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## “They’ve Shot Many Like This”

Abusive Night Raids by CIA-Backed Afghan Strike Forces



## **“They’ve Shot Many Like This”**

**Abusive Night Raids by CIA-Backed Afghan Strike Forces**

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# Map of Afghanistan



## Summary

Through much of 2019, the United States government and Taliban insurgents were engaged in negotiations toward an agreement that could lead to the eventual withdrawal of US forces in Afghanistan. Those negotiations officially halted, at least temporarily, on September 7, 2019. In the absence of a larger political settlement, any agreement between the US and Taliban would not end the armed conflict between the Afghan government and the Taliban, nor resolve a range of conflicts that have fueled fighting among various Afghan factions for over four decades. If there is a political settlement, the kind of Afghan government that emerges, the structure of the country's defense forces, and the extent to which existing militia and insurgent forces demobilize and disarm will all be critically important.

One glaring omission in the negotiations so far has been discussion of the future of clandestine Afghan forces operating as part of the covert operations of the Central Intelligence Agency (CIA) in Afghanistan, with ground support from US special forces seconded to the CIA and air support from the US military, including intelligence and surveillance in the identification of targets. A number of US military officials have sought to retain these Afghan paramilitary forces in Afghanistan as a bulwark against Al-Qaeda and the Islamic State (also known as ISIS). These troops include Afghan strike forces who have been responsible for extrajudicial executions and enforced disappearances, indiscriminate airstrikes, attacks on medical facilities, and other violations of international humanitarian law, or the laws of war.

Among the recent cases Human Rights Watch has documented:

- In March 2018, Afghan paramilitary forces raided the home of a staff member of an Afghan nongovernmental organization (NGO). The forces arrived late at night at the family compound and separated the women from the men. They singled out the staff member's brother and took him to another part of the house. They shot him, leaving the body, and left with another male family member, whom the government later denied holding.
- In October 2018, an Afghan paramilitary force unit raided a home in the Rodat district of Nangarhar province, shooting dead five civilian members of one family, including an elderly woman and child.

- In December 2018, the Khost Protection Force fatally shot six civilians during a night search operation in Paktia province. They shot Naim Faruqi, a 60-year-old tribal elder and provincial peace council member, in the eye, and his nephew, a student in his 20s, in the mouth.

These are not isolated cases. This report documents 14 cases in which CIA-backed Afghan strike forces committed serious abuses between late 2017 and mid-2019. They are illustrative of a larger pattern of serious laws-of-war violations—some amounting to war crimes—that extends to all provinces in Afghanistan where these paramilitary forces operate with impunity.

In the course of researching this report, Afghan officials, civil society and human rights activists, Afghan and foreign healthcare workers, journalists, and community elders all described abusive raids and indiscriminate airstrikes as having become a daily fact of life for many communities—often with devastating consequences. Speaking to Human Rights Watch, one diplomat familiar with Afghan strike force operations referred to them as “death squads.”

Afghan paramilitary forces nominally belong to the Afghan National Directorate of Security (NDS), the country’s primary intelligence agency. However, these forces do not fall under the ordinary chain of command within the NDS, nor under normal Afghan or US military chains of command. They largely have been recruited, trained, equipped, and overseen by the CIA. They often have US special forces personnel deployed alongside them during kill-or-capture operations; these US forces, primarily Army Rangers, have been seconded to the CIA. Afghan paramilitary strike forces generally carry out operations with US logistical support and are dependent on US intelligence and surveillance for targeting.

Search operations in Afghan villages to “kill or capture” insurgents conducted at night (“night raids”) have long raised controversy in Afghanistan because they frequently harm civilians and civilian property. Nonetheless, there has been a sharp increase in these operations since late 2017.

In 2017, in a departure from previous policy, the US authorized Afghan special forces, including these paramilitary units, to call in airstrikes for support even without US forces



present to identify the targets. Changes to targeting directives have meant that airstrikes are hitting more residential buildings, while a decreased US ground presence and a reliance on local Afghan intelligence sources has meant there is less information available about the possible presence of civilians in those buildings.

Taliban forces have frequently committed violations of the laws of war and human rights abuses, including indiscriminate attacks that have killed and injured civilians, as well as using civilians as shields. Afghan National Defense and Security Force (ANDSF) officials and their US counterparts contend that night raids backed by air operations are necessary in a war in which insurgent forces deploy among the civilian population. But Taliban forces unlawfully putting civilians at risk does not justify Afghan and US military operations that cause indiscriminate or disproportionate loss of civilian life, nor attacks on medical facilities. The deliberate killing of civilians or combatants in custody is never lawful.

In many of the night raids that Human Rights Watch investigated, Afghan paramilitary forces seem to have unlawfully targeted civilians because of mistaken identity, poor intelligence, or political rivalries in the locality.

### **Faulty Intelligence**

In many cases, paramilitary units apparently targeted houses for night raids or airstrikes based on intelligence that family members had provided food to Taliban or ISIS insurgents (often under duress); were nearby when insurgents carried out attacks on government forces; or may have had political or tribal links that made them susceptible to local rivalries and false accusations of links with insurgent groups.

### **Guilt by Association**

In some cases, these paramilitary forces targeted medical staff working in clinics in contested or Taliban-controlled areas because they treated wounded insurgents. Civilians in these areas also described living in fear that the near constant presence of drones, aircraft, and helicopters searching for insurgents who live in their villages left them vulnerable to being targeted at any time as fighters.

### **Willful Violation of the Law**

In many cases, paramilitary strike forces summarily executed persons taken into custody or forcibly disappeared them, not telling their families about their fate or whereabouts. In none of the cases Human Rights Watch investigated did the civilians who were killed offer resistance or act in any way that justified the use of force.

### **Failure to Investigate**

Under the laws of war, the government has an obligation to investigate alleged war crimes by its forces and appropriately prosecute those responsible. Neither the Afghan military nor the government has developed any meaningful capacity to investigate possible violations arising from their military operations, despite years of training by the US and others. They lack both the capacity and the political will to investigate incidents involving these CIA-backed paramilitary forces.

In the very few cases in which the Afghan government has promised to investigate incidents, no findings have been made public. We are unaware of any cases in which those responsible for serious crimes, including murder, have been held to account, nor have the victims been able to obtain redress. Foreign forces taking part in military operations are also obligated to investigate alleged wrongdoing. As a matter of policy, the US military does not respond to questions about clandestine operations.

At their core, the behavior of these Afghan paramilitary forces reflects the propensity of the US and Afghan governments to prioritize short-term military fixes over long-term reforms that would promote security and the rule of law. As these forces commit serious abuses without accountability, they foster an environment that contributes to, rather than reduces, general lawlessness and distrust of the government in the areas in which they deploy.

Even though the paramilitary strike forces operate outside of the usual Afghan military chain of command and have repeatedly been involved in rights abuses, official calls to preserve them remain strong. Ultimately, the strike forces are just the latest manifestation of US and Afghan government attempts since 2001 to unleash forces largely unbound by the laws of war in a counterproductive approach to combatting insurgency, from the

Taliban to Al-Qaeda to ISIS. Rather than bringing stability to Afghanistan, they have undermined Afghan institutions and put many Afghans at risk.

## Recommendations

All parties to the armed conflict in Afghanistan, including insurgent forces, are obligated to abide by international humanitarian law, or the laws of war. Specifically, the laws of war prohibit deliberate or indiscriminate attacks on civilians and civilian structures, including medical workers and facilities; summary executions of anyone in custody; and enforced disappearances, including secret detention.

### To the Government of Afghanistan

- Immediately disband and disarm all pro-government armed groups, paramilitary strike forces, and militias, including National Directorate of Security strike force units, the Khost Protection Force, and other counterinsurgency forces that are not under the Afghan National Defense and Security Forces chain of command. Only incorporate such forces into the ANDSF following a robust vetting procedure to screen out individuals against whom there are credible allegations of war crimes.
- Cooperate with independent investigations into these allegations, including those carried out by the Afghanistan Independent Human Rights Commission, in order to facilitate accountability.
- Promptly and impartially investigate existing allegations of secret detentions and enforced disappearances, locate and release those unlawfully held, and prosecute those responsible, including as a matter of command responsibility.
- Take all necessary measures to end attacks on medical personnel and medical facilities, including those providing care to suspected insurgents.
- Investigate all serious allegations of violations of human rights and the laws of war, and appropriately prosecute those responsible for war crimes.
- Investigate military operations that result in civilian casualties to provide an effective feedback mechanism to reduce civilian casualties in the future.
- Provide timely and appropriate compensation to civilians harmed in unlawful attacks.

## To the Government of the United States

- Clarify command responsibility for operations by Afghan paramilitary strike forces, NDS special forces, the Khost Protection Force, and other Afghan counterinsurgency forces.
- Cooperate with independent investigations into these allegations, including those carried out by the Afghanistan Independent Human Rights Commission, in order to facilitate accountability.
- In all circumstances, comply with international humanitarian law standards to protect civilians from the dangers arising from military operations. These include prohibitions on attacks against civilians and civilian objects, indiscriminate attacks, and attacks that cause harm to civilians or civilian objects that are excessive in relation to the anticipated military advantage.
- US forces should, in all instances, take all appropriate steps to prevent or stop Afghan forces deployed with or under the command of US forces from committing violations of international human rights and humanitarian law. Those who do should be turned over to the proper Afghan authorities for disciplinary action or criminal prosecution.
- Assist Afghan investigations into alleged secret detentions and enforced disappearances.
- Press the Afghan government to promptly and impartially investigate alleged serious violations of human rights and the laws of war.
- Investigate alleged war crimes involving the participation of US forces, and appropriately prosecute or transfer for prosecution US personnel implicated in war crimes.
- Restore safeguards prohibiting US airstrikes in densely populated areas unless the intelligence is highly reliable and US forces have visually identified the target and made an on-the-ground assessment of the presence of civilians.
- Provide accurate information on civilian casualties in military operations, and refrain from denying responsibility for civilian loss before a thorough investigation has been conducted.
- Conduct immediate and transparent investigations of airstrikes in which there are civilian casualties, and publicly report the findings.

- Rebuild the capacity of the Resolute Support civilian casualty mitigation units to monitor, investigate, and publicly report on all incidents of civilian casualties.
- Provide timely and appropriate compensation or ex gratia (condolence) payments to civilians harmed in operations involving US forces.

### **To the Taliban and Other Insurgent Forces**

- Take all feasible measures to protect civilians from the effects of attacks, and, to the extent feasible, remove civilians from the vicinity of insurgent forces.
- Avoid deploying forces within or near densely populated areas.
- Cease the requisition of food and other private property through threats and the use of force and without payment.

## Methodology

Human Rights Watch conducted research for this report in Afghanistan between November 2017 and August 2019. Human Rights Watch researchers interviewed 39 local residents and other witnesses to night raids in Ghazni, Helmand, Kabul, Kandahar, Nangarhar, Paktia, Uruzgan, Wardak, and Zabul provinces. We identified incidents on the basis of reports from local media and Afghan NGOs tracking civilian casualties. We also interviewed staff at Afghan human rights groups who have documented these raids, and NGO officials whose Afghan staff have been caught up in raids. Most interviews were conducted in Dari and Pashto. Some of the interviews were conducted by telephone.

All of the witnesses with whom we spoke were informed of the purpose of the interview and the ways in which the information would be used, and were offered anonymity in our reporting. This report withholds identifying information for most interviewees to protect their privacy and security. None of the interviewees received financial or other incentives for speaking with us.

Human Rights Watch also interviewed staff members of Afghanistan-based NGOs and international humanitarian organizations, representatives from the United Nations, journalists, and military analysts familiar with Afghanistan's security institutions and oversight of special forces operations.

In August 2019, Human Rights Watch asked the Afghan government and US military for information, including any investigations into the incidents documented in this report, and for their comments. Responses from the US Forces-Afghanistan and Resolute Support and from the CIA are included in appendices to this report.

# I. Extrajudicial Killings by CIA-Backed Afghan Special Forces

United States and Afghan security force operations in Afghanistan are claiming the highest civilian toll in more than a decade. According to the United Nations Assistance Mission in Afghanistan (UNAMA), international and Afghan government forces caused more civilian deaths than the Taliban and other insurgent groups in Afghanistan in the first six months of 2019.<sup>1</sup> Airstrikes, many of which hit residential buildings, have been the leading cause of these deaths, but UNAMA also noted a 79 percent increase in civilian casualties from search operations conducted by Afghan paramilitary strike forces as of mid-2019.<sup>2</sup>

## Role of US Personnel in Kill-or-Capture Operations

Kill-or-capture operations conducted at night (“night raids”) have long been a controversial military tactic in Afghanistan.<sup>3</sup> Soon after the US-led invasion of Afghanistan in late 2001, the Central Intelligence Agency recruited forces from among existing anti-Taliban militias to conduct kill-or-capture operations as an early feature of US special forces operations after 2001.

Such raids increased during the “surge” of 2009-2010 that brought 50,000 additional US troops to Afghanistan.<sup>4</sup> Between December 2010 and February 2011, US special forces, often accompanying Afghan government forces, carried out on average 19 night raids per night.<sup>5</sup> Following public protests in Afghanistan and criticism from human rights organizations about rising civilian casualties in these operations, as well as concerns for

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<sup>1</sup> UNAMA, “Midyear Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2019,” July 30, 2019, [https://unama.unmissions.org/sites/default/files/unama\\_poc\\_midyear\\_update\\_2019\\_-\\_30\\_july\\_english.pdf](https://unama.unmissions.org/sites/default/files/unama_poc_midyear_update_2019_-_30_july_english.pdf) (accessed August 22, 2019).

