

His Excellency Mr. Abdul Baseer Anwar, Dr.

ID: LFG-2018-0022

Minister of Justice

Office of the Minister of Justice

Kabul

Afghanistan

May 25<sup>th</sup>, 2018

Re: Request for an investigation into the April 2<sup>nd</sup>, 2018 air force military attack in the Dasht-e-Archi district of the Kunduz province of Afghanistan

His Excellency Mr. Baseer Anwar, Dr.

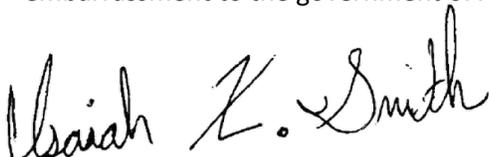
It appears that on April 2<sup>nd</sup>, 2018 an Afghanistan air force military attack took place in the Dasht-e-Archi district of the Kunduz province of Afghanistan. Individuals in the Afghanistan air force used machine guns and launched rockets into a religious ceremony that took place outside. While it was reported that the government of Afghanistan was attempting to target senior Taliban officials in the air force military attack, I believe that the timing and the place of the military attack was extremely inappropriate and is extremely concerning. As a result of the military attack that occurred, approximately thirty-six (36) people were killed. Of those thirty-six people that were killed in the air force attack, thirty of them have been reported to be children. With that, approximately seventy-one (71) people were wounded, including fifty-one (51) children, based on an investigation that was conducted by the United Nations into that incident. See Exhibit 1.

While the government of Afghanistan did again claim that its air force officials were attempting to target senior Taliban officials as a part of its military objective, I again do believe that the time and the place of the military attack that the government of Afghanistan engaged in was extremely inappropriate, was not proper and was not a wise decision for that time and at that place for the military attack to have taken place. It is to my understanding that the laws of war as defined under international law mandates that governments of countries that are involved in some type of attack are doing so for military objectives. Military objectives to my knowledge and understanding, according to international law, are individuals and things that are contributing to an armed action in which its destruction, capture, or neutralization gives a benefit of a military advantage. But even though the government of Afghanistan, by and through its air force, may have attempting to target individuals that are a part of a legitimate military objective, the timing and the place of the attack was extremely inappropriate and was not proper, due to many innocent civilians and noncombatants being in the way of the attack. Whenever a government of any country has its military officials conduct a military attack against a military objective, regardless as to whether or not the target is a legitimate military objective, I believe that government needs to ensure that innocent civilians will not suffer as a result of the military attack taking place.

I believe that it is imperative for governments of countries around the world to set policies, practices and procedural safeguards to help ensure that combatants are distinguished from innocent civilians and their families and that their government operations only have the purpose as to targeting military objective. While it may be true that during an armed conflict that some civilians are inevitable when and during an armed conflict occurs, I believe that it is imperative for governments of countries

around the world to set policies, practices and procedural safeguards to help ensure that combatants are distinguished from innocent civilians and their families and that their government operations only have the purpose as to targeting military objectives as defines under the laws of war pursuant to international law and that the laws of war as defined under international law is abided by, as defined under the laws of war pursuant to international law and that the laws of war as defined under international law is abided by.

As a response as to the April 2<sup>nd</sup>, 2018 Afghanistan air force military attack in which a large number of innocent civilians were killed and were wounded, His Excellency Mr. Ashraf Ghani, the President of Afghanistan, issued a public apology and met with individuals who had their family members killed and wounded as a result of the Afghanistan air force military attack that occurred. While I am thankful and while I do appreciate the fact that President Ashraf Ghani issued a public apology and met with individuals who had their family members victimized by the military attack, I believe that more action needs to be taken in response as to the air force military attack incident that occurred, in which resulted in a large number of innocent civilians being killed and being wounded. What I believe would be appropriate would be you and your office opening up a criminal investigation into the military attack incident, for the purpose as to ensuring justice. I believe that criminally charging all individuals that were responsible for the air force military attack that killed innocent civilians and that wounded innocent civilians is appropriate and needs to take place. I surely hope that you understand that doing so would show that the government of Afghanistan is capable of investigating the actions and the conduct of its officials, even if the actions and the conduct of officials of the government of Afghanistan is an embarrassment to the government of Afghanistan.

