

HUMAN RIGHTS WATCH

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RE: Civilian Protection in Afghanistan

Dear NATO Members,

At last year's NATO Summit in Warsaw, member states endorsed a new policy on the protection of civilians. This policy came at a crucial time, as civilians are increasingly bearing the brunt of the armed conflict in Afghanistan, where civilian casualties have steadily risen since 2014. NATO's Resolute Support Mission functions to "train, advise, and assist" the Afghan National Security Forces (ANSF), making NATO uniquely placed to implement the new civilian protection policy by discouraging unlawful ANSF practices and pressing the government to institute effective civilian protection measures. [In an appendix to this letter we have included recommendations specific to NATO's operations in Afghanistan.](#)

Since the withdrawal of most international forces at the end of 2014, fighting between the Afghan government and insurgents has escalated, straining the capacities of the ANSF, and taking a higher toll on civilians. In July 2016, Human Rights Watch wrote to all NATO heads of state to raise our concerns about rising civilian casualties in the Afghan conflict and about specific abuses by Afghan government forces and government-supported militias. We recognize that the Afghan government faces a growing threat not only from Taliban insurgents, but also from groups claiming affiliation with the Islamic State. Under these circumstances the government should be more concerned than ever about the effect of abuses on the civilian population, yet serious violations by government forces continue to increase with near complete impunity.

The United Nations Assistance Mission to Afghanistan (UNAMA) has documented a steady rise in civilian casualties since 2009, with each year reaching a new high for civilian loss of life. In 2016, one-third of civilian casualties were children.

The Taliban and other insurgent groups have been responsible for the vast majority of attacks that have caused significant civilian casualties in Afghanistan, particularly by carrying out suicide

bombings in urban areas and planting improvised explosive devices (IEDs) on public roads. However, as we noted in our letter last year, despite years of support and training by NATO allies, ANSF personnel are also increasingly responsible for military operations that have resulted in large numbers of civilian casualties.

At the Warsaw Summit, NATO members pledged to ensure that Afghan security institutions and forces were “fully capable of providing security for the Afghan people; operate under effective civilian control; respect human rights; and act in accordance with the Afghan constitution and the rule of law.” NATO should make good on that pledge by adopting a clear strategy to curb abusive practices by the ANSF and press the government to institute effective measures to protect civilians.

Civilian Casualties from Aerial Operations

In 2016, UNAMA documented a 46 percent increase in civilian casualties caused by pro-government forces over 2015, with a total of 903 deaths and 1,825 injured, most from the use of explosive weapons (mortars, rockets, etc.) during ground engagements in civilian-populated areas and from aerial operations. In the first three months of 2017, UNAMA documented 148 civilian casualties from Afghan government air operations alone, a figure more than five times higher than for the same period in 2016.

NATO’s Resolute Support Civilian Casualty Mitigation Team has provided guidance to the Afghan government in developing its National Civilian Casualty Mitigation and Prevention Policy, which reportedly remains under review by Afghan authorities. In its response to UNAMA’s February 2017 report on civilian casualties, the Resolute Support Mission noted that insurgents conduct attacks “while in the vicinity of known civilian locations.” The fact that much of the fighting in Afghanistan since early 2016 is taking place closer to densely populated urban areas makes it all the more important that appropriate measures are taken to ensure that the force used is discriminate and proportionate in accordance with international humanitarian law, and that the risks of targeting in such areas are adequately assessed. In this regard, we are particularly concerned that Afghan civilian casualty tracking and mitigation measures are significantly lacking, and that the training of Afghan tactical air coordinators (ATACs) lags far behind what is needed as aerial operations increase. The National Civilian Casualty Mitigation and Prevention Policy has been two years in the making, but has yet to be adopted. The government should adopt a comprehensive policy without further delay and implement an effective action plan that includes the establishment of an entity within the government to track and investigate all reports of civilian casualties.

Attacks on Schools and Military Use of Schools

One key area in which NATO can make a significant difference is with respect to ANSF's use of schools for military purposes, and abuses against students and education personnel. As security throughout Afghanistan has deteriorated, schools throughout the country have come under threat, not only from the Taliban but also from Afghan security forces. In its final 2016 report, UNAMA documented the ANSF's military use of 26 schools (the Taliban or other insurgents made military use of 9 schools). The most affected provinces were Helmand, Kunduz, Logar, Maidan Wardak, Takhar, Farah, Badakshan, Ghor, Jawzjan and Paktya. Human Rights Watch's own research suggests that the actual numbers may be much higher. In April 2016, we conducted research in Baghlan province, which had seen intense fighting that year, and in that province alone we documented 11 schools occupied or being used for military purposes by units belonging to the Afghan National Army (ANA), Afghan National Police (ANP), and Afghan Local Police (ALP).

As you may know, Afghanistan is a signatory to the international Safe Schools Declaration, as are many NATO members; the declaration provides guidance on how to better protect schools from attacks and military use. Even so, Afghan security forces have used schools—many of them constructed by foreign donors and often the only concrete-reinforced, multi-story buildings in smaller villages—as their military bases during offensives into Taliban-held areas, with the result that the schools often become battlegrounds between ANSF and Taliban forces.

The failure to protect schools, together with deteriorating security across the country, means that Afghanistan's fragile gains in education are at serious risk. Schools are closing at an alarming rate as the fighting has escalated and spread to previously secure areas. In January 2017, the acting education minister told parliament that 1,000 schools were closed due to insecurity, out of a total of 16,000. Escalating insecurity encourages families to keep their children at home—and families usually have less tolerance for sending girls to school in insecure conditions than boys. In addition, the lack of rule of law stemming from the conflict means that girls on the way to school are at risk of kidnapping and sexual harassment – all of which makes it more likely their families will keep them at home.