<sup>2</sup> Ibid. Between January 1 and June 30, 2019, UNAMA recorded 519 civilian casualties (363 deaths and 156 injured), 150 of which were children (89 deaths and 61 injured), a 39 percent increase from aerial operations in comparison to the first half of 2018. UNAMA also documented 218 civilian casualties (159 deaths and 59 injured) as a result of search operations, more than half of which were caused by NDS special forces. In the first half of 2018, such search operations caused 122 civilian casualties (99 deaths and 23 injured).

<sup>3</sup> Open Society Foundations and The Liaison Office, “The Cost of Kill/Capture: Impact of the Night Raid Surge on Afghan Civilians,” September 2011, <https://www.opensocietyfoundations.org/publications/cost-killcapture-impact-night-raid-surge-afghan-civilians> (accessed August 22, 2019).

<sup>4</sup> Adding to the 50,000 already there. “Afghanistan War: Trump’s Allies and Troop Numbers,” *BBC News*, August 22, 2017, <https://www.bbc.com/news/world-41014263> (accessed August 22, 2019).

<sup>5</sup> Open Society Foundations and The Liaison Office, “The Cost of Kill/Capture.”



rising numbers of deaths of US special forces personnel, the US military in 2011 cut back the involvement of its special forces in night raids.<sup>6</sup> In subsequent years, however, the CIA expanded its recruitment and training of Afghan paramilitary units to work with CIA operatives to carry out kill-or-capture operations.<sup>7</sup>

According to the *New York Times*, Afghan paramilitary strike force units recruited, trained, equipped, and overseen by the CIA operate “in a parallel mission to the United States military’s, but with looser rules of engagement,” in which Afghan security institutions maintain only a “liaison relationship.”<sup>8</sup> The development of these strike forces is linked to the US military’s practice of lending US special forces to the CIA through a program initially known by the code name Omega.<sup>9</sup> Although Afghan forces “are doing the assaulting and the killing and the capturing,” US special forces, principally US Army Rangers, are often, but not always, deployed alongside them.<sup>10</sup> Even where no US forces take part in the operation, the US military often provides logistical and tactical support to these CIA-backed operations, including planning, delivering the forces to the location via helicopters, and providing air support.<sup>11</sup>

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<sup>6</sup> Human Rights Watch telephone interview with military analyst, September 21, 2019.

<sup>7</sup> Before 2011, the CIA was already working with some Afghan units as “counterterrorism pursuit teams,” created to “pursue” Al-Qaeda militants into Pakistan, where the US military had no legal authority to conduct operations. Some of these units, particularly the Khost Protection Force and Kandahar Strike Force, conducted operations inside Afghanistan. In 2013, then-President Hamid Karzai responded to public protests over disappearances and killings by US forces during night raids in Maidan Wardak by greatly restricting the use of such raids. However, when President Ashraf Ghani took office in September 2014, he lifted the restrictions and authorized the presence of US special operations forces to accompany Afghan forces in an “advisory” capacity during the raids. John Wendle, “Fear and Loathing in Afghanistan,” *Independent*, March 12, 2013, <https://www.independent.co.uk/news/world/asia/fear-and-loathing-in-afghanistan-8531601.html> (accessed October 19, 2019); Rod Nordland and Taimoor Shah, “Afghanistan Quietly Lifts Ban on Nighttime Raids,” *New York Times*, November 23, 2014, <https://www.nytimes.com/2014/11/24/world/asia/afghanistan-quietly-lifts-ban-on-night-raids.html> (accessed October 19, 2019).

<sup>8</sup> Mujib Mashal, “C.I.A.’s Afghan Forces Leave a Trail of Abuse and Anger,” *New York Times*, December 31, 2018, <https://www.nytimes.com/2018/12/31/world/asia/cia-afghanistan-strike-force.html> (accessed August 5, 2019). Members of these forces are paid about US\$1,000 monthly, much more than an ordinary soldier. Stefanie Glinski, “How the CIA Aims to Keep a Footprint in Afghanistan,” *Foreign Policy*, August 8, 2019, <https://foreignpolicy.com/2019/08/08/how-the-cia-aims-to-keep-a-footprint-in-afghanistan-taliban-talks/> (accessed August 20, 2019).

<sup>9</sup> Wesley Morgan, “U.S. Soldier Killed in Afghanistan Was Part of CIA Operation,” *Politico*, July 24, 2018, <https://www.politico.com/story/2018/07/24/afghanistan-defense-cia-operation-704929> (accessed August 20, 2019).

<sup>10</sup> *Ibid.*

<sup>11</sup> Human Rights Watch telephone and text interviews with military analyst and former US special forces officer, September 11 and 15, 2019.

## CIA-Backed Covert Afghan Paramilitary Forces in Afghanistan

From the initial weeks after the September 11, 2001 attacks on the US, the CIA worked with existing Afghan anti-Taliban forces and recruited new Afghan militias to pursue Al-Qaeda militants.<sup>12</sup> The early versions of these paramilitary strike forces were in place and operating as part of the CIA's covert operations before other US ground forces arrived in Afghanistan in November 2001, before the Bonn Agreement was signed in December 2001, and more than a year before the Afghan National Army was created in December 2002.<sup>13</sup>

Since 2001, the CIA has maintained a counterterrorism operation in Afghanistan parallel to the US military operation.<sup>14</sup> Some US special forces personnel have been seconded to this CIA operation over the years, initially under the Omega program which began in 2001.<sup>15</sup> The CIA counterterrorism operation, which falls under different US legal authorities than the US military operation, has continued to recruit, equip, train, and deploy Afghan paramilitary forces in pursuit of Al-Qaeda and Taliban forces, and, after 2014, militants affiliated with ISIS. CIA officers from the agency's Special Activities Center oversee operations along with operatives from Afghanistan's intelligence agency—the National Directorate of Security, which was established by the CIA in 2002—outside of the ordinary NDS chain of command.<sup>16</sup> The operations include elite US troops from the Joint Special Operations Command, generally Army Rangers, and contractors.<sup>17</sup> The majority of the forces taking part in these operations are Afghan.<sup>18</sup>

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<sup>12</sup> For extensive documentation of this effort, see Steve Coll, *Directorate S: The C.I.A. and America's Secret Wars in Afghanistan and Pakistan* (New York: Penguin Press, 2018).

<sup>13</sup> International Crisis Group, "A Force in Fragments: Reconstituting the Afghan National Army," May 12, 2010.

<sup>14</sup> In 2002, President Bush gave written legal authority to the CIA to "hunt down and kill the terrorists without seeking further approval." James Risen and David Johnston, "Threats and Responses: Hunt for Al Qaeda; Bush Has Widened Authority of C.I.A. to Kill Terrorists," *New York Times*, December 15, 2002, <https://www.nytimes.com/2002/12/15/world/threats-responses-hunt-for-al-qaeda-bush-has-widened-authority-cia-kill.html> (accessed October 9, 2019); Human Rights Watch, *"Enduring Freedom": Abuses by U.S. Forces in Afghanistan*, March 2004, <https://www.hrw.org/report/2004/03/07/enduring-freedom/abuses-us-forces-afghanistan>; Coll, *Directorate S*; Bob Woodward, *Obama's Wars* (New York: Simon and Schuster, 2010).

<sup>15</sup> Human Rights Watch telephone interview with military analyst, September 21, 2019; Coll, *Directorate S*, p. 118, 160-161, 237; Morgan, "U.S. Soldier Killed in Afghanistan Was Part of CIA Operation," *Politico*.

<sup>16</sup> Michael E. DeVine, "Covert Action and Clandestine Activities of the Intelligence Community: Selected Definitions in Brief," Congressional Research Service, June 14, 2019, <https://fas.org/sgp/crs/intel/R45175.pdf> (accessed September 26, 2019); Mashal, "C.I.A.'s Afghan Forces Leave a Trail of Abuse and Anger," *New York Times*; Glinski, "How the CIA Aims to Keep a Footprint in Afghanistan," *Foreign Policy*; Kate Clark, "What Exactly is the CIA Doing in Afghanistan? Proxy Militias and Two Airstrikes in Kunar," Afghanistan Analysts Network, April 28, 2013, <https://www.afghanistan-analysts.org/what-exactly-is-the-cia-doing-in-afghanistan-proxy-militias-and-two-airstrikes-in-kunar> (accessed October 8, 2019); Coll, *Directorate S*.

<sup>17</sup> Kenneth Anderson, "CIA, Drones and Proxy Forces, and the Exit from Afghanistan," *Lawfare*, March 3, 2012, <https://www.lawfareblog.com/cia-drones-and-proxy-forces-and-exit-afghanistan> (accessed October 9, 2019); Morgan, "U.S. Soldier Killed in Afghanistan Was Part of CIA Operation," *Politico*.

<sup>18</sup> Thomas Gibbons-Neff, Eric Schmitt, and Adam Goldman, "A Newly Assertive C.I.A. Expands Its Taliban Hunt in Afghanistan," *New York Times*, October 22, 2017, <https://www.nytimes.com/2017/10/22/world/asia/cia-expanding-taliban-fight-afghanistan.html> (accessed August 23, 2019).

The earliest of these Afghan forces, the Khost Protection Force (KPF), has operated since the mid-2000s, and the Kandahar Strike Force (KSF) since at least 2009.<sup>19</sup> Operations by the NDS 04 paramilitary force first garnered headlines in 2013 following airstrikes in Kunar that killed 26 civilians;<sup>20</sup> the first reports about NDS 01 and NDS 02 operations appeared from 2017.<sup>21</sup> The KPF and KSF operate out of CIA bases (Camp Chapman and “Mullah Omar’s house,” respectively). They function as part of US covert operations and often have US special forces officers deployed alongside them during kill-or-capture operations.<sup>22</sup> They carry out operations with US logistical support and are dependent on US intelligence and surveillance for targeting.<sup>23</sup> Since 2017, these paramilitary strike forces have stepped up night raids, apparently as part of a US strategy to cause maximum casualties to the Taliban and other insurgents before a US troop withdrawal.<sup>24</sup>

The Afghan National Defense and Security Forces, including the Afghan National Army and Afghan National Police, have their own special forces.<sup>25</sup> They are not part of the CIA’s covert operations.

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<sup>19</sup> UNAMA has documented abuses by the Khost Protection Force for many years. In its 2018 annual report, UNAMA stated: “The Khost Protection Force is a pro-Government paramilitary group that has carried out specialized operations in the southeast of Afghanistan since at least 2007. It functions outside of the regular military command and control structures, does not exist in the official Government *tashkil*, and its operations are often not coordinated with local authorities or the National Directorate of Security.... The vast majority of civilian deaths attributed to the Khost Protection Force were caused by intentional shooting, mostly in the context of search operations.” See also Sudarsan Raghavan, “CIA Runs Shadow War with Afghan Militia Implicated in Civilian Killings,” *Washington Post*, December 3, 2015, [https://www.washingtonpost.com/world/cia-backed-afghan-militias-fight-a-shadow-war/2015/12/02/fe5a0526-913f-11e5-befa-99ceebcbb272\\_story.html](https://www.washingtonpost.com/world/cia-backed-afghan-militias-fight-a-shadow-war/2015/12/02/fe5a0526-913f-11e5-befa-99ceebcbb272_story.html) (accessed October 8, 2019). The Wikileaks war logs, released in 2010, contain references to the CIA’s private army in Khost. Martin Smith and Stephen Grey, “The Secret War,” PBS Frontline, January 3, 2012, <https://www.pbs.org/wgbh/frontline/film/secret-war/> (accessed October 8, 2019); Jules Cavendish, “CIA Trains Covert Units of Afghans to Continue the Fight against Taliban,” *Independent*, July 20, 2011, <https://www.independent.co.uk/news/world/asia/cia-trains-covert-units-of-afghans-to-continue-the-fight-against-taliban-2317182.html> (accessed October 8, 2019).

<sup>20</sup> Aimal Faizy, then spokesperson for President Hamid Karzai, called the NDS 04 a “CIA proxy” that was “not armed by the NDS, not paid by the NDS, and not sent to operations by the NDS.” Emma Graham-Harrison, “Hamid Karzai Seeks to Curb CIA Operations in Afghanistan,” *Guardian*, April 19, 2013, <https://www.theguardian.com/world/2013/apr/19/hamid-karzai-curb-cia-afghanistan-operations> (accessed October 8, 2019); Clark, “What Exactly is the CIA Doing in Afghanistan?” Afghanistan Analysts Network.

<sup>21</sup> While UNAMA reported on NDS special forces working with international forces in its 2017 annual report, it did not name the individual NDS 01 and 02 units until 2018. Human Rights Watch first investigated a night raid by 02 in 2017.

<sup>22</sup> Mashal, “C.I.A.’s Afghan Forces Leave a Trail of Abuse and Anger,” *New York Times*; Glinski, “How the CIA Aims to Keep a Footprint in Afghanistan,” *Foreign Policy*.

<sup>23</sup> Human Rights Watch telephone and text interviews with military analysts and former US special forces officer, September 11, 15, and 21, 2019.

<sup>24</sup> Craig Nelson, “Afghans Supported by U.S. Repel Taliban to Increase Leverage in Talks,” *Wall Street Journal*, June 25, 2019, <https://www.wsj.com/articles/afghans-supported-by-u-s-repel-taliban-to-increase-leverage-in-talks-11561392312> (accessed October 9, 2019).

<sup>25</sup> US Department of Defense, “Enhancing Security and Stability in Afghanistan,” June 2019, <https://media.defense.gov/2019/jul/12/2002156816/-1/-1/1/ENHANCING-SECURITY-AND-STABILITY-IN-AFGHANISTAN.PDF> (accessed October 9, 2019).