  
Respectfully,

Isaiah X. Smith<sup>1</sup>

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<sup>1</sup> [www.isaiahxsmith.com](http://www.isaiahxsmith.com)

# EXHIBIT 1

# **AFGHANISTAN**

**Human Rights and Protection of Civilians in Armed Conflict**

**Special Report**

**Airstrikes in Dasht-e-Archi district, Kunduz Province, 2 April 2018**



**United Nations Assistance Mission in Afghanistan  
Kabul, Afghanistan  
May 2018**

## OVERVIEW

### Summary

On 2 April 2018, at approximately 12:30pm Afghan Air Force helicopters conducted aerial operations in Laghmani village, Dasht-e-Archi district of Kunduz province, releasing multiple rockets and firing heavy machineguns during an open-air '*dashtar bandi*' religious ceremony next to a madrassa where hundreds of men and boys were gathered. As of 7 May, UNAMA verified 107 casualties<sup>1</sup> (36 killed and 71 injured) according to its methodology, of which 81 were children (30 killed and 51 injured).<sup>2</sup>

According to the Government, the airstrike targeted senior Taliban leaders present in the area, including members of the Quetta Shura, as well as members of a Taliban 'Red Unit', who had allegedly gathered to launch an operation against Kunduz city.<sup>3</sup> The Government has acknowledged that civilian casualties took place and the President established a commission to look into the incident.<sup>4</sup> The Governor of Kunduz also reportedly established a provincial-level investigative committee. At the time of the report's release, neither had publicly reported their findings, although the Government has informed UNAMA that it has documented civilian casualties from the incident. The Taliban, through its public website, stated that its own internal investigation found over 200 casualties (59 killed and 150 injured), mainly children, scholars and elderly men attending the *dashtar bandi* ceremony.<sup>5</sup>

UNAMA is not able to confirm the civilian status of each individual killed or injured, nor is the mission in a position to determine the presence or actions of Taliban leaders or units at the time of the airstrike. However, even if the Government had a legitimate military target, UNAMA questions the extent to which the Government undertook steps and concrete measures to prevent civilian casualties, in accordance with its Civilian Casualty Mitigation Policy.

A key finding of this report is that the Government used rockets and heavy machinegun fire on a religious gathering, resulting in high numbers of child casualties, raising questions as to the Government's respect of the rules of precaution and proportionality under international humanitarian law.<sup>6</sup> Additionally, the timing and place of the attack, which occurred during a religious ceremony attended by hundreds of people, cannot be reconciled with the Government's obligations under international humanitarian law to take all feasible measures to spare civilians and civilian objects from the harm of conflict, or, at minimum, to minimize incidental loss of civilian life and damage to civilian property. While UNAMA is not in a position to determine whether the Government's actions amounted to violations of international humanitarian law, including the rules of precaution and proportionality and the explicit prohibition against launching an indiscriminate attack affecting the civilian population, these factors raise serious concern and require further investigation by competent authorities.

The mission urges the Government to investigate, fully document and conduct a transparent review of the circumstances that led to this incident and to take immediate steps to ensure accountability for those responsible along the chain of command. UNAMA further recommends the implementation of measures to strengthen

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<sup>1</sup> Although UNAMA has verified 107 casualties, the mission has received victims' lists from various sources indicating over 200 casualties.

<sup>2</sup> See methodology section below.

<sup>3</sup> President's Office Press statement on the incident in Dasht-e-Archi district of Kunduz (3 April 2018), <https://president.gov.af/fa/2018/04/03/14318> (Dari). See also: See "Taliban red army was targeted by an air strike", <http://www.gmic.gov.af/dari/press-releases/3253-2018-04-03-14-15-46> (Dari).

<sup>4</sup> Ibid.

<sup>5</sup> <http://shahamat1.com/?p=113406> (Pashto), <http://alemarah-english.com/?p=27503> (English).

