ensure that military and police forces are given appropriate training, including training in human rights law and international humanitarian law, including, in particular, the proper treatment of detainees;
- Provide victims of violations of international humanitarian law, and their families, access to justice, truth and full reparation, including restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition;
- Fully adopt the Rome Statute of the International Criminal Court into national law, and comply with any requests from the Office of the Prosecutor;
- Take swift and concrete steps to bar the use of schools by Taliban and associated forces, using the Guidelines on Protecting Schools and Universities from Military Use During Armed Conflict as a minimum standard, in line with the country's commitments as an endorser of the Safe Schools Declaration;
- Immediately re-open all secondary schools to girls and put a stop to all harassment, threats, and attacks against teachers and students;
- Ensure non-discrimination in any reparation or compensation scheme for violations of international human rights law or international humanitarian law. Ensure that children, including girls specifically, are not excluded.

TO THE UNITED STATES GOVERNMENT

Amnesty International calls on the United States to:

- Immediately cease the killing of civilians in air strikes in Afghanistan, and comply with the rules of international human rights law in future military operations outside of an armed conflict;
- Conduct prompt, independent, impartial, thorough, and transparent investigations into all credible allegations of civilian casualties of air strikes and other military operations in Afghanistan, including those documented in this report. Investigations should include proactively seeking to speak with eyewitnesses, survivors and families of victims, despite constraints;

- Where there is sufficient admissible evidence of crimes, bring all those suspected of criminal responsibility to justice in fair trials before ordinary civilian courts and without recourse to the death penalty;
- Provide victims of violations of international humanitarian law, and their families with access to justice, truth and full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Acknowledge civilian casualties caused by US attacks and offer compensation and explanation to survivors and families of civilians killed in US strikes, regardless of whether or not the casualties were caused by a lawful attack;
- Implement an effective mechanism to ensure a safe and accessible means for families and communities to self-report civilian casualties arising from US air strikes and other military operations;
- Fully comply with the rules of international humanitarian law in the planning and execution of all attacks, including by:
 - Reviewing the criteria for selecting targets, including for “signature strikes,” “over the horizon” strikes, and similar practices, to ensure they do not lead to targeting of civilians;
 - Ensuring that individuals are never targeted solely on the basis of their age, gender, geographical location, and proximity to ISKP or the Taliban;
 - Taking all feasible precautions in planning and execution of attacks, including cancelling strikes when there is doubt that the target is a military objective or when they are likely to be disproportionate or indiscriminate;
 - Reviewing the definitions of “combatants”, “militants”, and “non-combatants” to ensure they comply with customary international humanitarian law and adhere to the presumption of civilian status.

TO THE 36 FORMER MEMBER STATES OF OPERATION RESOLUTE SUPPORT, AS WELL AS FORMER MEMBERS OF THE INTERNATIONAL SECURITY ASSISTANCE FORCE

Amnesty International calls on all states that provided forces to train and equipment the ANDSF to:

- Note the failure to create a national army and security force that attained legitimacy in the eyes of the Afghan people, and revise training and equipping standards for future missions to ensure that international humanitarian law and international human rights law are the foundation for such work.

TO THE ARMED GROUP CALLING ITSELF THE ISLAMIC STATE IN KHORASAN PROVINCE

- Immediately cease the killing of captives and other summary killings, all direct attacks on civilians and civilian objects and indiscriminate attacks;
- Commit publicly to respecting the rules of international humanitarian law and make clear to fighter that violations will not be tolerated;
- Remove from the ranks all those alleged to have ordered or committed violations;
- Treat all those in detention humanely.

TO THE PROSECUTOR OF THE INTERNATIONAL CRIMINAL COURT

- Amnesty International urges Prosecutor Karim Khan to conduct a full investigation in Afghanistan into all parties to the conflict and to urgently reconsider his decision to ‘deprioritise’ investigations into crimes under international law allegedly committed by Afghan National Defense and Security Forces (ANDSF) and the armed forces of the United States of America and its Central Intelligence Agency (CIA). Failure to do so would present grave questions on the ICC-OTP’s future legitimacy and purpose;
- While conducting investigations of crimes committed by all parties to the conflict, include a focus on crimes committed against children, women, and people with disabilities.

TO THE UNITED NATIONS

- Fully resource the mandate of the Special Rapporteur on Afghanistan to begin serious oversight of the current and quickly-changing human rights situation in the country.

- The UN Assistance Mission in Afghanistan must continue their robust human rights monitoring and documentation mandate without domestic or international interference.
- The Human Rights Council must continue to monitor the situation closely and adapt their response as needed to ensure accountability for international crimes.

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info@amnesty.org



+44 (0)20 7413 5500

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NO ESCAPE

WAR CRIMES AND CIVILIAN HARM DURING THE FALL OF AFGHANISTAN TO THE TALIBAN

The fall of Kabul to the Taliban on 15 August 2021 caught the world by surprise. It should not have. Afghanistan's two decades of armed conflict, which had always taken a massive and disproportionate toll on civilians, reached a new intensity after the US announced a full withdrawal in April 2021.

In the last months of the conflict, the United States conducted air strikes that killed large numbers of civilians. As the Taliban gained control of new districts, war crimes followed. Ethnic and religious minorities and supporters of the former government were targeted for torture and execution. And the Afghan National Defense and Security Forces launched mortar attacks on homes, and conducted an air strike on a hospital, all of which killed civilians hiding in fear.

The attacks investigated in this report represent a small and fractured, yet still important, glimpse into the suffering visited upon Afghans during the last stage of US intervention in the country.