## US Forces Involved in Counterterrorism Operations in Afghanistan

CIA operations involving Afghan paramilitary strike forces fall under the authority of Title 50 of the US Code, covering covert activities.<sup>26</sup> The US commander in Afghanistan—currently Gen. Austin Scott Miller, a former Army Ranger—is head of both the US counterterrorism mission, Operation Freedom’s Sentinel (OFS), and the NATO mission, Resolute Support. Only OFS is a combat operation; NATO ceased combat operations at the end of 2014.<sup>27</sup>

All US military commands, including the Joint Special Operations Command (JSOC), operate under the US Commander. “White” special force operations include US forces who support the Afghan National Army in conventional operations and Crisis Response Units in Kabul. “Black” special forces operations include those of JSOC.<sup>28</sup>

The most clandestine “black ops” units are also drawn from JSOC and seconded to the CIA. Initially known as the Omega program and drawn primarily from SEAL Team 6, the program has since 2009 recruited experienced Army Rangers. The objectives for these units have evolved from the original counterterrorism pursuit teams of the early 2000s, focused on Al-Qaeda, to become more focused on the Taliban, especially after 2009, then on groups linked to ISIS after 2014. As of 2019, the focus is largely on the Taliban leadership, ISIS-affiliated groups, and groups claiming to be Al-Qaeda.<sup>29</sup>

Since 2015, Afghan paramilitary strike forces have stepped up night raids against the Taliban and other insurgents. The US military does not publish statistics on the numbers of such raids, but there has been a sharp increase in these operations since late 2017 as part of the new US South Asia policy that expanded both airstrikes and CIA operations to target the Taliban as well as Al-Qaeda.<sup>30</sup> In October 2017, senior US administration officials told

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<sup>26</sup> DeVine, “Covert Action and Clandestine Activities of the Intelligence Community,” Congressional Research Service.

<sup>27</sup> “NATO and Afghanistan,” March 5, 2019, [https://www.nato.int/cps/en/natohq/topics\\_8189.htm](https://www.nato.int/cps/en/natohq/topics_8189.htm) (accessed October 18, 2019).

<sup>28</sup> In Afghanistan, these include US Army Rangers, who partner with Afghanistan’s Ktah Khas counterterrorism brigade, created in 2009, which relies on the US for intelligence, targeting, and air transportation. Human Rights Watch telephone and text interviews with military analysts and former US special forces officer, September 11, 15, and 21, 2019.

<sup>29</sup> Ibid.

<sup>30</sup> UNAMA, “Protection of Civilians in Armed Conflict: Annual Report 2018,” February 2019, [https://unama.unmissions.org/sites/default/files/unama\\_annual\\_protection\\_of\\_civilians\\_report\\_2018\\_-\\_23\\_feb\\_2019\\_-\\_english.pdf](https://unama.unmissions.org/sites/default/files/unama_annual_protection_of_civilians_report_2018_-_23_feb_2019_-_english.pdf) (accessed September 10, 2019); Gibbons-Neff, Schmitt, and Goldman, “A Newly Assertive C.I.A. Expands Its Taliban Hunt in Afghanistan,” *New York Times*; Astri Suhrke and Antonio De Lauri, “The CIA’s ‘Army’: A Threat to Human Rights and an Obstacle to Peace in Afghanistan,” Brown University, August 21, 2019,

the *New York Times* that the CIA was expanding its covert operations in Afghanistan by sending officers and contractors to work with Afghan forces to “hunt and kill” Taliban militants.<sup>31</sup> On October 12, then-CIA Director Mike Pompeo publicly announced that under the Trump administration, the CIA was adopting a more aggressive approach:

The CIA, to be successful, must be aggressive, vicious, unforgiving, relentless—you pick the word. We must every minute be focused on crushing our enemies.... President Trump gets this. Whenever we’ve discussed the challenges the agency is facing, he has given us what we need, whether it’s funding, authorities, or policy guidance—such as when the law already permits a given action, but the previous administration chose not to do it.... So with the president’s backing, we’re taking several steps to make CIA faster and more aggressive.<sup>32</sup>

The UN Assistance Mission in Afghanistan has raised concerns about “the lack of transparency for command, control, rules of engagement, and policy framework” guiding these forces, noting that no one “within the Afghan national security forces or civilian government administration has been willing or able to discuss incidents ... or address issues of accountability.”<sup>33</sup>

UNAMA noted in February 2019 that a significant reason for the increase in civilian casualties caused by pro-government forces was kill-or-capture operations attributed to NDS special forces and the Khost Protection Force.<sup>34</sup> These forces operate as part of the covert program backed by the CIA. With regard to the Khost Protection Force, UNAMA said:

As a pro-government armed group that operates outside of the *tashkil* [personnel list] of the Afghan National Security Forces, there is no legal basis for the existence of the Khost Protection Force, and the continued

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[https://watson.brown.edu/costsofwar/files/cow/imce/papers/2019/Costs%20of%20War%2C%20CIA%20Afghanistan\\_Aug%2021%2C%202019.pdf](https://watson.brown.edu/costsofwar/files/cow/imce/papers/2019/Costs%20of%20War%2C%20CIA%20Afghanistan_Aug%2021%2C%202019.pdf) (accessed August 23, 2019).

<sup>31</sup> Gibbons-Neff, Schmitt, and Goldman, “A Newly Assertive C.I.A. Expands Its Taliban Hunt in Afghanistan,” *New York Times*.

<sup>32</sup> CIA Director Mike Pompeo, “Remarks at UT Austin National Security Forum,” October 12, 2017, <https://www.cia.gov/news-information/speeches-testimony/2017-speeches-testimony/pompeo-delivers-remarks-at-ut-austin-national-security-forum.html> (accessed September 12, 2019).

<sup>33</sup> UNAMA, “Protection of Civilians in Armed Conflict: Annual Report 2018,” p. 36.

<sup>34</sup> UNAMA, “Midyear Update on the Protection of Civilians in Armed Conflict: 1 January to 30 June 2019.”

widespread impunity for abuses its members enjoy remains of grave concern. The Afghan authorities have not taken the necessary action to hold members of this group accountable with respect to allegations of excessive use of force, intentional killings, and other abuses that severely impact the human rights and the lives of Afghans.<sup>35</sup>

In 2018, UNAMA documented 353 civilian casualties (284 deaths and 69 injured) from search operations, with the majority caused by NDS special forces and the Khost Protection Force, and noted that the “high number of fatalities compared to the number of injured suggests that force was employed indiscriminately.”<sup>36</sup> Following the alleged killing of 11 men in Zurmat district in August 2019 (described below), the former head of UNAMA’s human rights unit tweeted that the killings needed “investigating, not only the incident but the pattern.”<sup>37</sup>

Peace talks between the Taliban and the US government, which began in late 2018, have focused on the withdrawal of US forces, but the status and fate of these paramilitary forces remains unclear. Some US officials have pushed for retaining all intelligence forces to continue the fight against ISIS and other groups and to act as a deterrent against groups like Al-Qaeda regaining a strong presence in Afghanistan. But the continued presence of paramilitary forces implicated in serious human right abuses—in some cases possibly fueled by tribal or political loyalties—would pose a threat to communities already victimized by these forces.<sup>38</sup>

## Airstrikes Accompanying Night Raids

In many cases, night raids have been accompanied by airstrikes that have indiscriminately and disproportionately killed Afghan civilians.<sup>39</sup> According to UNAMA, civilian casualties from US airstrikes have increased steadily since 2017.<sup>40</sup> In a departure from previous

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<sup>35</sup> A *tashkil* is the Afghan government’s official list of required ANA and ANP personnel by position and rank. UNAMA, “Protection of Civilians in Armed Conflict: Annual Report 2018,” p. 37.

<sup>36</sup> *Ibid.*, p. 42.

<sup>37</sup> Richard Bennett (@richard11215), Twitter, August 15, 2019, <https://twitter.com/richard11215/status/1162190350951170048> (accessed August 22, 2019).

<sup>38</sup> Suhrke and De Lauri, “The CIA’s ‘Army,’” Brown University.

<sup>39</sup> Gibbons-Neff, Schmitt, and Goldman, “A Newly Assertive C.I.A. Expands Its Taliban Hunt in Afghanistan,” *New York Times*.

<sup>40</sup> “Throughout 2018, UNAMA documented a steady increase in civilian casualties caused by aerial operations by Pro-Government Forces. This follows from a relaxation of the rules of engagement for airstrikes by United States forces in

policy, sometime after 2016, the US authorized Afghan forces to call in airstrikes for support even without US forces present to identify the targets.<sup>41</sup>

Changes to targeting directives have meant that airstrikes are hitting more residential buildings, at a time when a decreased ground presence and a reliance on local Afghan intelligence sources have limited the amount of information about the possible presence of civilians in those buildings.<sup>42</sup> Such strikes carry inherently greater risks for civilians because of the difficulties in determining whether civilians are inside prior to a strike.<sup>43</sup> This intensification in offensive operations has coincided with decreased US government transparency. While CIA operations and actions by CIA-backed forces have never been made public, Resolute Support, the US-led NATO mission in Afghanistan, published a monthly breakdown of air operations from the NATO mission from January 2015 through October 2017. This stopped after October 2017. In October 2018, Resolute Support resumed publishing strike data, but from November 2018, the data no longer included information about targets due to “operational concerns.”<sup>44</sup> The decision to remove

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Afghanistan at the end of 2017. In 2018, UNAMA documented ... a 61 percent increase in civilian casualties from this tactic from 2017. This is the highest number of civilian casualties from airstrikes in a single year since UNAMA began systematic documentation in 2009.” UNAMA, “Protection of Civilians in Armed Conflict: Annual Report 2018,” p. 38. UNAMA noted a further 39 percent increase in civilian casualties from air operations in the first half of 2018. UNAMA, “Midyear update on the protection of civilians in armed conflict: 1 January to 30 June 2019.”

<sup>41</sup> Jessica Purkiss, Abigail Fielding-Smith, and Emran Feroz, “CIA-Backed Afghan Unit Accused of Atrocities Is Able to Call in Air Strikes,” Bureau of Investigative Journalism, February 8, 2019, <https://www.thebureauinvestigates.com/stories/2019-02-08/cia-backed-afghan-unit-atrocities> (accessed October 10, 2019).

<sup>42</sup> With the advent of President Trump’s South Asia policy in August 2017 which abrogated tactical directives that had imposed constraints on US military operations, Afghanistan has witnessed an unprecedented increase in air operations and dropped munitions. Aaron Mehta, “Mattis Reveals New Rules of Engagement,” *Military Times*, October 3, 2017, <https://www.militarytimes.com/flashpoints/2017/10/03/mattis-reveals-new-rules-of-engagement> (accessed August 18, 2019). For more on the tactical directives and how they reduced civilian casualties, see Marc Garlasco, “How to Fix the US Military’s Broken Targeting System,” *Just Security*, December 12, 2017, <https://www.justsecurity.org/49133/fix-militarys-broken-targeting-system/> (accessed August 18, 2019); Center for Civilians in Conflict, “Civilian Harm Tracking: Analysis of ISAF Efforts in Afghanistan,” 2014, [https://civiliansinconflict.org/wp-content/uploads/2017/09/ISAF\\_Civilian\\_Harm\\_Tracking.pdf](https://civiliansinconflict.org/wp-content/uploads/2017/09/ISAF_Civilian_Harm_Tracking.pdf) (accessed August 18, 2019). Human Rights Watch made recommendations on these directives in its 2008 report, *Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan*, September 2008, [https://www.hrw.org/sites/default/files/reports/afghanistan0908web\\_o.pdf](https://www.hrw.org/sites/default/files/reports/afghanistan0908web_o.pdf).

<sup>43</sup> In 2008, Gen. Stanley McChrystal, then serving as the top US commander in Afghanistan, banned airstrikes that targeted residential buildings except in the most extreme cases. “The directive calls for military commanders to ‘scrutinize’ and ‘limit’ the use of close air support (CAS) against residential compounds and other areas likely to result in civilian casualties.” Jonathan Burch, “New U.S. Combat Order to Cut Afghan Civilian Deaths,” Reuters, July 6, 2009, <https://www.reuters.com/article/us-afghanistan-civilian-casualties-sb-idUSTRE56549C20090706> (accessed August 18, 2019).

<sup>44</sup> Abigail Fielding-Smith and Jessica Purkiss, “US Ends Blackout on Afghan Air Strike Data,” Bureau of Investigative Journalism, October 5, 2018, <https://www.thebureauinvestigates.com/stories/2018-10-05/us-resumes-release-of-afghan-strike-data> (accessed August 18, 2019). This data did not include drone operations or other air operations by other agencies, notably the CIA.

targeting data followed a report by the Bureau of Investigative Journalism, which maintains a strike log for US operations in Afghanistan, on the increase in civilian casualties from airstrikes on residential buildings.<sup>45</sup>

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<sup>45</sup> Ibid.



## II. Afghan Forces Responsible for Abuses

Before the drawdown of most international forces from Afghanistan in 2014, the CIA began expanding the number of Afghan paramilitary units fighting the Taliban and other insurgents. A 2013 report by the Afghanistan Analysts Network described a military operation in Kunar province carried out by a paramilitary unit known as NDS 04, led by CIA officers. NDS 04 had called in two airstrikes over a two-month period in Kunar that killed 26 civilians.<sup>46</sup> Reports on NDS 01 and 02 appeared in 2017. The numbers refer to the regional NDS directorates. Specific operations led by NDS strike forces may include units from other Afghan National Defense and Security Forces, including the Afghan National Army (ANA) and Afghan National Police (ANP).

While these forces are nominally under the National Directorate of Security, they operate outside the normal chain of command of the Afghan security forces and as part of CIA-backed covert operations. The forces are reliant on the US military for logistical and air support, including helicopters to transport the forces during operations—even for operations that are not directly partnered by US or allied non-Afghan special forces.

### *NDS 01*

Operates in Afghanistan’s central region, in Kabul, Parwan, Wardak, Logar, and possibly other bordering provinces.<sup>47</sup>

### *NDS 02*

Operates in Afghanistan’s eastern region, in Nangarhar and possibly other bordering provinces.