<sup>6</sup> ICRC has noted that disproportionate attacks are treated as particular forms of indiscriminate attacks. Article 51(5)(b), Additional Protocol I to the Geneva Conventions, while formally not applicable in non-international armed conflicts, provides the following relevant example of what constitutes an indiscriminate attack: an attack 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.

accountability and transparency within the context of planning and conducting military operations in order to prevent unnecessary and unacceptable harm to civilians in the future.

## **Mandate**

This report is issued in accordance with UNAMA's mandate under United Nations Security Council resolution 2405 (2018) "to monitor the situation of civilians, to coordinate efforts to ensure their protection, [...] to promote accountability, and to assist in the full implementation of the fundamental freedoms and human rights provisions of the Afghan Constitution and international treaties to which Afghanistan is a State party."

UNAMA undertakes a range of activities aimed at minimizing the impact of the armed conflict on civilians, including independent and impartial monitoring and fact-finding concerning incidents involving loss of life or injury to civilians, advocacy with all parties to the conflict, and initiatives to promote compliance with international humanitarian and human rights law, as well as the laws and Constitution of Afghanistan. Consistent with established practice concerning civilian casualty incidents, UNAMA undertook its own fact-finding into the 2 April aerial attack in Dasht-e-Archi district of Kunduz province. This report contains UNAMA's findings and offers recommendations in furtherance of its mandate.

## **Methodology**

From 2-30 April 2018, UNAMA conducted fact-finding into the 2 April aerial attack in Laghmani village, Dasht-e-Archi district, Kunduz province. The findings of this report are based on: first-hand accounts of the incident from residents of Laghmani village, Dasht-e-Archi district, including victims and their relatives, witnesses, teachers from the madrassa and schools in the area and community elders; observations by hospital staff at Kunduz Regional Hospital and the Sardar Mohammed Daud Khan Ministry of Defense hospital (400 beds hospital) in Kabul; and, discussions with security forces and government representatives at provincial and national levels.

UNAMA met with key government stakeholders, including multiple meetings with the Provincial Governor and provincial head of the National Directorate of Security, the provincial leadership of the Afghan National Army, and the Chief of Police of Dasht-e-Archi district. UNAMA also met with the provincial Department of Health and conducted a phone interview with officials at the provincial Department of Education. At the national level, UNAMA met with the Legal Advisor to the Afghan Air Force Commander and various representatives of Ministry of Defence in Kabul. UNAMA also met with representatives of the Resolute Support mission in Kabul.

In total, UNAMA human rights staff conducted over 90 in-person and telephone interviews, held three large community consultations in Kunduz city with over 15 elders and community members from the area, and spoke with over 50 more residents of Laghmani village during its field visit.

In addition to interviews and meetings held in Kunduz city and Kabul, UNAMA carried out a site visit to Laghmani village in Dasht-e-Archi district on 23 April, in collaboration with the Afghan Independent Human Rights Commission (AIHRC). UNAMA considered the mission to be of significant value to the fact-finding process as it allowed the delegation to interview individuals who were unable to travel to Kunduz city for face-to-face interviews, particularly women and children, and those whom UNAMA had not reached by telephone. It also allowed the delegation to visually observe and map the reported impact sites.

UNAMA coordinated its outreach and fact-finding efforts with the AIHRC at national and local levels throughout the verification process.<sup>7</sup> In addition to the joint site visit to Dasht-e-Archi district, UNAMA and the AIHRC held joint meetings with civil society, community members and leaders, government officials, and victims and witnesses. UNAMA collected photos, including of the site and of victims' injuries, and an audio

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<sup>7</sup> UNAMA acknowledges that its casualty figures may slightly vary from the figures presented by the AIHRC. This is due to differences in verification standards of the respective organizations only, and UNAMA is satisfied that the figures are broadly consistent.

recording of the incident to assist in its analysis. UNAMA used media and other reports as a basis to formulate questions, but did not rely upon them as a source of information.

UNAMA contacted multiple sources to confirm the identity of each of the victims, and considered casualties verified only when confirmed by three independent sources. Information was considered credible, but not yet verified when confirmed by two strong sources.

