



AIHRC

**Report on the Airstrike in
Dasht-e-Archi District (Laghmani village), Kunduz
Province**

Sawr 9, 1397 (29/4/2018)

Introduction

Kunduz province is one of the insecure provinces in northern Afghanistan that has fallen twice in the Taliban hand in the past two years. For several years now, this province has witnessed armed conflicts, including attacks on cities, districts, fronts, suicide attacks, roadside mines and air strikes, resulting in the death and injury of a large number of civilians. Although various human rights institutions, including the AIHRC have always investigated incidents involving civilian casualties, and have published reports on the issue and expressed their concerns through publishing of press releases, and has called on the parties to the conflict to comply with the principles of international humanitarian law, but still many civilian individuals are killed and wounded every day in various ways.



The anti-government armed groups are active in the major areas of Kunduz provinces, and every now and then various regions and districts of Kunduz are threatened by the armed conflicts. One of the volatile and insecure districts of this province is Dasht-e-Archi district. The district of Dasht-e-Archi is located in the northeastern part of Kunduz and bordered by the districts of Imam Sahib, Khan Abad, Kunduz, Takhar province and part of it is close to Tajikistan border. For many years, apart from a limited area in the district center, the majority area of the villages in the district, including the city of Dasht-e-Archi, have been ruled by the Taliban group, and is one of the most important bases of this group in Kunduz province.

About the AIHRC

The AIHRC, as a national human rights institution, was established on the basis of the provisions of the Bonn Agreement, and the Presidential Decree on 16.03.1381. After the adoption of the Constitution in 1382 and enshrining of Article 58 in it, the AIHRC found a strong legal base. The new Constitution states in its Article 58: " in order to monitor respect for human rights in Afghanistan as well as to foster and protect it, the State shall establish the Independent Human Rights Commission of Afghanistan. Every individual shall complain to this Commission about the violation of personal human rights. The Commission shall refer human rights violations of individuals to legal authorities and assist them in defense of their rights. Organization and method of operation of the Commission shall be regulated by law" In 1384, the Law on the Structure, Duties and Mandates of the AIHRC, based on Article 58 of the Constitution, was approved by the

President, and the structure, mandate and basis of action of the AIHRC was defined. The organization and functioning of this commission are regulated by law.¹

The Law of Structure, Duties and mandates of the AIHRC was approved in 1382. The law has set and defined the activities, authorities and structure of this Commission. According to Article 5 of the AIHRC's Law, the Commission shall work for the following purposes:

- Monitor the observance of human rights;
- Promotion and protection of human rights;
- Monitor the situation of and people's access to human rights and freedoms;
- Investigate human rights violations;
- Take measures to improve and develop the human rights situation in the country.²

Monitoring the observance of human rights and international humanitarian law and investigating human rights violations, and collecting documents, evidence and information, are among the duties and mandate of the AIHRC provided in Article 21 of the AIHRC's Law. The ongoing armed conflict in Afghanistan, which is a non-international armed conflict, has always been accompanied by widespread human rights violations and breaches of international humanitarian law, which is continuously monitored by the AIHRC on the basis of its legal jurisdiction.

The AIHRC has always monitored the situation of international humanitarian law, in particular civilian casualties, and investigated cases of human rights violations perpetrated during the conflicts, and has prepared and published the relevant reports and statements. Through the publication of these statements and reports, the AIHRC has consistently presented clear requests, recommendations and suggestions to the parties involved in the conflict, and by performing of such activities the AIHRC has attempted to reduce violence and inhumane acts committed during armed conflicts among the parties to the conflict.

Methodology:

The AIHRC sent its special investigation team to Kunduz province following an airstrike by the Afghan National Army (ANA) on the religious ceremony (turban tying), held by Dar al-Ulam Hashemi Omariya in Dasht-e-Archi district. The AIHRC's Special Investigation Team, in collaboration with colleagues in Kunduz Regional Office of the AIHRC, visited the central hospital in Kunduz, and interviewed the wounded and their family members, including eyewitnesses. Interviews with the injured and eyewitnesses took place individually. In addition to the central hospital in Kunduz, the delegation visited private hospitals and a hospital in Imam Sahib, and interviewed with the wounded and the witnesses individually. They also checked the

¹ - Government of the Islamic Republic of Afghanistan, Constitution, Article 58, Adopted in 1382

² -Law on Structure, Duties and Mandate of the AIHRC, Article 5, Decree No. 7, dated 12/2/1384

registration records of hospitals and got access to a number of pictures (photos and videos) recorded by local people. The AIHRC's investigation team could conduct individual interviews with 30 people and eyewitnesses. The information gathered from these people regarding the incident, including the situation before the attack, during the attack, and after the attack that were completely identical.