### *NDS 03 (Kandahar Strike Force)*

One of the older counterterrorism pursuit teams established by the CIA to “pursue” Al-Qaeda suspects into Pakistan after 2001 (like the KPF, below). The KSF is based in

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<sup>46</sup> President Karzai’s spokesperson at the time referred to the unit as a counterterrorism pursuit team. The term has been applied to other US-backed Afghan paramilitary forces. Rod Nordland, “After Airstrike, Afghan Points to C.I.A. and Secret Militias,” *New York Times*, April 18, 2013, <https://www.nytimes.com/2013/04/19/world/asia/after-airstrike-afghan-points-to-cia-and-secret-militias.html> (accessed September 2, 2019).

<sup>47</sup> UNAMA, “Protection of Civilians in Armed Conflict: Annual Report 2018,” p. 41, fn. 158.

Kandahar in the former compound of the late Taliban leader Mullah Omar, renamed “Gekho” after US forces occupied it, but still commonly referred to as “Mullah Omar’s house.” It operates in Afghanistan’s southern region, in Kandahar, Helmand, and Uruzgan. Ahmad Wali Karzai, the late brother of former president Hamid Karzai, reportedly oversaw KSF operations until his assassination in 2011.<sup>48</sup>

#### *NDS 04*

Operates in Nuristan, Kunar, and other bordering northeastern provinces.<sup>49</sup>

#### *Khost Protection Force*

The first of the CIA-supported special forces units established in the mid-2000s.<sup>50</sup> As with the NDS strike force units listed above, CIA officers or contractors sometimes accompany the KPF on operations. At the same time, according to UNAMA, a KPF commander “participates in the weekly security meetings in Khost province, chaired by the provincial governor, alongside Afghan national security forces, which suggests some degree of information-sharing and tacit consent by the [Afghan] government of its operations.”<sup>51</sup> The KPF base is Camp Chapman outside Khost city. It reportedly has battalions in Sharana, Paktika province, and Gardez, Paktia province, and is the largest of the paramilitary strike forces, with between 3,000 and 10,000 men and a network of informants.<sup>52</sup>

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<sup>48</sup> Kate Clark, “CIA-Proxy Militias, CIA-Drones in Afghanistan: ‘Hunt and Kill’ Deja Vu,” Afghanistan Analysts Network, October 26, 2017, <https://www.afghanistan-analysts.org/cia-proxy-militias-cia-drones-in-afghanistan-hunt-and-kill-deja-vu> (accessed September 1, 2019).

<sup>49</sup> Clark, “What Exactly is the CIA Doing in Afghanistan?” Afghanistan Analysts Network.

<sup>50</sup> “The Khost Protection Force emerged out of the 25th Division of the ‘Afghan Military Forces,’ the term used to describe the various Afghan armed forces that came under formal Ministry of Defence command in 2001 and 2002 and received US funding.... The Afghan Military Forces encompassed a wide range of militias and forces drawn from the Northern Alliance and those loyal to pro-US Pashtun commanders. The 25th Division in Khost was unusual in that it had a high proportion of former members of the PDPA army, from the party’s Khalqi wing.... The 25th Division was spared Disarmament, Demobilisation and Reintegration (DDR) because of its good links to the CIA.” Kate Clark, “Khost Protection Force Accused of Fresh Killings: Six Men Shot Dead in Zurmat,” Afghanistan Analysts Network, January 21, 2019, <https://www.afghanistan-analysts.org/khost-protection-force-accused-of-fresh-killings-six-men-shot-dead-in-zurmat/> (accessed August 22, 2019).

<sup>51</sup> UNAMA, “Protection of Civilians in Armed Conflict: Annual Report 2018,” p. 36.

<sup>52</sup> Clark, “Khost Protection Force Accused of Fresh Killings,” Afghanistan Analysts Network; Mashal, “C.I.A.’s Afghan Forces Leave a Trail of Abuse and Anger,” *New York Times*. In previous years, UNAMA documented KPF incidents exclusively in Khost province; in 2018, however, it noted a geographic expansion in KPF operations, with 14 incidents with civilian casualties in Khost, four in Paktika, and four in Paktia. UNAMA, “Protection of Civilians in Armed Conflict: Annual Report 2018.”

### III. Assaults, Arbitrary Detentions, and Summary Executions during Night Raids

Night raids by US and Afghan forces aimed at killing or capturing insurgents largely occur in rural areas of Afghanistan that are under Taliban control or being contested by Afghan government forces. Urban-based journalists have little access to the incidents, and many do not get reported in the mainstream Afghan media, particularly in English-language outlets. Journalists based in the provinces report on some of the incidents, particularly those that spark protests from local residents.<sup>53</sup> An Afghan NGO staff member based in Kabul described the incidents as “severely and maybe sometimes intentionally under reported,” because Afghan media outlets are under pressure from Afghanistan’s security institutions not to publish reports critical of the security forces.<sup>54</sup>

The modus operandi of night raids by Afghan paramilitary forces is that helicopters arrive late at night or early morning, airlifting a strike force unit to a designated area.<sup>55</sup> These forces then breach the outer walls of residential compounds, clinics, offices, or other facilities, generally by using an explosive. Upon entering the buildings, they separate men and teenage boys from women, teenage girls, and younger children, who usually remain in a single room. Following questioning, some of the men may be detained and taken away by the forces for further interrogation.<sup>56</sup> In some cases, those detained are brought to the Parwan detention facility in Bagram, on the US military base north of Kabul. Others have been detained in facilities in different parts of Afghanistan. Cases where family members

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<sup>53</sup> For example, after an NDS 01 raid killed three members of a family in Jabal Saraj, Parwan province, on the night of November 23, 2018, villagers blocked the Parwan-Kabul highway in protest, claiming that the forces had been searching for a known criminal and had targeted the family by mistake. Farid Tanha, “3 Civilians Killed, 4 Injured in Parwan Overnight Raid,” *Pajhwok*, November 23, 2018, <https://www.pajhwok.com/en/2018/11/23/3-civilians-killed-4-injured-parwan-overnight-raid> (accessed September 1, 2019). Following numerous night raids in Wardak province in July 2019, residents threatened to close roads and “boycott” the government. “If Civilian Killings Continue, We Will Boycott Govt,” *Pajhwok*, July 22, 2019, <https://www.pajhwok.com/en/2019/07/22/%E2%80%98if-civilian-killings-continue-we-will-boycott-govt%E2%80%99> (accessed September 1, 2019).

<sup>54</sup> Human Rights Watch email correspondence with NGO staff member, Kabul, July 17, 2019.

<sup>55</sup> In some cases where operations are closer to the forces’ command center, or do not entail extensive travel through insurgent-held territory, the units may travel by road.

<sup>56</sup> “Americans have a presence at bases where detainees have accused the units of torture and abuse, officials say... Sabrina Hamidi, who leads the Afghan Human Rights Commission in the east, said that during her 13 years of work at the commission, she could not recall a single example of access to the regional forces to examine accusation of abuses. ‘In their operations, most of the times the harm to civilians is direct,’ Ms. Hamidi said about the 02 unit. ‘When they make arrests, there is usually torture involved, also.’ Mashal, “C.I.A.’s Afghan Forces Leave a Trail of Abuse and Anger,” *New York Times*.

are not informed of their detained relatives' whereabouts constitute enforced disappearances. In some other cases, the suspect is shot, execution-style.

While the targeting of a specific area or house for a night raid is supposed to be based on accurate intelligence about insurgent activity, in practice, certain activities leave local residents who are not involved in insurgent activity vulnerable to being targeted. These include providing food to Taliban insurgents, even if under duress; proximity to insurgent activities; or incidental contact with insurgent groups. Political rivalries within the community have also been a factor in targeting civilians who demonstrated no belligerent conduct or status.<sup>57</sup>

These problems were identified several years ago and were supposed to have been addressed in revised rules of engagement. A 2011 report on night raids observed similar abuses at a time when the Afghan administration under President Karzai sought to curtail US-led night raids: “The lack of transparency or strong accountability mechanisms have reinforced Afghan perceptions that international military use night raids to kill, harass, and intimidate civilians with impunity.”<sup>58</sup>

### **Witness to a Night Raid**

An Afghan employee of a Kabul-based NGO described his experience of being in the vicinity of a night raid during the Eid holidays in June 2019:<sup>59</sup>

The first three nights of Eid were okay. Then on the fourth night [June 7], at about 11 p.m. we were playing cards. We heard the noise of helicopters hovering over the roof. It was a terrifying moment. My in-laws knew the situation. They said, “Turn off all the lights and stay calm.” I was in one room with some relatives and the women and kids were in another room. My wife took my computer and ID card with her because they would not check her. We were waiting to see if they were coming to the house. In the normal situation you should wait 30 minutes—either a rocket [will come] or there will be knocking at the gates. After 30 minutes, the helicopters

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<sup>57</sup> Open Society Foundations and The Liaison Office, “The Cost of Kill/Capture.”

<sup>58</sup> Ibid.

<sup>59</sup> Human Rights Watch telephone interview with NGO staff member, Kabul, July 16, 2019. Identifying details of the raid have been withheld to protect the source.

were still hovering. After 15 minutes, we heard one rocket, then after 30 minutes, the sound of another rocket. Then we realized it was not [focused on] our house, but near our house. By then we were all in the same room—we could not sleep. I shared my email password with my relatives in case something happened to me. The helicopters continued to hover until 2 a.m. We waited for three more hours [until daylight]. At first we would not come out—we were worried they would be waiting to shoot. Even the imam did not come to the mosque [for the dawn prayer]. After that, slowly, slowly, people began to come out.

Around 7 a.m., my in-laws learned that the raid had targeted two houses [in another area of the village]. My sister-in-law was in that house—she is married to someone who lives there and they told me the story. Her family had also turned off the lights and waited—that is the way in all villages. We know they've shot many like this.

A rocket destroyed the wall of that house. The second rocket destroyed the gate. They said American and Afghan commandos came up through the [destroyed] wall. Speaking through a [megaphone], they told everyone to come out and carry nothing with them—put everything on the floor. Women to one room. The men to the yard. The men were sitting there and the forces were questioning them—their names, sons, and so on. They said they had a report that some Taliban had entered the house. The owner of the house [my brother's father-in-law] told them, "Search—and if you find them, you can shoot us."

The soldiers turned everything upside down in the house, breaking wardrobes and metal boxes. They made a big mess in all the rooms. Then they took two brothers with them—one is a teacher in a local school and the other is a laborer. They said "We will release them soon." Then they left.

They brought the two brothers to Bagram. I shared the information with [some foreign journalists and NGO members] who contacted [US officials]. The brothers were held for two weeks and then released. They also raided another house [in the village] in the same way, by destroying a wall and taking the owner with them. He has not returned.

## Summary Executions in Zurmat, Paktia

Strike force units have conducted multiple raids in Zurmat district in Paktia province since 2018, killing at least 17 civilians.

On August 11, 2019, a raid by NDS o1 in Kulalgo village began at about 10:30 p.m.<sup>60</sup> According to a witness whose house was targeted, the Afghan strike forces were accompanied by US forces who blew open the doors of the house and shot four men in front of the rest of the family. In another house, they fatally shot three shopkeepers and one of their guests, all of whom were home for Eid celebrations. In the third incident, they killed a religious teacher and two construction workers.<sup>61</sup>

The Afghanistan Analysts Network (AAN), a Kabul-based research NGO, identified the men who were killed in the second house as Rahatullah, Nasratullah, and Hekmatullah, brothers who had a shop in Ghazni city. Nasratullah was also studying at Ghazni University to become a teacher, while Hekmatullah was a high school teacher.

Relatives told AAN that the strike force had asked males to present their ID cards. Said one:

When the residents complied—there was no resistance—some were asked to come out of the rooms they were staying in. They were then separated from other family members and taken to separate rooms and later shot dead. No one saw who exactly did the shooting, but multiple family members said their relatives were shot in the eyes or the mouth.<sup>62</sup>

According to AAN, eight of the men belonged to one tribe, and the four cousins were part of the extended family of a well-known local tribal elder—a family “known not to be

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<sup>60</sup> NDS o1 took credit for the raid in a tweet on August 12; other media reported it as well. NDS o1 Unit (@NDS\_Afghanistan), Twitter, August 12, 2019, [https://twitter.com/NDS\\_Afghanistan/status/1160810703357468675](https://twitter.com/NDS_Afghanistan/status/1160810703357468675) (accessed August 24, 2019); “11 Civilians Killed in Special Unit’s Raid in Paktia: Residents,” *Tolo News*, August 14, 2019, <https://www.tolonews.com/afghanistan/11-civilians-killed-special-unit%E2%80%99s-raid-paktia-residents> (accessed August 24, 2019).

<sup>61</sup> Human Rights Watch telephone interview with Afghan human rights activist who interviewed the relatives of the victims, August 16, 2019.

<sup>62</sup> Thomas Ruttig and AAN team, “‘Murder Is Always’: The Kulalgo Night Raid Killings,” Afghanistan Analysts Network, August 17, 2019, <https://www.afghanistan-analysts.org/murder-is-always-the-kulalgo-night-raid-killings> (accessed August 24, 2019).

associated with the Taleban or any other armed opposition group.”<sup>63</sup> In fact, the family patriarch, who died some years ago, was openly critical of the Taliban and had been forced to live out the last years of his life in Kabul.<sup>64</sup>

AAN also noted that on the same night, local residents reported a raid on a known Taliban house elsewhere in Zurmat that proved unsuccessful, as the Taliban fighters escaped. That both raids occurred on the same night in Zurmat, and that the National Directorate of Security initially claimed that the 11 killed were Taliban, suggests that the strike forces might have targeted the wrong house, or operated on faulty intelligence, possibly fueled by local rivalries.<sup>65</sup> The laws of war prohibit the summary execution of any individual in custody; those responsible for such acts are committing war crimes.<sup>66</sup>

On August 15, 2019, the Afghan government ordered an investigation into the Kulalگو killings. At time of writing, no findings had been made public.