It was not possible for UNAMA to verify the civilian status of each individual victim – all of whom were male – according to its usual methodology, which requires three independent source types.<sup>8</sup> UNAMA notes that the casualty figures presented in this report do not include any individuals whose civilian status was questionable. For many such persons, irrespective of their status, UNAMA was unable to verify whether they had suffered casualties. Accordingly, this report does not provide final verified civilian casualty figures.<sup>9</sup> Instead, it focuses on the scope of harm to individuals, highlighting in particular the significant child casualties caused. Despite all efforts to reach absolute accuracy, UNAMA does not claim that the statistics presented in this report are complete.

UNAMA does not purport to have the capacity to make a legal determination of whether violations of international law, including war crimes, took place, nor does UNAMA seek to be an alternative for the criminal justice system. The protection of civilians monitoring conducted by UNAMA uses internationally accepted human rights fact-finding methodologies to provide credible and reliable information on issues related to the protection of civilians.

UNAMA presents the findings of this Special Report for the public and as a contribution to the Government's own investigation as it seeks to meet its obligations under international law, including towards the victims. The Government is obligated as the primary duty-bearer to protect civilians from harm and ensure accountability for those responsible for violations of international and Afghan law.

## CASUALTIES

According to UNAMA's rigorous methodology, which requires three independent sources for verified casualties, UNAMA has verified 107 casualties (36 killed and 71 injured), of which 81 were children (30 killed and 51 injured).<sup>10</sup> However, UNAMA received credible information to substantiate at least 122 casualties in total (38 killed and 84 injured), of which 87 were children (30 killed and 57 injured). UNAMA acknowledges that the figures presented in this report may not be exhaustive due to these stringent verification standards and the challenges of obtaining information.

UNAMA is not able to confirm the civilian status of each individual killed or injured, nor is the mission in a position to determine the presence or actions of Taliban leaders or units at the time of the airstrike.

According to the victims, witnesses and medical personnel interviewed by UNAMA, most of the injuries resulted from shrapnel from the rocket attack while those who were killed had reportedly been hit by machinegun fire and rocket shrapnel.

No women or girls were among the casualties as this was a religious event for men and boys only.

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<sup>8</sup> For more information, see Methodology section of UNAMA's midyear and annual protection of civilians in armed conflict reports, available at: <https://unama.unmissions.org/protection-of-civilians-reports>.

<sup>9</sup> UNAMA expects the final civilian casualty figures from this attack to be included in its Protection of Civilians Mid-Year report, due for public release in July 2018.

<sup>10</sup> Some of the boys interviewed in Laghmani village during UNAMA's visit to the area exhibited signs of very minor injuries, while nearly all of the children interviewed in the Kunduz hospital in the days after the incident showed more serious signs of shrapnel wounds.

## FINDINGS RELATED TO THE ATTACK ON LAGHMANI VILLAGE

On 2 April 2018, at approximately 12:30pm in Dasht-e-Archi district, Kunduz province, Afghan Air Force MD-530 helicopters fired rockets and heavy machineguns in Laghmani village,<sup>11</sup> with at least three rockets impacting in the immediate vicinity of the Darul-ulom-e-Hashimia Omaria madrassa,<sup>12</sup> where a large group of men and boys had gathered for an open air '*dashtar bandi*' religious ceremony to celebrate the completion of memorization of the Quran by nine madrassa students. Individuals who attended estimated that 500-1500 persons were present, including a large number of children.

Those victims and witnesses interviewed by UNAMA consistently reported that helicopters approached and fired rockets into the crowd, striking children sitting at the rear of the ceremony first. UNAMA received multiple accounts from victims and witnesses that after the first rocket struck the crowd and people ran towards the nearby road and houses, the helicopters continued to launch rockets in the village and fire machineguns, reportedly following the path of individuals fleeing the area. UNAMA could not verify allegations that the firing from the helicopters deliberately targeted civilians.

Government sources indicated that the helicopters were equipped with rockets and .50 calibre machineguns, and confirmed firing three rockets during its aerial operations.<sup>13</sup> According to victims and witnesses interviewed, as many as twelve rockets impacted Laghmani village, including on a nearby school, which was closed due to province-wide school closures at the time. UNAMA obtained an audio recording of the incident and heard noises consistent with multiple rounds of rocket fire and heavy machinegun fire from the air, as well as small arms fire from the ground.