In order to conduct an impartial and comprehensive investigation, the delegation met with representatives of civil society in Kunduz, influential members of the Dasht-e-Archi district, Provincial Authority, Chief of Security Office, National Directorate of Security, the 20th Pamir Division, and the officials of Health Development Institute. The delegation could provide and analyze the information about the airstrike, military target and the identity of the those killed and the wounded. In addition, on 3th of Sawr 1397, the staff of the AIHRC with the staff of UNAMA, a total of 9 people, traveled to Dasht-e-Archi District controlled by Taliban group. The delegation also met with a large number of local people, including eyewitnesses, local influential people and in charge of Hashemi Dar al-Ulum.

All information provided by various sources were cross-checked. Similarly, the information gathered by both delegations were also checked and reviewed so that common points and differences were cross checked and the facts were revealed. A second delegation visited the place of the incident, and looked into the signs and traces of the incident, including the scene of the incident, blood spots, clothes, turbans, shoes and blood-stained hats. The delegation also visited seven graves related to the incident. Since the area was under the control of the Taliban group, the AIHRC and UNAMA were not able to travel to other villages and see possible graves of the other dead.

The findings of this report attempt to rely as much as possible on the information that has been approved by various independent sources. According to the AIHRC most of the information in this report is credible, but we can't guarantee a hundred percent the accuracy of the identity and number of people killed and injured. Due to the security reasons and lack of possibilities, it was not possible to precisely distinguish the claims and allegations, including the number of dead and wounded and their identity, whether military or civilian.

This report sets the principles and rules of international humanitarian law and human rights that are applicable to domestic armed conflict, as the main criterion for the assessment and analyzing of this incident. Describing the case, legal analysis, making conclusions and recommendations constitute the main parts of this report. The AIHRC expects the parties involved in the conflict to seriously apply and implement the recommendations presented in the report.

Description of the case

According to the eyewitnesses and the relatives of the victims the incident took place on Hamal 13, 1396 in the village of Laghmani, Nahr-e-Kohna in Dasht-e-Archi district, where a graduation ceremony was held for the students who had finished Hadith period and memorized the Quran. In charge of the Dar al-Ulum had determined a place for the ceremony in the open air. To prepare this site for the ceremony. According to the officials of this Madrassa, preparations for this ceremony started two months ago and a sum of money was also collected from the local people and city of Kunduz for the expenses of the ceremony. The officials of the Madrassa had prepared the lunch, and in order to advertise this event they had installed banners and posters in different parts of Dasht-e-Archi City.

According to the in charge of the Hashemya Omarya Madrassa, at this ceremony, around 1,700 people, including mullahs, influential people had gathered from different parts of Kunduz, Baghlan, Takhar, Samangan and even Kabul, and a number of children from the villages around the area also attended the ceremony. But the images obtained by the AIHRC show that the number of participants was between 700 to 1,000 people. According to the in charge of Madrassa, before the ceremony, they coordinated the issue with the Taliban leaders in the district as well as with the local government officials of Afghanistan, including the district's chief executive officer, the security commander and the NDS of the district.

The ceremony began officially at 9am on Monday, 13th of Hamal 1397. The ceremony, according to the previous agreement, was attended by several Taliban members, including the Heads of the Cultural, Educational and Vice and Virtue Commission of the Taliban group in Dasht-e-Archi District. A number of Taliban gunmen installed Taliban's flags and banners in the four corners of Dar al-Ulum, They were co-operating with Dar al-Ulum officials to maintain order³. This ceremony, according to Dar al-Ulum officials, was facilitated by Shaikh Al-Mashayekh Mohammad Omar Orf, Sheikh al-Quran and al-Hadith Momtazallah Agha, Austadulqaran Mohammad Naim Mohammadi and Molavi Ghulam Sarwar Rahbar.