According to the UN Assistance Mission in Afghanistan, an earlier night raid occurred in Zurmat on December 30, 2018, when the Khost Protection Force killed six civilians during a nighttime kill-or-capture operation that targeted a member of the provincial peace council and a tribal elder.<sup>67</sup> In the manner of other night raids, a helicopter delivered the KPF forces, who first breached the compound walls with an explosive, then shouted at those inside the house not to move or turn on the lights.<sup>68</sup>

One of the survivors, Ghulam Mohammad, told AAN that the strike forces forced him to come outside, where they questioned him about the Taliban. When the forces left and he returned to the house, Ghulam Mohammad found they had killed his son, Mohammad

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> Tolo News (@TOLONews), Twitter, August 12, 2019, <https://twitter.com/TOLONews/status/1160822773780025344?s=20> (accessed August 25, 2019).

<sup>66</sup> Common Article 3 of the 1949 Geneva Conventions prohibits at any time and in any place whatsoever “violence to life and person, in particular murder of all kinds” and “the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples” with respect to “persons taking no active part in hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.” See International Committee of the Red Cross, “Customary Law: Practice Relating to Rule 89. Violence to Life,” [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2\\_rul\\_rule89](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v2_rul_rule89) (accessed August 24, 2019).

<sup>67</sup> UNAMA, “Protection of Civilians in Armed Conflict: Annual Report 2018,” p. 43.

<sup>68</sup> Clark, “Khost Protection Force Accused of Fresh Killings,” Afghanistan Analysts Network.

Karim, a student in his 20s; his brothers Sayid Hassan, mid-40s, and Naim Faruqi, 60; his nephews Attiqullah and Fath al-Rahman, students in their 20s; and Mohammad Omar, a neighbor in his 40s. Naim had been shot in the eye, and Karim in the mouth.<sup>69</sup>

The family decided to take the bodies to the governor in Gardez city to protest the killings, where they were joined by 100 residents demanding justice.<sup>70</sup> However, no investigation was announced.

## Summary Execution in Nerkh, Wardak

Nerkh district in Wardak province has been a contested area for at least a decade, with a history of special operations abuses against local civilians.<sup>71</sup> As of mid-2019, the Taliban dominated much of the district. Clashes between Afghan security forces and the Taliban have been frequent.

M., an *ustad* (teacher) and elder from Pair Dad village in Nerkh, told Human Rights Watch that NDS o1 activity had increased in recent months:

o1 activity is very high. Every week there is something. They just appear, and civilians are the most affected. [Recently] there have been operations in eight villages. They blow up the houses. The Taliban come every night demanding food—some are from these villages. We have to feed them. We are caught in between. Small people, simple people—they cannot talk to VIPs [about this]. So every day we are coming to the district governor about the civilians, but he says it's out of his hands. Many people are affected.

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<sup>69</sup> The families were known to be staunchly anti-Haqqani, which makes any accusation of supporting the Taliban baffling. For an in-depth analysis of the possible political motivations for the killings, see Clark, “Khost Protection Force Accused of Fresh Killings,” Afghanistan Analysts Network.

<sup>70</sup> UNAMA, “Protection of Civilians in Armed Conflict: Annual Report 2018,” p. 43.

<sup>71</sup> The district first garnered international media attention when US Green Berets established themselves at a US military base there in late 2012. By my mid-2013, they had left under a cloud as evidence of alleged war crimes came to light. Over a period of months, US special forces had detained 18 Nerkh men whose bodies were found in a shallow grave near the base or elsewhere in the vicinity. UNAMA stated that the disappearances and killings—if proven to be the responsibility of a party to the conflict—amounted to war crimes. In August 2015, the US military reopened a criminal investigation into 17 alleged murders of civilians by the special forces team. Matthieu Aikens, “The A-Team Killings,” *Rolling Stone*, November 6, 2013, <https://www.rollingstone.com/interactive/feature-a-team-killings-afghanistan-special-forces/> (accessed August 24, 2019); Rod Nordland, “U.S. Army Reopens Criminal Inquiry into Afghan Civilians’ Deaths,” *New York Times*, August 24, 2015, <https://www.nytimes.com/2015/08/25/world/asia/us-army-reopens-criminal-inquiry-into-afghan-civilians-deaths.html> (accessed August 24, 2019). The findings of that investigation have not been made public.



They cannot always report these things, cannot get compensation for their houses that have been destroyed.<sup>72</sup>

On October 8, 2018, a strike force conducted a large-scale operation with US air support to search for Taliban fighters in the area.<sup>73</sup> D.D., a 70-year-old farmer, had four daughters in Nerkh, one son working in Kabul, and two sons who had returned in mid-2018 from Iran, where they had worked as laborers for several years. One of those sons was shot dead in the raid and another was taken into custody. D.D. described what happened:

At around midnight on the 15th of Mezan [October 8], the NDS 01 destroyed the gate to our compound with an explosive device. They killed one of my sons at the back of our home and took the other with them. My sons had returned home after three years from Iran doing hard labor jobs over there. We are not terrorists. The forces accused us, “Why are you feeding the Taliban?” But the Taliban come asking for food. If you don’t feed them, then they harass you.<sup>74</sup>

## Summary Execution, Enforced Disappearances in Panjwai, Kandahar

Around March 21, 2019, a strike force unit arrived in Panjwai at night and ordered all the men in the village to come outside, where they tied their hands and hooded them. After questioning them, they took two men, only one of whom has returned. Based on their uniforms, the fact that Gekho base is the only base in the vicinity reachable by road, and the fact that they had carried out previous raids in the district, witnesses identified the unit as belonging to the NDS 03, or Kandahar Strike Force, based at Gekho, west of Kandahar city.<sup>75</sup>

A few weeks later, on April 10, a strike force unit carried out a raid in Talokan village and neighboring villages in Panjwai. They killed Mohammad Gul, 60, who had been the

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<sup>72</sup> Human Rights Watch interview with M., Kabul, November 5, 2018.

<sup>73</sup> The US Forces-Resolute Support press release on the October 8 airstrikes in Wardak has been removed. Bureau of Investigative Journalism, “Afghanistan: Reported US Covert Actions 2018,” <https://www.thebureauinvestigates.com/drone-war/data/afghanistan-reported-us-covert-actions-2018> (accessed September 11, 2019).

<sup>74</sup> Human Rights Watch interview with D.D., Kabul, November 5, 2018.

<sup>75</sup> Human Rights Watch telephone interview with M.M., April 13, 2019. Camp Gekho is a US base located west of Kandahar city.

principal of the primary school since 2011.<sup>76</sup> M.M., a relative, said that Mohammad Gul had been at home with his wife and daughters at the time of the raid. Based on their uniforms and the fact they traveled by road from east of Panjwai, M.M. believed the forces had come from the US base in Gekho, which is also known as “Mullah Omar’s house.” M.M. said:

They came from “Mullah Omar’s house”—all the dangerous operations come from there. At 11 p.m., the soldiers came to the house. They locked the women in one room, then they went to Mohammad Gul’s room, where he was alone, and shot him three times. Then they dragged the body out to the courtyard. The forces were speaking Pashto.<sup>77</sup>

The forces also detained five men—one from Talokan and four from Sarkilla village—and took them to an undisclosed location, effectively forcibly disappearing them.<sup>78</sup> According to M.M.:

Since this latest incident, we decided to protest. This is the second time something has happened here. We should just leave. Please tell this story. Why are we always being killed by them? What’s our mistake? Also, they got [Mohammad Gul’s] phones—if they find anything in the phones, we will accept [that he did something wrong]. We want our rights. He was very respected, and now the school is closed. He was an employee of the government. Why do they kill their own people?<sup>79</sup>

## Summary Executions in Rodat, Nangarhar

On October 23, 2018, an NDS strike force unit carried out a raid in the Rodat district of Nangarhar, after first calling in an airstrike. G.G., a resident of Shahidanu Mena, Rodat,

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<sup>76</sup> Fahim Abed, “Afghan War Casualty Report: April 5-11,” *New York Times*, April 11, 2019, <https://www.nytimes.com/2019/04/11/magazine/afghan-war-casualty-report.html> (accessed August 25, 2019).

<sup>77</sup> Human Rights Watch telephone interview with M.M., April 13, 2019.

<sup>78</sup> Mujib Mashal (@MujMash), Twitter, April 11, 2019, <https://twitter.com/MujMash/status/1116224969741164544> (accessed August 25, 2019). Human Rights Watch has been unable to learn if any had been released. The arrest or detention of anyone by government forces followed by a refusal to acknowledge the detention or whereabouts of the person, is considered an enforced disappearance under human rights law. International Convention for the Protection of All Persons from Enforced Disappearance, adopted December 20, 2006, G.A. Res. 177 (LXI), U.N. Doc. A/RES/61/177 (2006), entered into force December 23, 2010.

<sup>79</sup> Human Rights Watch telephone interview with M.M., April 13, 2019.

said that it was the NDS o2 unit.<sup>80</sup> He said they came at midnight and began shooting almost immediately, killing five members of one family and injuring two others:

First they blew up the door. When a father of the family came out of the house, they shot him first, then the sons came out to check on him and they killed them, then another brother came, and then the women stopped another brother from coming out. The women said, “Please don’t kill us,” and then they shot an older woman. A younger girl ran to the brother and they shot her, injuring her, then killed the last brother. They carried out raids for two more nights.<sup>81</sup>

The Bureau of Investigative Journalism investigated the raid and documented 13 civilian deaths in the incident, including the guard at the government school and the village pharmacist. Jamal Khan, a relative of the school guard, told the Bureau of Investigative Journalism that the raid started with an airstrike. “First, they attacked us with bombs,” he said. “Then they entered the living room and started to shoot around. They didn't care about who they were killing. They killed my uncle and his 9-year-old son. His wife and his other child were injured.”<sup>82</sup>

The government claimed that all those killed were ISIS fighters, but G.G. said that district officials had visited him to look into the incident and told him that what happened “was wrong.” He said NDS paid compensation to the affected families.<sup>83</sup>

## Summary Executions in Maiwand, Kandahar

On the evening of January 31, 2018, an Afghan paramilitary force unit backed by US airstrikes began an offensive against Taliban insurgents in the Band-e Timor area of Maiwand district and the Reg area of Panjwai district, long-time Taliban strongholds located on a strategic transportation route.<sup>84</sup> A witness in Band-e Timor told Human Rights

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<sup>80</sup> Human Rights Watch interview with G.G., November 4, 2018.

<sup>81</sup> Ibid.

<sup>82</sup> Bureau of Investigative Journalism, “Afghanistan: Reported US Covert Actions 2018.”

<sup>83</sup> Ibid.; Human Rights Watch interview with G.G., November 4, 2018. The NDS pays up to 100,000 afghanis (US\$1,280) in cases of wrongful death.

<sup>84</sup> “‘Dozens’ of Taliban Militants Killed in Southern Afghanistan,” Radio Free Europe/Radio Liberty, February 2, 2018, <https://www.rferl.org/a/afghanistan-kandahar-dozens-taliban-killed/29011526.html> (accessed October 6, 2018). Band-e Timor was a Taliban stronghold before 2002. In April 2002, Ishaqzai tribal elders in Band-e Timor, who had supported the

Watch that the Afghan forces opened fire on men as they attempted to flee, killing Taliban fighters and at least 20 civilians.<sup>85</sup>

Another witness told Human Rights Watch: “When the airplanes came, we fled. But as the people were running away, the forces were shooting them.”<sup>86</sup> He said security force personnel dragged some men from their homes and shot them.<sup>87</sup> The NDS claimed that the air and ground operation killed 50 militants, and that 32 suspects had been detained.<sup>88</sup>

A Kandahar-based civil society activist who had contacted local officials told Human Rights Watch that the forces included NDS 03, as well as counterinsurgency forces of the Afghan National Police under Lt. Col. Sultan Mohammad.<sup>89</sup> The Kandahar police have been accused of systematic human rights violations, including torture, enforced disappearances, and extrajudicial executions.<sup>90</sup>

## Summary Executions in Dehbala, Nangarhar

Several border districts of southern Nangarhar province, particularly Dehbala, Achin, and Khogyani, have seen intense fighting since 2016. Afghan government forces operating with US air support have stepped up military operations in areas that have been controlled or heavily influenced by the Islamic State of Khorasan Province (ISKP), an insurgent group that has affiliated itself with ISIS.<sup>91</sup> Since January 2017, US forces have carried out

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Taliban, pledged their allegiance to President Hamid Karzai. However, Gul Agha Sherzai, the former governor of Kandahar whose depredations helped pave the way for a Taliban takeover in 1994, saw the Ishaqzai as rivals and informed US officials that they were all Taliban sympathizers. In a single operation in May 2002, US special forces raided villages in the district. The US forces shot and wounded several men and detained 55. Haji Burget Khan, the most senior elder in the community who had persuaded the others to support Karzai, died of gunshot wounds five days later. Over the next two years, Band-e Timor became a stronghold of the Taliban resurgence. Gul Agha Sherzai again became governor of Kandahar and was implicated in a number of corruption scandals related to lucrative US contracts for the Kandahar airfield and US military base. See Anand Gopal, “Dick Cheney’s Gift to the Middle East: How America Created an Afghan Blackwater,” *Salon*, April 12, 2015, [https://www.salon.com/2015/04/12/dick\\_cheneys\\_gift\\_to\\_the\\_middle\\_east\\_how\\_america\\_created\\_an\\_afghan\\_blackwater\\_partner/](https://www.salon.com/2015/04/12/dick_cheneys_gift_to_the_middle_east_how_america_created_an_afghan_blackwater_partner/) (accessed August 26, 2019).