UNAMA confirmed that the religious ceremony was widely publicized and known in the area; 400 posters were printed announcing the graduates and special guests from across the country. Attendees included graduates and continuing students from the madrassa, invited students and religious leaders from mosques and madrassas from neighbouring areas and other parts of the country, along with many boys and men who joined from the area. In accordance with cultural tradition, lunch was meant to be served after the ceremony, which may have drawn some of the attendees, particularly the children.

Those interviewed by UNAMA described the graduation ceremony as mainly religious in nature, noting speeches by religious scholars. Witnesses also described organizers of the event as wearing a green or yellow band on their arm, who handed out bags for shoes, distributed food and water, and directed people where to sit. Witnesses told UNAMA that unarmed members of the Taliban were present among the attendees, which was not uncommon for gatherings in the area. Several residents of the village noted that a number of armed Taliban fighters were also present in the area providing security for the ceremony. While several attendees reported that a few of the speakers conveyed political messages, none of the sources interviewed by UNAMA indicated that the ceremony had a military purpose or any link to military activities.

The ceremony took place outdoors, in a field (approximately the size of a football field) adjacent to the madrassa, with a stage for speeches placed on the side of the field closest to the madrassa. Children were seated separately from adults at the rear of the field, farthest from the madrassa. The Taliban had established temporary checkpoints on the nearby road for the ceremony and no vehicles were allowed to approach; cars were reportedly being directed to park at the nearby boys' school approximately 300-400 metres away.

During a visit to Laghmani village on 23 April, UNAMA recorded the size and location of 12 sites where witnesses indicated rockets had impacted, including one impact site in the field where the children were reportedly hit, two on buildings near to the field and madrassa, and multiple impacts on the boys' school.

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<sup>11</sup> Laghmani and Daftani villages are geographically very close to one another. While a number of media reports refer to the attack taking place in Daftani village, residents from the area referred to the incident site as being in Laghmani.

<sup>12</sup> This was known by residents of the area by the name of Gujjar Akhundzada Madrassa.

<sup>13</sup> UNAMA meeting with the Ministry of Defense in Kabul on 30 April 2018.

UNAMA observed one impact site from a bullet on a solar panel on the roof of a home between the boys' school and the madrassa. Several witnesses and village residents alleged that some victims were killed or injured inside a house that was also impacted, others by shrapnel from rockets. The victims who were interviewed at the hospital directly after the attack all exhibited injuries consistent with shrapnel wounds, as confirmed by health professionals. UNAMA observed that the madrassa where the incident took place was surrounded by small shops, residential homes, a boys' school, a mosque, wheat fields, a canal, a road and trees.

## LEGAL FRAMEWORK

UNAMA takes the position that the armed conflict in Afghanistan is a non-international armed conflict between the armed forces supporting the Government of Afghanistan (Afghan national security forces supported by international military forces) and non-State armed opposition groups. In a non-international armed conflict, article 3 common to the Geneva Conventions establishes minimum standards that parties to a conflict shall respect. Additionally, the provisions of Additional Protocol II of 1977, to which Afghanistan is a party, as well as the provisions of customary international law apply. Under international law, parties to a conflict are obligated to respect principles of distinction, precaution and proportionality in the conduct of hostilities, including when planning military operations.

Direct attacks against civilians or civilians objects are prohibited by international humanitarian law, most notably in line with the principle of distinction, which states that parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants and military objectives and must not be directed against civilians or civilian objects.<sup>14</sup> Children in armed conflict are entitled to special respect and protection.<sup>15</sup> Buildings dedicated to education or religion are also entitled to special protection from attack, unless they are military objectives.<sup>16</sup>

Prior to launching an attack, a party to the conflict has the obligation to take all feasible precautions to verify that targets are military objectives, and choose means and methods of warfare to avoid or minimize civilian casualties and damage to civilian property. The party must assess whether the attack may be expected to be disproportionate, and cancel or suspend an attack when it becomes apparent that the target is not a military objective or that the attack may be expected to be disproportionate. Given the choice between several military objectives for obtaining a similar advantage, the party must select the objective that is expected to cause the least danger to civilian lives and civilian objects. The party must also give effective advance warning of attacks that may affect the civilian population.<sup>17</sup>