The ANSF have also been responsible for other abuses against students and education personnel. In 2016, UNAMA documented 94 conflict-related incidents targeting or affecting education; ANSF and pro-government armed groups were responsible for 20 of them. And despite Afghanistan's new law criminalizing the recruitment of children into the armed forces, such abuse continues.

Attacks on Healthcare Facilities

Healthcare facilities have also been at risk of attack by both insurgent forces and the ANSF. While the Taliban and other insurgents, including those affiliated with ISIS, have attacked healthcare facilities—most notably in the March 2017 attack on the Army Hospital in Kabul that killed at least

50 and injured more than 100—ANSF have also been responsible for such attacks. In 2016 UNAMA documented 13 incidents of military use or occupation of healthcare facilities by the ANSF. In one case that we brought to your attention last year, Afghan security forces raided a clinic run by the nongovernmental Swedish Committee for Afghanistan (SCA) in Day Mirdad district, Wardak province. During the raid, the Afghan Special Forces assaulted medical staff, removed two patients, one of whom was under 18, and a 15-year-old caregiver from the facility, and summarily executed them outside the clinic. Following the incident, Afghan provincial authorities in Wardak province gave statements justifying the raid on the grounds that those killed (including the two children) were Taliban, and that the raid was carried out because Taliban were being treated at the clinic.

As you are aware, wounded Taliban fighters who are *hors de combat* are entitled to treatment, and facilities that provide such treatment remain civilian objects that may not be targeted. International humanitarian Law provides special protection to medical facilities, staff and patients during armed conflict. In no case can security forces summarily kill persons in their custody. We understand that the Afghan Ministry of Interior conducted an inquiry into the incident, though the results have not been made public. We again urge you to call for a comprehensive, impartial, and transparent investigation outside the military chain of command, and to urge that those identified as responsible for killings and other serious abuses be held accountable. The investigation should also examine the role played by international forces who accompanied the Afghan Special Forces, and whether they attempted to intervene or prevent the killings and assaults on medical staff.

Impunity

Impunity for serious violations of international humanitarian law is a key factor in their recurrence. The United Nations Committee against Torture, which in April 2017 held a public hearing on Afghanistan's submission—the first report any Afghan government has submitted in nearly 25 years—voiced its strongest concern about the problem of continued impunity for serious abuses in Afghanistan.

Despite reforms initiated by the National Unity Government, including the criminalization of the recruitment of child soldiers, abuses by Afghan security forces continue because perpetrators are not held to account. Impunity has long been identified by the Afghan government, donor countries, and intergovernmental organizations as an impediment to the country's development and the protection of civilians. NATO and leaders of NATO member states should act in unison to press the Afghan government to ensure justice for grave crimes. The absence of justice will foster continuing distrust in government authorities, revenge crimes, and support for insurgents.

NATO is uniquely placed to advance protection of civilians due to its high-level engagement both with those in a position to stop and remedy violations and with those senior authorities responsible for abuses. NATO should strengthen its expertise and capacities by appointing a high-level envoy on Protection of Civilians at Headquarters to ensure successful implementation of its protection of civilians strategy and coordinate with other international and national agencies, experts and civil society groups. The high-level envoy would help ensure informed and timely discussion within NATO, and provide expert analysis, advice, and recommendations to advance implementation of specific measures aimed at curbing serious abuses. The appointment of the special representative for women, peace and security provides an important model, but without a similar high-level mechanism on the protection of civilians, NATO pledge may mean very little.

We look forward to engaging in a constructive dialogue with you about these issues.

Sincerely,

Lotte Leicht
EU Director
Human Rights Watch

Brad Adams
Asia Director
Human Rights Watch

Appendix

Recommendations to NATO's Resolute Support Mission regarding Civilian Protection in Afghanistan

- Urge the government of Afghanistan to finalize and adopt its National Policy on Civilian Casualty Prevention and Mitigation, and support it in implementing concrete actions to minimize civilian casualties in the conduct of hostilities.
- Continue to provide training, resources and related support to Afghan national security forces beyond 2017, in relation to the use of indirect fire weapons and airstrikes, so as to ensure compliance with obligations under international humanitarian law.
- Conduct transparent post-operation reviews and investigations following reported civilian casualties in operations involving international military forces, including security and intelligence forces, with particular regard to aerial operations – including those deploying unmanned aerial vehicles – and search operations, with a view to improving operational practice and accountability, as well as to ensuring operations are carried out in line with obligations under international humanitarian law and international human rights law, and providing appropriate compensation or *ex-gratia* payments for victims and survivors.
- Urge the government of Afghanistan to:
 - Take immediate steps to curtail the military use of schools in line with the Safe Schools Declaration and the related Guidelines on Protecting Schools and Universities from Military Use During Armed Conflict, including by incorporating the guidelines into military orders, doctrine, trainings, and other means of dissemination to ensure appropriate practice throughout the chain of command;
 - Establish an effective permanent mechanism to monitor and respond to school occupations and raids on healthcare facilities, including through receiving public complaints;
 - Disband all irregular armed groups and militias, or bring them into the command structure of regular armed forces; and
 - Investigate all allegations of serious violations of international humanitarian and human rights law by Afghan national security forces and pro-government armed groups, and appropriately prosecute and punish those found responsible.
- Secure commitments from the Afghan authorities that schools supported by donor funds will not be used by Afghan security forces for military purposes, and establish a system to monitor these commitments, including through regular check-ins with the school officials

at individual schools. Immediately report any such military use or attacks to the relevant authorities, and monitor their response and actions taken.

- Cooperate with the International Criminal Court's preliminary examination into alleged war crimes and crimes against humanity committed in Afghanistan since May 2003.