<sup>85</sup> Human Rights Watch telephone interview with witness in Kandahar, February 14, 2018.

<sup>86</sup> Human Rights Watch interview with witness from Kandahar, Kabul, February 14, 2018.

<sup>87</sup> Human Rights Watch email correspondence with witness in Kabul, February 16, 2018.

<sup>88</sup> “50 Taliban Militants Killed in Kandahar Offensive,” *Tolo News*, February 2, 2018, <https://www.tolonews.com/afghanistan/50-taliban-militants-killed-kandahar-offensive> (accessed August 26, 2019).

<sup>89</sup> Human Rights Watch interview with witness from Kandahar, Kabul, February 14, 2018. See also “‘Dozens’ of Taliban Militants Killed in Southern Afghanistan,” Radio Free Europe/Radio Liberty.

<sup>90</sup> Human Rights Watch, *“Today We Shall All Die”: Afghanistan’s Strongmen and the Legacy of Impunity*, March 2015, <https://www.hrw.org/report/2015/03/03/today-we-shall-all-die/afghanistans-strongmen-and-legacy-impunity>.

<sup>91</sup> The ISKP emerged in 2015 out of a loose affiliation of militant organizations driven out of Pakistan by military operations in 2009-2010. ISKP has exercised brutal control over these districts, extorting taxes, forcing schools and clinics to close, and

numerous air operations in eastern Nangarhar province, in some cases accompanying raids by NDS o2 strike forces.<sup>92</sup>

D.D., 65, a resident of Dehbala district, described a deadly night raid in August 2017 that included forces who spoke English, which he identified as NDS o2:

At around 12:20 a.m., helicopters arrived in the area, bringing ground forces. My cousin's house is located at a distance of about 100 meters from my house [in the same compound]. The forces, Americans and Afghans, blew up the gate of my cousin's house. According to relatives in the house, my cousin went to his mother's room and shouted through the window to my brother [who lived beside them] not to go out because the helicopters were hovering above and they might target him. Afterward, he went to his children's room to check on them, but the forces shot him dead through the window of that room.

After that, the forces made their way to our house and told all of the family to surrender. Another cousin left the house and went into the yard, saying he would surrender. He told the forces there was nothing going on and they could come in, but the forces opened fired and shot him in the yard.<sup>93</sup>

D.D. said that when the forces entered the compound, they shot one of his brothers and a nephew, then detained another brother of his, whom they took when they left:

My brother was lying on the ground and bleeding, and when my other brother came to see him, an Afghan soldier took him away and put a stamp

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summarily executing some who resisted. ISKP cells have carried out suicide bombings in Jalalabad, Kabul, and other cities, killing and injuring hundreds of civilians. Human Rights Watch, *"No Safe Place": Insurgent Attacks on Civilians in Afghanistan*, May 2018, [https://www.hrw.org/sites/default/files/report\\_pdf/afghanistano518\\_web\\_1.pdf](https://www.hrw.org/sites/default/files/report_pdf/afghanistano518_web_1.pdf), p. 8-11.

<sup>92</sup> In December 2017 and February 2018, Human Rights Watch interviewed residents from Nangarhar districts who said that some of these air operations killed and injured civilians. Human Rights Watch, "Afghanistan: Weak Investigations into Civilian Airstrike Deaths," May 16, 2018, <https://www.hrw.org/news/2018/05/16/afghanistan-weak-investigations-civilian-airstrike-deaths>.

<sup>93</sup> Human Rights Watch interview with D.D., Jalalabad, November 30, 2017.

on his back. They have some type of stamp. If they put the stamp on anyone, they won't kill him, but just arrest him. It is their secret.<sup>94</sup>

D.D. said the village held a protest, and he reported the incident to the district governor:

With the help of the villagers, we took all the dead bodies to the road, and villagers staged a protest on the road asking the government to bring the perpetrators to justice. Three days after the incident, I told the governor that if anyone put forward any evidence about [my family having] links with Daesh [ISIS] or the Taliban, they could hang [the detained brother].

The whole village was besieged. I understand that Americans do not know where my house was, and I think they were brought by some Afghans there. They have to ask the Afghans who gave them incorrect reports about the presence of the Taliban or Daesh. Why would they shoot everyone? All of them were just poor guys.<sup>95</sup>

It is unclear whether US or Afghan authorities carried out an investigation. No findings have been made public.

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<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

## IV. Kill-or-Capture Operations Involving Airstrikes

Air operations may precede or follow a night raid. In a number of incidents Human Rights Watch investigated, airstrikes or helicopter-fired munitions killed and injured civilians before or after night raids. The dramatic increase in civilian casualties from US air operations in Afghanistan may reflect a result of changes to tactical directives that eliminated former measures that had reduced civilian harm.

In 2008, civilian harm from US airstrikes in Afghanistan was at what was then an all-time high (it was surpassed in 2018-2019). After UNAMA began publishing reports detailing civilian harm from airstrikes, and Human Rights Watch published its report on civilian casualties, *Troops in Contact*, NATO created a civilian casualties tracking unit within its mission designed to have direct input to lessons learned that could feed into air operations. The changes that were implemented—including restrictions on targeting, not using explosive weapons with wide impact in populated areas unless troops were under attack, and the use of precise, low-collateral weapons where appropriate—had a measurable impact in terms of reduced civilian casualties.<sup>96</sup>

However, after 2014, NATO's noncombat Resolute Support mission significantly reduced its civilian casualty tracking team. The Afghan government took over basic tracking of casualties caused by its forces at the Presidential Information Coordination Center, known as the Tawhid Center, which collects information but does not conduct independent investigations.

Since then, the US military has rescinded directives restricting targeting, and has authorized ground troops to approve targets and Afghan special forces to call in airstrikes, even in situations where there is limited information about civilian presence in the identified target area.<sup>97</sup>

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<sup>96</sup> Tactical directives that NATO's International Security Assistance Force (ISAF) put in place after 2007 were a major factor in reducing civilian deaths by airstrikes in Afghanistan by nearly 70 percent from 2008 to 2012. See Garlasco, "How to Fix the US Military's Broken Targeting System," *Just Security*.

<sup>97</sup> Previously, under the tactical directives, every strike directed against a building had to be authorized by an admiral or general. "In practice, this means that a strike approval coming from a flag officer sitting in an operations center has myriad checks and balances.... Relinquishing this authority to troops in the field potentially curtails many of the checks and balances built into the system to protect civilians." Garlasco, "How to Fix the US Military's Broken Targeting System," *Just Security*.

## Deadly Airstrike during Kill-or-Capture Operation in Hesarak

On March 10, 2019, an Afghan paramilitary strike force carried out a search in Nasir Khil, a village about four kilometers north of the district center of Hesarak, in Nangarhar province. According to the *New York Times* and witnesses who spoke with Human Rights Watch, the unit was NDS 02. The strike force arrived in the early morning and called in air support after coming under fire. The strikes killed at least 13 civilian members of two families, including several children.<sup>98</sup> One resident told Human Rights Watch:

The airstrikes hit two houses. A soldier of the Afghan National Army, his wife, and four children were in one of the houses. All were killed. The village doctor, his wife, and their five daughters were in the other house that was hit, and all of them died.<sup>99</sup>

According to a *New York Times* report, a Resolute Support spokesperson said that the mission was looking into the situation:

In self-defense, precision airstrikes were used to support the troops on the ground.... We are fighting in a complex environment against those who intentionally kill and hide behind civilians. We hold ourselves to the highest standards of accuracy and accountability, and we are looking into this.<sup>100</sup>

The governor of Nangarhar, Shahmahmood Miakhel, claimed that “an important Taliban commander” had been killed in the strikes, but witnesses said that the airstrikes did not hit a house known to belong to a Taliban commander, instead hitting civilian houses.<sup>101</sup>

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<sup>98</sup> Zabihullah Ghazi and Fahim Abed, “13 Civilians Reported Killed in U.S. Airstrikes in Afghanistan,” *New York Times*, March 10, 2019, <https://www.nytimes.com/2019/03/10/world/asia/airstrikes-nangarhar-afghanistan.html> (accessed August 26, 2019).

<sup>99</sup> Human Rights Watch telephone interview with witness in Nangarhar, April 13, 2019.

<sup>100</sup> Statement attributed to Sgt. First Class Debra Richardson, who added that “the Afghans had been targeting a Taliban operations center.” Ghazi and Abed, “13 Civilians Reported Killed in U.S. Airstrikes in Afghanistan,” *New York Times*.

<sup>101</sup> Bureau of Investigative Journalism, “Afghanistan: Reported US Covert Actions 2019,” <https://www.thebureauinvestigates.com/drone-war/data/afghanistan-reported-us-covert-actions-2019> (accessed September 12, 2019).



The father of the killed soldier asked Human Rights Watch, “Why didn’t they know which house?”<sup>102</sup>

## Deadly Airstrike following Raid in Wardak

On the night of September 22, 2018, US and NDS o1 forces carried out a raid in the village of Mullah Hafiz, Jaghatu district, in Wardak province. The next morning, US forces carried out an airstrike that killed 12 civilians, all of whom were women and children from the same family.<sup>103</sup> The children ranged in age from 4 to 16 years old.<sup>104</sup>

Masih Ur-Rahman Mubarez, whose entire family was killed, told Human Rights Watch that a Taliban prison was located in the area. He said that US forces and Afghan strike forces had been searching for the prison, checking all the houses in the area. He said that in the middle of the night, his wife, Amina, called him to say there was a raid in the village.<sup>105</sup> He told her to keep the phone on so he could reach her.<sup>106</sup>

Mubarez later learned that after he spoke with Amina, fighting had broken out in the village between the Taliban and US and Afghan forces. Sometime between 9 and 10 a.m. the next morning, US forces carried out several airstrikes, one of which destroyed his family’s house and killed everyone inside, including his wife and seven children. He said: “I tried to call my family that morning. I could not reach them. Then a neighbor called and told me my house had been hit.... I have lost everyone—I am alone now.”<sup>107</sup>

Those killed were Masih Ur-Rahman Mubarez’s wife, Amina, 32; daughters Anisa, 14, Safia, 12, Samina, 7, and Fahima, 5; sons Mohammad Wiqad, 10, Mohammad Ilyas, 8, and Fayaz, 4; and nieces Rahmania, 16, Nafisa, 14, Zarifa, 12, and Amina, 10. Mubarez said no one had come from the government to investigate the incident. Because of fighting in the area,

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<sup>102</sup> Human Rights Watch telephone interview with witness in Nangarhar, April 13, 2019.

<sup>103</sup> UNAMA, “Preliminary Findings Indicate Airstrike Killed 12 Civilians in Maidan Wardak Province,” September 25, 2018, <https://unama.unmissions.org/preliminary-findings-indicate-airstrike-killed-12-civilians-maidan-wardak-province> (accessed August 26, 2019); Jessica Purkiss and Mateen Arian, “How US ‘Good Guys’ Wiped Out an Afghan Family,” Bureau of Investigative Journalism, June 3, 2019, <https://www.thebureauinvestigates.com/stories/2019-06-03/us-bomb-kills-afghan-family> (accessed October 5, 2019).

<sup>104</sup> Purkiss and Arian, “How US ‘Good Guys’ Wiped Out an Afghan Family,” Bureau of Investigative Journalism.

<sup>105</sup> Human Rights Watch telephone interview with Masih Ur-Rahman Mubarez, April 13, 2019.

<sup>106</sup> According to the Bureau of Investigative Journalism, she had been told to switch off the phone. Purkiss and Arian, “How US ‘Good Guys’ Wiped Out an Afghan Family,” Bureau of Investigative Journalism.

<sup>107</sup> Human Rights Watch telephone interview with Masih Ur-Rahman Mubarez, April 13, 2019.

Mubarez said that villagers could not retrieve the bodies from under the rubble of the house for two days.<sup>108</sup>

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<sup>108</sup> Ibid. According to the Bureau of Investigative Journalism, the US military mission in Afghanistan first denied responsibility for the airstrike, then confirmed that US forces on the ground had called for air support, and a strike had been carried out in “self-defense.” Purkiss and Arian, “How US ‘Good Guys’ Wiped Out an Afghan Family,” Bureau of Investigative Journalism.

## V. Special Forces Raids on Medical Facilities

Human Rights Watch documented an increase in Afghan special forces raids on medical facilities between May 2018 and July 2019. The forces that carried these out were NDS 01, NDS 02, the Kandahar Strike Force (NDS 03), and other special forces units, all of which are supported, and sometimes accompanied, by US forces. During these kill-or-capture operations, the forces involved assaulted and, in some cases, killed medical staff; assaulted or killed accompanying civilian or noncombatant caregivers; and caused damage to the facilities.

The laws of war, applicable to the armed conflict in Afghanistan, protects patients, including wounded soldiers, and all medical personnel from attack. Hospitals and other medical facilities are also protected from attack unless they are being used outside their humanitarian function to commit acts harmful to the enemy, such as to fire artillery or store munitions. Commanders and combatants who willfully violate these protections are responsible for war crimes.

### Clinic Disrupted in Andar, Ghazni

Ghazni province has seen significant fighting since August 2018 when the Taliban took control of the city for 10 days before US airstrikes and special forces operations forced them out. The Taliban have maintained a significant presence in many districts of Ghazni province, including Andar, which lies south of Ghazni city.<sup>109</sup> From April 15 to May 7, 2019, US forces carried out 55 airstrikes in Ghazni province, many of them in Andar district, as well as many night raids.<sup>110</sup>

Several raids took place in Andar on May 14, including one in which a strike force unit accompanied by US forces searched an NGO-run clinic.<sup>111</sup> The forces questioned staff

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<sup>109</sup> In mid-2012, the Taliban lost control of Andar district in the so-called Andar Uprising, which the Afghan government and US military seized on as a hoped-for turning point in the war. However, the Taliban's temporary setback had much more to do with local power dynamics, and by 2017 the district was again in Taliban control. Fazal Muzhary and Kate Clark, "Uprising, ALP and Taleban in Andar: The Arc of Government Failure," Afghanistan Analysts Network, May 22, 2018, <https://www.afghanistan-analysts.org/uprising-alp-and-taleban-in-andar-the-arc-of-government-failure> (accessed August 24, 2019).