Attacks that may be expected to cause incidental loss of civilian life and injury to civilians which would be excessive in relation to the concrete and military advantage anticipated are prohibited under international humanitarian law and may amount to war crimes.<sup>18</sup> Additionally, attacks that employ a method or means of combat that cannot be directed at a specific military objective are indiscriminate attacks prohibited under international humanitarian law and may amount to war crimes.<sup>19</sup>

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<sup>14</sup> 1977 Additional Protocol II to the Geneva Conventions, Article 13(2); ICRC Customary International Humanitarian Law Study, Rules 1 and 7.

<sup>15</sup> 1977 Additional Protocol II to the Geneva Conventions, Article 4(3); 1989 Convention on the Rights of the Child, Article 38; and ICRC Customary International Humanitarian Law Study, Rule 135.

<sup>16</sup> ICRC Customary International Humanitarian Law Study, Rule 38.

<sup>17</sup> ICRC Customary International Humanitarian Law Study, Rules 15-21, and Article 13(1) of 1977 Additional Protocol II to the Geneva Conventions.

<sup>18</sup> ICRC Customary International Humanitarian Law Study, Rules 14 and 156.

<sup>19</sup> ICRC Customary International Humanitarian Law Study, Rules 11, 12 and 156.

## ANALYSIS

According to the Government, the airstrike targeted a large number of senior Taliban leaders present in the area, including members of the Quetta Shura as well as members of the Taliban's 'Red Unit' who travelled to the village for a military planning meeting.<sup>20</sup> According to the Government, the Taliban were preparing an attack to take control of Kunduz city.<sup>21</sup> The Government issued public statements in the days directly after the airstrike indicating that most of the casualties were members of the Taliban and providing initial reports that 18 Afghan and foreign top commanders of Taliban were killed and 12 others were wounded.<sup>22</sup> The Government later informed UNAMA that 25 Taliban leaders were killed, including members of the 'Red Unit' and Quetta Shura, and 31 Taliban were injured.<sup>23</sup>

The Government has acknowledged that civilian casualties occurred, and has established a commission to investigate the incident, which has produced internal findings, but as of 7 May 2018, these have not been released to the public.<sup>24</sup>

UNAMA is not in a position to determine whether senior Taliban leaders were present at the ceremony or not, although witnesses indicated Taliban members were present in the area at the time, nor is it in a position to evaluate whether they were engaged in military planning. However, even if the government had a legitimate military objective, UNAMA's findings raise serious concern as to the process that was followed by the military in planning and carrying out its attack. The high numbers of child casualties resulting from this attack, which took place in a civilian area during a religious ceremony, combined with the use of imprecise weapons in this context, raise questions as to the respect by the government of the rules of precaution and proportionality.

UNAMA's findings indicate that the ceremony was religious in nature, had been widely advertised and known, and the crowd gathered was primarily civilian, many of whom were children, many under the age of ten. UNAMA notes that the attack took place at a time when lunch was about to be served for the attendees, and the crowd gathered also included members of the community, including children, who came to observe the ceremony or partake in the meal.

Additionally, the use of rockets and heavy machine fire from MD-530 helicopters in the context of such an event attended by a large number of civilians, with no apparent warning issued prior to the attack, is especially concerning. Such weapons do not allow for precision targeting and the impact area of the rockets extended over approximately 400 meters. The imprecise nature of the weapons that were used make it difficult for an attacking party to distinguish between the military objective of an attack and civilians or civilian objects, which is required to limit the attack's effects as required by international humanitarian law. Considering such circumstances, UNAMA finds that it was reasonably foreseeable that an attack against this area, using imprecise weapons, during a religious ceremony would have caused a large number of civilian casualties, with lethal indiscriminate effects.