According to the in charge of Dar al-Ulum, a number of the anti-government armed groups also had asked him to be given the opportunity to deliver speech and install their own banners and flags near the stage, but the in charge of Dar al-Ulum had said to them that this meeting should not be used in favor of the Islamic Emirate, because this could endanger the participants and may incite any action by the government or international forces like that bitter experiences happened in Farah province. The head of the Dar al-Ulum said that his argument was regarded by the Taliban, and

³-A total of 10 interviewees and key figures, including the in charge of Dar al Ulum confirmed the presence of the Taliban armed men, and the officials of the Ministry of Education, the cultural and vice and virtue commission.

they accepted to participate in the meeting and install their banners and flags only in the four corners of the site of ceremony⁴.

According to witnesses, the ceremony participants had come from the neighboring districts and provinces, in charge of Dar al-Ulum, a number of Taliban leaders and some of the local influencers were sitting in the first line of the meeting, the middle part of the meeting was occupied by a number of local people and students of Dar al-Ulum, and at the end, a few meters apart from adults, a number of children were sitting.

According to in charge of Darul-Ulum and eyewitnesses, the lectures lasted until 12:20 pm. According to witnesses, Sheikh Abdul Ghani was on the stage delivering a speech when the sound of two Afghan National Army helicopters was heard in the sky. According to eyewitnesses, one of the participants said to Malawi Nasrullah Akhondzadeh, in charge of the Dar al-Ulum, that these helicopters were dangerous and might bombard the site. But, Mawlvi Nasrallah was confident that helicopters would not bombard them, because he had already informed the local government officials about the ceremony.



According to relatives of some of the victims, helicopters passed through the sky not that high. They said that after a few minutes, helicopters approached the ceremony and fired the first rocket where the children were sitting. People rushed and run away. The second rocket hit a wall close to

⁴ - Interviews No. 3, 8, 6, 1 of the AIHRC

the stage. The second helicopter targeted the rally too. According to eyewitnesses, helicopters traced away people who were fleeing for about two kilometers and were targeting them using machinegun fire. These attacks lasted for about 15 minutes, and then the helicopters returned to Kunduz City.

Local people from different villages rushed to the site to collect the bodies and help the wounded, moving them to the closest hospitals, including the central hospital of Kunduz, hospitals and clinics in Dasht-e Archi and Imam Sahib districts.

An eyewitness who didn't want to reveal his identity told the AIHRC's delegation that:

"I arrived at 10 o'clock in Daftani district (village of Laghmani), where a ceremony was held for the students who had memorized the Holy Qur'an and graduated from the hadith period. On the way to the Madrassa I saw four Taliban gunmen who guided people to the meeting site. Close to the site there were several white-collar flags of the Taliban. A number of religious scholars who had come from the neighboring provinces of Kunduz were giving lectures. The last speaker was Mullah Ghani, who had come from Baghlan. Mullah Ghani was reciting Bokhari Sharif when he heard the sound of the helicopters that passed over the meeting site and then went away to turn back and released a rocket. The first rocket hit among the children. This rocket was so strong that the body of two children went up high and fell on my shoulder. I escaped from the place and hid under a tree. I heard that for 15 minutes rockets were fired. After that, the helicopters went to Kunduz, and after a few moments I went to the site looking for my sons, and finally I found one of my sons named Nour Al-Din, who was 14 years old, bleeding, he was dead. My other son was still missing. After two hours, someone told me that my other son was injured and was at the hospital in Kunduz. "

Two types of MB530 helicopter were used in this attack. According to eyewitnesses, a total of 12 rockets were fired in the attack, with three rockets that hit in the meeting site. According to them three other rockets hit the wheat grain farm around the ceremony and five rockets hit a school that was closed and located two hundred meters away from the ceremony site. A rocket also hit a wall of a house adjacent to the Dar al-Ulum. According to the witnesses the first rocket hit the wall of a house, and in addition to rockets, they also machine-gunned people from inside the helicopters.

But the AIHRC delegation who made a visit of the site did not see any clear indications that rockets hit the site of the meeting. At least, it was not proved for the AIHRC that a rocket hit the meeting site or where the children were sitting. Also, the exact number of rockets fired from the helicopters was not certain, but the AIHRC's officials apparently saw the rocket shells on the site.