<sup>110</sup> On the number of airstrikes, see Bureau of Investigative Journalism, "Afghanistan: Reported US Covert Actions 2019."

<sup>111</sup> For an account of some of the night raids, see Fazal Muzhary, "One Land, Two Rules (7): Delivering Public Services in Insurgency-Affected Andar District in Ghazni Province," Afghanistan Analysts Network, June 13, 2019,

members about the identities of patients who had sought treatment at the clinic, specifically a Taliban commander in the area. According to an unpublished report, the forces took the staff members' phones and searched the contents. They questioned the staff about any explosives in the clinic, then took them to a nearby building, forcing the staff to walk ahead of them in the dark, with the forces taking cover behind them. When the Afghan and US forces left at 3:30 a.m., they took the staff members' phones with them, as well as the clinic's patient logbook.<sup>112</sup>

While medical facilities can be searched to ensure they are genuinely providing medical services, using the staff as a civilian shield against insurgent attack, disrupting operations by questioning staff, and stealing medical equipment are all unlawful.

### Clinic Raided, Equipment Destroyed in Uruzgan

On January 14, 2019, an NDS o3 unit carried out an operation during which they deliberately caused damage to the NGO-run Surmurghab Adda clinic, which provides services to nearby villages.<sup>113</sup>

Before the raid there had been fighting nearby, across a river from the clinic. Taliban fighters had opened fire, and a special forces helicopter had fired on the fighters, killing them.<sup>114</sup> The strike force raid on the clinic began at about 12:30 a.m. A member of the clinic staff said:

Helicopters landed on the main road close to the clinic. [Due to these raids] the hospital directors leave the clinic at night and so do any Taliban, so there were no doctors in the clinic and no patients [only night staff]. The special forces came in and accused the staff of treating Taliban fighters. They broke the tables and equipment. They set fire to two generators and

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<https://www.afghanistan-analysts.org/one-land-two-rules-7-delivering-public-services-in-insurgency-affected-andar-district-in-ghazni-province/> (accessed August 24, 2019).

<sup>112</sup> Unpublished report on threats to healthcare facilities in Afghanistan, 2019, on file with Human Rights Watch.

<sup>113</sup> Ibid.

<sup>114</sup> Human Rights Watch telephone interview with clinic staff member, August 25, 2019. Details corroborated in unpublished report on threats to healthcare facilities in Afghanistan.

an ambulance. The forces were in uniform, but not normal ANA [Afghan National Army] uniforms.<sup>115</sup>

## Raid Killing Medical Staff, Other Civilians in Wardak

On the night of July 8, 2019, a special forces unit identified by witnesses as NDS 01 raided an NGO medical clinic in Day Mirdad, Wardak province. A member of the local health council told Human Rights Watch that at about 9 p.m. on July 8, he heard helicopters and knew a raid was underway. At 5 a.m., he and others from the health council went to the clinic and found the guard's room shattered by a rocket that had left a crater.<sup>116</sup>

A clinic staff member said that the strike force had tied the hands of all the staff and visiting family caregivers and taken them to a room, where they questioned them about the whereabouts of the Taliban. Then they took four men with them, including the clinic's director, Dr. Wahidullah, and told the remaining staff to stay in the room.<sup>117</sup>

After the Afghan forces left, villagers discovered the bodies of three of the men who had been taken. The villagers were unable to locate Dr. Wahidullah, whom they believe the forces may have detained. The body of a family caregiver was also found on the premises.<sup>118</sup>

On July 11, the Swedish Committee for Afghanistan, a humanitarian organization that runs the clinic, described the incident as a “shocking violation” of international humanitarian law, and said that “such outrageous use of force against civilians and health facilities constitutes a serious violation of applicable international humanitarian law and it affects provision of health services delivery to the people in the local community.”<sup>119</sup>

A media report cited Haji Waheed Akbarzai, a member of the Wardak provincial assembly, saying that the clinic was located in an area that is under Taliban control. “The Afghan

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<sup>115</sup> Ibid.

<sup>116</sup> Human Rights Watch telephone interview with two local health council members in Day Mirdad, July 12, 2019.

<sup>117</sup> Ibid.

<sup>118</sup> Ibid.

<sup>119</sup> Swedish Committee of Afghanistan, “SCA Strongly Condemns Attack on Health Clinic in Wardak Province,” July 14, 2019, <https://swedishcommittee.org/blog/sca-strongly-condemns-attack-health-clinic-wardak-province-o> (accessed August 24, 2019).

forces raided the hospital because they received information that Taliban [members] were being treated and were hiding there,” he said.<sup>120</sup>

Afghan forces had previously targeted the Day Mirdad clinic. On February 17, 2016, Afghan forces accompanied by international forces raided the facility, dragging away two patients and a visiting 11-year-old and shooting dead all three outside the hospital premises.<sup>121</sup>

## Clinic Raided, Enforced Disappearance in Kajaki, Helmand

On the night of July 9, 2019, a special forces unit carried out a raid on an NGO clinic in the Zamindawar area of Kajaki district, Helmand. Kajaki has been under Taliban control for several years. The clinic provided basic health services and first aid.

The raid began at about 2:30 a.m. when helicopters arrived, dropping the unit. The staff described the unit as commandos who spoke in a Kandahari accent.<sup>122</sup> The modus operandi of arriving by helicopters at night is similar to that of the NDS o3 based at Gekho in Kandahar.

The forces tied the hands of the five clinic staff members and questioned them as to the location of the Taliban, before departing about an hour later.<sup>123</sup> A farmer who lived nearby said that he went to the clinic in the morning and the staff told him the soldiers had beaten them; one had a black eye and others had bruises. They told him the strike force had taken the doctor who was in charge of the clinic to an undisclosed location. According to the clinic staff, he has not been released, and his whereabouts remain unknown.<sup>124</sup>

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<sup>120</sup> Shehreena Qazi, “Swedish-Run Clinics Stay Shut in Afghanistan for Fifth Day,” *Al Jazeera*, July 18, 2019, <https://www.aljazeera.com/news/2019/07/swedish-run-clinics-stay-shut-afghanistan-day-190717080408361.html> (accessed August 24, 2019).

<sup>121</sup> Human Rights Watch, “Afghanistan: Investigate Army Killings of Hospital Patients,” February 19, 2016, <https://www.hrw.org/news/2016/02/19/afghanistan-investigate-army-killings-hospital-patients>.

<sup>122</sup> Human Rights Watch telephone interview with resident of Kajaki, August 30, 2019.

<sup>123</sup> *Ibid.*; unpublished report on threats to healthcare facilities in Afghanistan, 2019, on file with Human Rights Watch.

<sup>124</sup> *Ibid.*

## VI. International Humanitarian Law

### Applicability of the Laws of War

The armed conflict in Afghanistan is considered to be a non-international conflict under international humanitarian law, or the laws of war. Even though many countries have been involved in the armed conflict in Afghanistan, the fighting does not involve one state engaged in hostilities with another state, so it is considered a non-international armed conflict. As a practical matter, the laws of war are largely the same for international and non-international armed conflicts.

Afghanistan's armed conflict is governed by law set out in treaties and in the rules of customary international law.<sup>125</sup> The most important treaty law is Common Article 3 to the Geneva Conventions of 1949, which sets forth minimum standards for all parties to non-international conflicts.<sup>126</sup> Afghanistan is also party to Protocol II to the Geneva Conventions, which provides further protections for combatants and civilians during non-international armed conflicts.<sup>127</sup>

All parties to Afghanistan's armed conflict—including non-state armed groups—are responsible for complying with the requirements of international humanitarian law. This obligation does not depend on reciprocity; parties to a conflict must respect the requirements whether or not the opposing side abides by them.<sup>128</sup>

### Fundamental Protections

The laws of war provide protections to civilians and other noncombatants from the hazards of armed conflict. It addresses the conduct of hostilities—the means and methods of

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<sup>125</sup> See generally, International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law* (Cambridge: Cambridge University Press, 2005).

<sup>126</sup> Article 3 common to the First, Second, Third, and Fourth Geneva Conventions (Common Article 3). Afghanistan became a party to the Geneva Conventions in 1956; the US became a party to the Geneva Conventions in 1955.

<sup>127</sup> Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 1125 U.N.T.S. 609, entered into force December 7, 1978. Article 1 states the protocol applies to “dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.”

<sup>128</sup> See generally the discussion of the applicability of international humanitarian law to non-state armed groups in ICRC, *Customary International Humanitarian Law*, p. 497-498.

warfare—by all sides. Foremost are the principles of “civilian immunity” and “distinction”—the requirements that civilians may never be the deliberate target of attacks and that parties to a conflict must distinguish at all times between combatants and civilians, and between military objectives and civilian objects.<sup>129</sup> Parties to the conflict are required to take all feasible precautions to minimize harm to civilians and civilian objects, and to not carry out attacks that fail to discriminate between combatants and civilians, or would cause disproportionate harm to the civilian population.<sup>130</sup>

Common Article 3 provides a number of fundamental protections for civilians and those who are no longer taking part in hostilities, such as captured combatants and those who have surrendered or are unable to fight because of wounds or illness. It prohibits violence against them—particularly murder, cruel treatment, and torture—as well as outrages against their personal dignity and degrading or humiliating treatment.<sup>131</sup>

## Treatment of Detainees

Even during armed conflicts, international human rights law remains in effect. Afghanistan and the other countries involved in the fighting are all party to a number of human rights treaties, including the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>132</sup> These treaties outline guarantees for fundamental rights, many of which correspond to the rights to which combatants and civilians are entitled under international humanitarian law (for example, the right to a fair trial and the prohibition on torture and inhuman and degrading treatment).

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<sup>129</sup> ICRC, *Customary International Humanitarian Law*, rules 1-10, citing, for example, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), adopted June 8, 1977, 1125 U.N.T.S. 3, entered into force December 7, 1978.

<sup>130</sup> ICRC, *Customary International Humanitarian Law*, rules 15-21.

<sup>131</sup> Common Article 3(1).

<sup>132</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.



International law prohibits enforced disappearances, which are defined as the arrest or detention of anyone by government forces or their agents followed by a refusal to acknowledge the detention or whereabouts of the person.<sup>133</sup>

Under international human rights law, detainees are entitled to judicial review of the legality of their detention, and all the rights to a fair trial, including the right to be tried and convicted for a criminal offense only by a court of law. Unacknowledged detention is prohibited at all times.<sup>134</sup>

## Distinction and Precautions in Attack

The laws of war limit attacks to “military objectives.” Military objectives are personnel and objects that are making an effective contribution to military action and whose destruction, capture, or neutralization offers a definite military advantage.<sup>135</sup> This would include enemy fighters, weapons and ammunition, and objects being used for military purposes. While humanitarian law recognizes that some civilian casualties are inevitable during armed conflict, it imposes a duty on parties to the conflict at all times to distinguish between combatants and civilians, and to target only combatants and other military objectives.

Combatants include members of a country’s armed forces and commanders and fighters in non-state armed groups.<sup>136</sup> They are subject to attack at all times during hostilities unless they are captured or incapacitated. Civilians lose their immunity from attack when and only for such time as they are “directly participating in hostilities.”<sup>137</sup> The International Committee of the Red Cross says that the laws of war distinguish members of the organized fighting forces of a non-state party, who may be targeted when there is fighting, from those who assume exclusively political, administrative, or other non-combat functions, who may not be targeted even when there is fighting. An individual recruited,

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<sup>133</sup> International Convention for the Protection of All Persons from Enforced Disappearance, adopted December 20, 2006, G.A. Res. 177 (LXI), U.N. Doc. A/RES/61/177 (2006), entered into force December 23, 2010, art. 2; see also ICRC, *Customary International Humanitarian Law*, rule 98.

<sup>134</sup> ICCPR, arts. 9 and 14.

<sup>135</sup> ICRC, *Customary International Humanitarian Law*, rules 7-10, citing Protocol I, art. 48, 52(2).

<sup>136</sup> *Ibid.*, rule 1.

<sup>137</sup> *Ibid.*, rule 6.

trained, and equipped by a non-state armed group is considered integrated into that group even before carrying out a hostile act at a time of fighting.<sup>138</sup>

The laws of war also protect “civilian objects,” which are defined as anything not considered a military objective. Direct attacks against civilian objects—such as homes, apartments and civilian businesses, places of worship, medical clinics and hospitals, and schools—are prohibited unless they are being used for military purposes and thus become military objectives.<sup>139</sup> This would be the case if military forces are deployed in what are normally civilian objects. Where there is doubt about the nature of an object, the attacking force must presume it to be civilian.<sup>140</sup>

Direct attacks on civilians and civilian objects, as noted above, are prohibited.<sup>141</sup> The laws of war also prohibit indiscriminate attacks, which strike military objectives and civilians or civilian objects without distinction. Examples are attacks that are not directed at a specific military objective or that use weapons that cannot be directed at a specific military objective.<sup>142</sup>

Military commanders must choose a means of attack that can be directed at military targets and will minimize incidental harm to civilians. If the weapons used are so inaccurate that they cannot be directed at military targets without imposing a substantial risk of civilian harm, then they should not be deployed.

Attacks that violate the principle of proportionality are also prohibited. An attack is disproportionate if it may be expected to cause incidental loss of civilian life or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated from the attack.<sup>143</sup>

The laws of war do not prohibit fighting in urban areas, although the presence of many civilians places greater obligations on parties to the conflict to take steps to minimize

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<sup>138</sup> See generally, ICRC, “Interpretive Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law,” May 2009.