During UNAMA's fact-finding, residents of Dasht-e-Archi district expressed to UNAMA that they felt "caught in the middle" of the conflict between the Government and Taliban and felt targeted from both sides. Residents of the area also expressed their perception that governmental authorities viewed the civilian populations in

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<sup>20</sup> UNAMA meetings with Ministry of Defense officers in Kunduz on 8 April 2018 and in Kabul on 30 April 2018. See also: President's Office Press statement on the incident in Dasht-e-Archi district of Kunduz (3 April 2018), <https://president.gov.af/fa/2018/04/03/14318> (Dari). "Taliban red army was targeted by an air strike", <http://www.gmic.gov.af/dari/press-releases/3253-2018-04-03-14-15-46> (Dari).

<sup>21</sup> Ibid.

<sup>22</sup> The Government Media and Information Center named these initial figures in a statement on 3 April 2018. See "Taliban red army was targeted by an air strike", <http://www.gmic.gov.af/dari/press-releases/3253-2018-04-03-14-15-46> (Dari); see also the President's Office Press statement on the incident in Dasht-e-Archi district of Kunduz, 3 April 2018, <https://president.gov.af/fa/2018/04/03/14318> (Dari).

<sup>23</sup> See footnote 20.

<sup>24</sup> See section on "Investigation, accountability and compensation" for additional information.

areas under Taliban control, such as Dasht-e-Archi district, with suspicion. They expressed concern that this may be resulting in their differential treatment.

The Government's statements raise serious doubt as to whether it is defining its military objectives in accordance with international law. Under international humanitarian law, civilian objects and the civilian population are protected from attack. UNAMA reminds the Government that civilians residing in an area under Taliban control remain civilians protected from attack unless and for so long as they actively participate in hostilities.<sup>25</sup> UNAMA notes that for many civilians living in Taliban-controlled areas, they may not have an alternative option, and one's residence is not indicative of any affiliation with a particular group. In case of doubt as to the character of a person, the person shall be considered a civilian and cannot be attacked. Only a careful assessment that concludes that the person is a legitimate target can justify an attack.<sup>26</sup>

UNAMA is not in a position to determine whether the Government's actions in planning and carrying out the aerial operation on 2 April amounted to violations of international law. However, UNAMA's findings raise serious concern about a lack of precautions taken to protect civilians from harm and require further investigation by competent authorities.

## INVESTIGATION, ACCOUNTABILITY AND COMPENSATION

On 4 April, the Government established a commission comprised of representatives from the Office of the President, Afghan National Army, Attorney General's Office, and Ministry of Haj and Religious Affairs who travelled to Kunduz city to investigate the incident. The commission met with a range of provincial stakeholders, including the Provincial Governor, Provincial Afghan National Army Commander, the National Directorate of Security, and community representatives from Dasht-e-Archi. The Wolesi Jirga appointed a delegation to monitor the outcome of this commission.

Immediately after the incident, the Governor of Kunduz reportedly established a provincial investigation committee comprised of representatives from the Afghan National Army, Afghan National Police, National Directorate of Security and the Provincial Council. According to the Provincial Governor, the provincial committee worked with the Kabul delegation to investigate the incident and prepared a report that was submitted to Kabul.

According to the Government, compensation has been provided to victims and some victims informed UNAMA that this was indeed the case. As of 7 May 2018, the findings of the governmental commission have not been publicly released, although certain details have been shared in meetings with UNAMA.

### Community reactions

Several public protests were organized in the aftermath of the attack. On 4 April, approximately 300 residents of Dasht-e-Archi traveled to Kunduz city to protest the incident. Reportedly, several of the protesters were harmed during clashes with the Afghan National Police, although casualties have not been verified as of the time of writing. On 13 April in Kunduz city near the Spinzar Hotel, during another *dashtar bandi* ceremony, several speakers, including religious scholars and mullahs from neighboring provinces and, reportedly, Iran, condemned the airstrike. On 18 April, religious scholars gathered in Herat Province to condemn attacks on madrassas and mosques, noting specifically the attack in Dasht-e-Archi. The Herat Ulema Council reportedly stated that if the government did not accept responsibility for the incident, the Council members would discourage participation in the upcoming elections.<sup>27</sup>

<sup>25</sup> Article 13(3) of the 1977 Additional Protocol II to the Geneva Conventions; ICRC Customary International Humanitarian Law Study, Rule 6; and ICRC Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law, pp. 11 and 32-34.