According to the information provided by relatives of victims and hospital records, it appears that a large number of civilians were killed and injured as a result of the attack, but until now, the exact number of victims cannot be determined, because the identity of some of them has not been established on the list provided by relatives of the victims, hospital officials and other sources, it

is likely that some of the members of the Taliban group have also been among the names of those killed or wounded, but the AIHRC was able to confirm the death of 27 children from a list of 37 children killed in the incident, and report the deaths of 10 other children with a degree of caution. 120 children were allegedly injured in this incident, but the AIHRC was able to confirm the report of 44 children who were wounded.

With this in mind, the AIHRC does not know how many civilian casualties were involved in the incident. Because it may be that the names of the members of the Taliban are also among the list of people killed and wounded. It is very difficult to establish the identity of these people, given that the incident area was dominated by the Taliban group and the AIHRC' staff were not able to travel to the villages surrounding the site of the incident, therefore, finding the real number of civilian casualties requires a comprehensive investigation.

The number of deaths and injuries of the Taliban group is also unknown because, according to relatives of the victims of the incident and some local influential people, members of the Taliban group, very quickly, transferred their deaths and wounded from the scene of the incident to an unknown location. So far, nobody knows how many Taliban members were killed and how many were wounded and where they were transferred.



Following the incident, the Ministry of National Defense said that as a result of an airstrike in Dashti-e-Archi, senior commanders of the Taliban group and some members of the Quetta Council who had a gathering in the Dasht-e-Archi were killed. The National Defense Ministry claimed that 15 members of the Taliban group were killed and 10 others wounded in the attack. The spokesman for the 20th Pamir Division told the media that members of the Taliban group were doing the military maneuvering. This authority of Defense Ministry also said that the Taliban group that was targeted here had gathered in the area with the Quetta Council leadership. He added that in this attack, Mawlavi Shahedullah, Mawlavi Zahed, Mowlavi Momtaz that belonged to Talibans Red Detachment were killed, and Mawlavi Baryalai member of Quetta Council of Taliban was also killed.⁵

When the news spread that a large number of civilians were targeted and killed, a government delegation was assigned to travel to Kunduz and investigate the attack. After three days of investigation, the head of the delegation told the media that their initial investigations in Kunduz during a meeting with local officials and elders and scholars of Dasht-e Archi, showed that at least 8 people were killed and 43 were injured. However, the head of the delegation said that they still cannot determine how many of them were civilians and how many of them were members of the anti-government armed groups, but confirmed that civilians were among the victims, including three children⁶.

Mohammad's mother (a 12-year-old boy), said in an interview with the AIHRC on the attack, "I lost my son in the incident. My son went to Mdrassa with a great pleasure after eating the morning tea, but later on they brought home his body. My son's brain was split into pieces by bombs. "

Government officials in Kunduz province, including the governor of Kunduz, told the AIHRC's delegation that the operation was not carried out from Kunduz's airport, it was probably carried out from the Mazar-e-Sharif airport. He said that he had no information about the attack and that no coordination had been made with the provincial office⁷.

BBC Persian page "Kunduz airstrike killed 15 Taliban fighters", dated 13 Hamal 1397, for further details:- ⁵
<http://www.bbc.com/persian/afghanistan-43617520>

⁶-Government delegation in Kunduz: ANA plain attack has left at least 8 dead and 43 wounded", dated Hamal16, 1397, for further details:
<http://www.bbc.com/persian/afghanistan-43639519>

⁷ - Ibid



The head of national security in Kunduz province, as well as the provincial security commander, during a meeting with the AIHRC expressed his lack of knowledge about the attack. However, the National Security Directorate stated that he was informed of the gathering of the anti-government armed groups and said that the images taken by the reconnaissance aircraft called Scan Eagle show that anti-government armed group had gathered in Dasht-e-Archi.⁸

The images taken from the space and made available to the AIHRC, clearly indicate that 700 to 1,000 people were gathered in the open air, before the attack. These images show a small number of people who were armed and the absolute majority of the participants of this gathering were civilians. There were also 30 to 50 children sitting in the final rows apart from the adults.

Video images of the airstrike show that no rocket hit close the stage, where the member of Taliban group and other elite and influential people were sitting. The AIHRC merely gained an image of a rocket hit against a wall of a house next to the meeting place. Before the rocket hit the site, people suddenly rushed from their places and run away. The rocket that hit by the wall was probably the second rocket. But, according to victims' relatives, the first rocket hit the wall of a house next to the meeting site. The attack all images were not available to the AIHRC to clearly describe the

⁸ - Interview with Seyyed Amir Shah Sadat; National Director of National Security, Kunduz Province, Date of Interview 16 Hamal 1397

entire scene of the attack. However, it is still unclear to the AIHRC whether a rocket hit among the children. The site of the incident observed by the AIHRC's delegation did not show clear and acceptable indications that the rocket hit among the children.