<sup>139</sup> ICRC, *Customary International Humanitarian Law*, rules 7-10.

<sup>140</sup> Protocol I, art. 52(3).

<sup>141</sup> ICRC, *Customary International Humanitarian Law*, rules 1 and 7.

<sup>142</sup> *Ibid.*, rules 11-13, citing Protocol I, art. 51(4).

<sup>143</sup> *Ibid.*, rule 14, citing Protocol I, art. 51(5).

harm to civilians. Parties to a conflict are required to take constant care during military operations to spare the civilian population and “take all feasible precautions” to avoid or minimize the incidental loss of civilian life and damage to civilian objects.<sup>144</sup> These precautions include doing everything feasible to verify that the objects of attack are military objectives and not civilians or civilian objects, and giving “effective advance warning” of attacks when circumstances permit.<sup>145</sup>

Forces must take all feasible precautions to protect civilians under their control from the effects of attacks.<sup>146</sup> They should remove civilians from the vicinity of military operations and avoid locating military objectives near densely populated areas.<sup>147</sup> They are prohibited from deliberately using civilians to shield military objectives or operations from attack.<sup>148</sup>

The attacking party is not relieved of its obligation to take into account the risk to civilians simply because it considers the defending party responsible for locating legitimate military targets within or near populated areas. The use of explosive weapons with wide-area effects (weapons with a wide blast radius or indirect-fire weapons without adequate spotting) against military objectives in populated areas heightens concerns of unlawful indiscriminate and disproportionate attacks.<sup>149</sup> All parties to armed conflict should thus avoid the use of explosive weapons with a wide impact area in populated areas.<sup>150</sup>

## Protections for Medical Facilities and Personnel

Medical units are civilian objects that have special protections under the laws of war. They include hospitals, clinics, medical centers and similar facilities, whether military or civilian. While other presumptively civilian structures become military objectives if they are being used for a military purpose, hospitals lose their protection from attack only if they

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<sup>144</sup> Ibid., rule 15, citing Protocol I, art. 57.

<sup>145</sup> Ibid., rule 20, citing Protocol I, art. 57(2).

<sup>146</sup> Ibid., rule 22, citing Protocol I, art. 58.

<sup>147</sup> Ibid., rule 24, citing Protocol I, art. 58.

<sup>148</sup> Ibid., rule 97, citing Third Geneva Convention, art. 23; Fourth Geneva Convention, art. 28; and Protocol I, art. 51.

<sup>149</sup> See “ICRC Q&A on the Issue of Explosive Weapons in Populated Areas,” *International Review of the Red Cross*, vol. 98, no. 901 (2016), p. 97-105.

<sup>150</sup> See “Explosive Weapons in Cities: Civilian Devastation and Suffering Must Stop,” UN Secretary-General and ICRC President joint statement, September 18, 2019.

are being used, outside their humanitarian function, to commit “acts harmful to the enemy.”<sup>151</sup>

Several types of acts do not constitute “acts harmful to the enemy,” such as the presence of armed guards or when small arms from the wounded are found in the hospital. Even if military forces misuse a hospital to store weapons or shelter able-bodied combatants, the attacking force must issue a warning to cease this misuse, setting a reasonable time limit for it to end, and attacking only after such a warning has gone unheeded.<sup>152</sup>

Under the laws of war, doctors, nurses, and other medical personnel must be permitted to provide care and attention to the wounded and sick without adverse distinction. They may not be punished for performing their medical duties.<sup>153</sup>

Armed personnel may enter medical facilities “for legitimate purposes such as searching for alleged criminals; interrogating and arresting suspects; searching for and arresting combatants or fighters posing an imperative threat to their security; or verifying that a medical unit is not used for military purposes.” At the same time, the military personnel may not disrupt the normal functioning of the medical facility, interfering with or denying medical treatment.<sup>154</sup>

## Accountability for Alleged War Crimes

Serious violations of international humanitarian law committed with criminal intent—that is, deliberately or recklessly—are war crimes. War crimes, listed in the “grave breaches” provisions of the Geneva Conventions and as customary law in the International Criminal Court statute and other sources, include a wide array of offenses for which individuals may be held criminally liable—deliberate, indiscriminate, and disproportionate attacks harming civilians; hostage taking; using human shields; and imposing collective punishment, among others.<sup>155</sup> Individuals also may be held criminally liable for attempting to commit a war crime, as well as assisting in, facilitating, aiding, or abetting a war crime.

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<sup>151</sup> ICRC, *Customary International Humanitarian Law*, rule 28, citing Protocol II, art. 11(1).

<sup>152</sup> *Ibid.*

<sup>153</sup> *Ibid.*, rule 26, citing Protocol II, arts. 9 and 10.

<sup>154</sup> See Alexander Breitegger, “The Legal Framework Applicable to Insecurity and Violence Affecting the Delivery of Health Care in Armed Conflicts and Other Emergencies,” *International Review of the Red Cross*, vol. 95, no. 889 (2013), p. 117-118.

<sup>155</sup> ICRC, *Customary International Humanitarian Law*, rule 156.

Responsibility also may fall on people planning or instigating a war crime.<sup>156</sup> Commanders and civilian leaders may be prosecuted for war crimes as a matter of command responsibility when they knew or should have known about the commission of war crimes and took insufficient measures to prevent them or punish those responsible.<sup>157</sup>

Ensuring justice for serious violations is, in the first instance, the responsibility of the country whose nationals are implicated in the violations. Governments have an obligation to investigate serious violations that implicate their officials or other people under their jurisdiction. The government must ensure that military or domestic courts or other institutions impartially investigate whether serious violations occurred, identifying and prosecuting the individuals responsible for those violations in accordance with international fair trial standards, and imposing punishments on individuals found guilty that are commensurate with their deeds.<sup>158</sup>

While non-state armed groups do not have the same legal obligation to prosecute violators of the laws of war within their ranks, they are nonetheless responsible for ensuring compliance with the laws of war and have a responsibility when they do conduct trials to do so in accordance with international fair trial standards.<sup>159</sup>

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<sup>156</sup> Ibid., rule 151.

<sup>157</sup> Ibid., rule 153.

<sup>158</sup> Ibid., rule 158.

<sup>159</sup> Ibid., rule 150.

## **Acknowledgments**

This report was written by Patricia Gossman, associate Asia director at Human Rights Watch. Brad Adams, Asia director, edited the report. James Ross, legal and policy director, and Joseph Saunders, deputy program director, provided legal and program review. John Sifton, Asia advocacy director, and Andrea Prasow, deputy Washington director, provided additional review. The report was prepared for publication by Jose Martinez, administrative officer, and Fitzroy Hepkins, senior administrative manager.

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## **Appendix I: Response from US Forces-Afghanistan and Resolute Support**

The continuing suffering of the Afghan people is the responsibility of the Taliban and terrorists like Da'esh and al Qaeda. The Taliban's pointless ongoing violence are betrayals of the Afghan people's loud and clear demands for an end to the fighting of the past 40 years. Taliban senior leaders, many of whom are not even in Afghanistan, must listen to the will of the people and stop sending Afghan sons to murder their fellow countrymen, women and children with suicide and car bombs in crowded cities, reckless rockets and indiscriminate roadside explosives. They must stop wrecking infrastructure and threatening humanitarian aid providers.

Senseless continued violence will not go unanswered. Resolute Support remains committed to supporting our Afghan security partners as they protect the people. We are committed to reducing violence but these actions must be reciprocated by all parties.

We are fighting in a complex environment against those who intentionally kill and hide behind civilians, as well as use dishonest claims of non-combatant casualties as propaganda weapons. We hold ourselves to the highest standards of accuracy and accountability and are unceasing in our efforts to mitigate harm to non-combatants and collateral damage. We are the most precise military force in history and learn and challenge ourselves every day to improve how we fight. The Taliban cannot say the same and IS-K and al Qaeda intentionally murder noncombatants.

War will never be "immaculate." The nature of war is horrific, particularly when civilization is challenged by terrorists whose aim is to sow fear, instability and division through spectacular attacks. The battlefield is complex—the fighting is in crowded cities and in populated villages. Our challenges are immense because we face enemies who do not wear uniforms, who hide among women and children, and who use lies about the death of civilians to try and check our effectiveness. The Taliban purposefully operate in ways which result in civilian casualties. They intentionally seek the deaths of innocents by all parties to use them for propaganda and to sow insecurity and instability.

Since they announced the start of what they called their al Fath offensive on April 11, the Taliban have murdered more than 400 innocent Afghans, including more than 60 women and children. They have wounded at least 1,400 more civilians.

The most effective way to end the suffering of non-combatants is to end the fighting. We will continue to partner with the Afghan security forces protecting the people and to judiciously and carefully deliver the military pressure which will create the confidence and political space to end the fighting and contain the threats.

**Resolute Support Public Affairs**

**Kabul, Afghanistan**

**September 21, 2019**



## **Appendix II: Response from the CIA**

The CIA fully agrees with Resolute Support's account of the Taliban's brutal campaign to destabilize the legitimately-elected government of Afghanistan. The Taliban's cruelty and intentional targeting of civilians are the root causes of the Afghan people's continued suffering.

For many years, well-intentioned journalists and non-governmental organizations have published accounts of alleged abuses by Afghan forces like those contained in the Human Rights Watch report. The U.S. Government routinely reviews such serious allegations to determine their validity. Although Human Rights Watch did not provide the CIA time to study the particular allegations in this report, without confirming or denying any particular role in Government of Afghanistan counterterrorism operations, we can say with some confidence that many, if not all, of the claims leveled against Afghan forces are likely false or exaggerated. Past in-depth reviews of similar allegations have shown this to be the case.

These false narratives persist because it is beyond dispute that the Taliban is engaged in a systematic propaganda campaign against Afghan and coalition operations to undermine the local population's confidence in its government and disparage its international partners, including the United States. Taliban media routinely highlight false claims by exaggerating civilian casualties and portraying killed or captured Taliban fighters as innocent civilians. Their strategy is to weaken the Afghan government and drive the United States out of the region by spreading misinformation.

By way of example, on 22 September, a raid by U.S. military and Afghan forces disrupted an al Qa'ida node in Helmand, resulting in several militants killed. The Taliban, however, circulated inaccurate reports that the operation targeted a wedding party and published pictures of the supposed civilian victims, leading hundreds of Afghans to protest the operation. At least some of the alleged civilian casualty photos originated from an unrelated story outside Afghanistan. This is not an isolated incident, but a well-coordinated and widespread propaganda campaign. To further distort public discourse, the Taliban makes use of its clandestine affiliations with tribal leaders and local officials

to spread false or exaggerated claims of civilian casualties in the aftermath of these operations.

Unlike the Taliban, the United States is committed to the rule of law. We neither condone nor would knowingly participate in illegal activities, and we continually work with our foreign partners to promote adherence to the law. We also take extraordinary measures, beyond the minimum legal requirements, to reduce civilian casualties in armed conflict and to strengthen accountability for our actions and those of our partners.

The CIA takes allegations of human rights abuses very seriously, no matter who might have committed them or their motivation. When we receive intelligence indicating that individuals associated with a foreign liaison partner—any foreign liaison partner—have engaged in human rights abuses, we thoroughly review the available information from both clandestine and open sources to determine whether the allegations are valid. If our review raises any concerns about the foreign partner’s conduct, we and other elements of the U.S. Government make our concerns known to the foreign partner, provide guidance and training on the applicable law and best practices, and take appropriate steps to reduce the likelihood of future abuses, including informing our oversight entities. In some cases, the U.S. Government suspends or terminates assistance to underscore the seriousness of our concerns; and in extreme cases, we have chosen to terminate our relationship with a foreign partner altogether.

These practices are well-established, and all of this is subject to rigorous reporting and oversight, both within the Executive Branch and from Congress.

The CIA is proud of the U.S. Government’s work with our coalition partners to defend against the bloody campaign the Taliban still wages on the Afghan people. The Taliban can end the suffering it has inflicted on the Afghan people by putting down their weapons and working with the Government of Afghanistan to bring about a lasting peace.

The CIA appreciates the opportunity provided by Human Rights Watch to provide a preliminary response to the allegations contained within their report. While we have not yet had the time to conduct a thorough review of the claims made prior to publication, we will continue to examine them because we are committed to the rule of law and doing what is right.

Central Intelligence Agency  
Washington, DC, United States  
October 30, 2019

# “They’ve Shot Many Like This”

## Abusive Night Raids by CIA-Backed Afghan Strike Forces

Civilian casualties in Afghanistan have spiked to record levels in 2019, a result not only of insurgent attacks but also United States and Afghan security force operations. Afghan forces operating as part of the US Central Intelligence Agency’s covert operations have in many provinces carried out unlawful airstrikes and abusive “night raids” that have had devastating consequences for civilians.

“*They’ve Shot Many Like This*” reveals how so-called Afghan strike forces—recruited, trained, equipped, and overseen by the CIA—have committed extrajudicial killings, enforced disappearances, indiscriminate airstrikes, attacks on medical facilities, and other laws-of-war violations. The report documents 17 cases in which CIA-backed Afghan strike forces committed abuses between late 2017 and mid-2019. The strike forces often appear to have unlawfully attacked civilians based on faulty intelligence, mistaken identity, or local political rivalries. They have also targeted medical staff for treating wounded insurgents.

In none of the cases reported has anyone been held to account for serious abuses, nor have the victims or their families had access to redress. Neither the Afghan nor US governments have meaningfully investigated alleged violations arising from these operations.

Human Rights Watch calls on the Afghan government to immediately disband all strike forces, pro-government armed groups, and militias that do not operate under normal chains of command. The US government should investigate alleged war crimes involving the participation of US forces, as well as restore safeguards for US airstrikes in densely populated areas.



*A car burned during a raid by the Khost Protection Force in Tani district, Khost province, Afghanistan, July 28, 2019.*

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