<sup>26</sup> ICRC Customary International Humanitarian Law Study, Rule 6.

<sup>27</sup> Kabul News evening bulletin, 18 and 19 April 2018.

## RECOMMENDATIONS

### Government of Afghanistan

*Accountability* - Ensure that investigations of the attack are prompt, impartial and transparent, ensure accountability for perpetrators and make public the findings and measures taken. Fully utilise existing forensic capacity in investigations to ensure all potential evidence is preserved and available to support efforts in the pursuit of accountability.

*Redress for victims* - Ensure appropriate redress for the victims, including compensation, is offered to all eligible wounded victims and families of those deceased, as provided for under Afghan laws.

*Prevention* - Conduct a thorough, transparent, objective and credible review of policies concerning military operations to ensure compliance with international humanitarian law, with specific attention to: the definition of military objectives, effectiveness of precautionary measures, and mechanisms for continuous review of compliance with international humanitarian law during military operations.

*Restoration of trust* – Take measures to correct any actual or perceived bias against civilians living in Taliban-controlled areas, particularly when it may influence the planning and conduct of military operations, with the aim of restoring trust between the Government and communities.

### International Forces

*Technical support* - Provide support to the Government of Afghanistan within its role to train, advise and assist in carrying out the recommended actions.

### Anti-Government Elements (Taliban)

*Protection of civilian population* - In accordance with international humanitarian law, take measures to ensure that the civilian population and individual civilians enjoy general protection against the dangers arising from military operations. Remove and relocate all military personnel, weapons and equipment from civilian populated areas.

## ANNEX 1: MEDIA STATEMENTS AND COMMUNITY REACTIONS

### Government public statements

The President's Office Press statement of 3 April indicated that the airstrike aimed to “thwart the plan” of the Taliban, which “had invited their people from outside and inside of the country to the Dasht-e-Archi district of Kunduz to develop deadly plans so our people would boil in blood”.<sup>28</sup> Addressing the media that same day, the Ministry of Defense deputy spokesman Mohammad Radmanish stated that the airstrike targeted “Taliban members from its northeastern council who had gathered to launch a massive operation to harm the residents of Kunduz”.<sup>29</sup>

### Taliban public statements

In the days after the incident, several videos purporting to show the scene at the madrassa moments before the attack as well as after the attack were posted on the Voice of Jihad website. The airstrike was likened to ‘doomsday’ by a man identified as a Taliban commander.<sup>30</sup>

Maulana Samiul Haq, Chief of Pakistan’s Jamiat Ulema-e-Islami, also considered to be Taliban’s ‘Spiritual Father’, was quoted in the media on 5 April stating that the attack on religious scholars, seminary students and civilians was an act of barbarism and terrorism.

On April 9, the Taliban announced on its Voice of Jihad website that a delegation had been assigned to look into the attack and locate the addresses of the victims, which they indicated consisted of over 200 civilians (59 killed, 150 injured), mostly children, scholars, Hufaz<sup>31</sup> and elderly men. The Taliban attributed responsibility for the attack to “US invaders and their puppets”, indicating that they bombed a madrassa and a large gathering.<sup>32</sup>

Taliban spokesman Zabihullah Mujahid in a media interview on April 10 called for an “independent team carry out a fair and thorough investigation in order to find out who carried out this attack and why”, indicating that the Taliban would guarantee their safety.

The Dasht-e-Archi incident also featured prominently in the Taliban’s 25 April public statement announcing its spring offensive.

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<sup>28</sup> President’s Office Press statement on the incident in Dasht-e-Archi district of Kunduz (3 April 2018), <https://president.gov.af/fa/2018/04/03/14318>.

<sup>29</sup> The Government Media and Information Center, 3 April 2018, “Taliban red army was targeted by an air strike”, <http://www.gmic.gov.af/dari/press-releases/3253-2018-04-03-14-15-46>.

<sup>30</sup> <http://shahamat1.com/?p=113323>.

<sup>31</sup> Hufaz is the plural for Hafez, which refers to someone who has memorized the Quran.

<sup>32</sup> <http://shahamat1.com/?p=113406> (Pashto), <http://alemarah-english.com/?p=27503>.