However, as a result of this attack, civilians, whose numbers are still unknown, were killed and wounded. It is believed that the gathering of Dasht-e-Archi was not a military gathering in which civilians, including children, were involved. Obviously, a number of Taliban gunmen also participated in the ceremony and installed their white flags in the corners.

Legal Analysis

According to the Four Geneva Conventions of 1949 and the customary rules of international humanitarian law, parties to the armed conflict are committed to adhere to the relevant principles and values. Specifically, the Geneva Convention on the Protection of Civilian Persons during conflict, the Second Additional Protocol to the Geneva Conventions and the Common Article 3 of the Convention oblige the parties to the conflict to protect civilians in armed conflicts and to avoid inflicting casualties or damage to civilians.

According to international humanitarian law and customary humanitarian law, attacks on civilians, residential areas, and public facilities that are necessary for a civilian population are prohibited. Common Article III of the Geneva Conventions, all parties involved in conflict, including governmental and non-governmental forces, are required to comply with certain criteria.

Common Article 3 of the 1949 Geneva Convention states:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (1) Persons taking no active part in the hostilities, including members of the armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, color, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) taking of hostages;
- (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- (d) the passing of sentences 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.

(2) The wounded and sick shall be collected and cared for.⁹

Article 13 of the Second Additional Protocol to the Geneva Conventions stipulates that the civilian population as well as individual civilians shall not be the object of an attack. The acts or threats of violence, the primary purpose of which is to spread terror among civilian population, is prohibited.

Article 8 of the Rome Statute also emphasizes that serious violations of the 1949 Geneva Conventions are considered as war crimes. International Criminal Court will have jurisdiction with regard to war crimes, especially if these crimes are carried out as part of a program or policy, or as part of a massive commission of such crimes.¹⁰

According to the statements of the wounded, the victim's relatives, government officials and the AIHRC's witnesses from the site of the attack and the video images of the reconnaissance aircraft available to the AIHRC, we conclude that this attack is contrary to the principles and rules of International humanitarian law and violations of international humanitarian law and customary international humanitarian law. Because the organizers of the attack, before the attack, saw the video of the reconnaissance aircraft and organized the attack on the basis of these images. These images clearly show that there were a large number of civilians gathered in one place, and among them there were a number of gunmen sitting or on the move.

Based on the above analysis, the precautionary principle was not followed in this attack. If there was a possibility that the helicopters involved in this attack could have used guided rockets or some other methods that could target gunmen of the Taliban alone, such rockets or methods have not been used. Therefore, the precautionary principle was violated in this attack and the attack was carried out without any distinction between the military and civilians.

The precautionary principle means that the parties involved in a military operation must take all the necessary measures to carry out an attack against a military target. It is also necessary to use methods that prevent or minimize accidental damage to individuals and objects of property, and should prevent launching attacks that their civilian casualties are more than direct military outcomes. If circumstances permit, it should be warned about attacks that may affect civilians.¹¹

Therefore, if the attack commanders knew that there were a large number of civilians and only a small number of Taliban gunmen among the civilian population, then they should not have ordered such an attack. It is unclear if the pilots who carried out the attack knew that there were civilians in the military target, or that they were only given general and obscure information that there was

Four Geneva Convention, Common Article 3, 12 August 1949⁹
Article 8, Rome Statute, 2002.¹⁰

¹¹ Ibid page 48

a gathering of Taliban. It is not known whether the pilots saw the images of the reconnaissance planes, or did they see the civilian population before the attack, when getting near the target?

All these questions depend on the findings of a comprehensive investigation and inspection made from the commanders and those who issued the attack order, and the pilots who carried out the attack, that despite the knowledge of the presence of the civilian population, how and why such an attack was organized and implemented.

Conclusion

Based on the investigation and analysis of Dasht-e-Archi occurrence, it can be said that a large number of civilians were killed or wounded. Although the exact numbers of the dead are unclear, it can be said that 38 children were killed and more than 120 other children were injured as a result of the attack.

The attack was a gross violation of international humanitarian law. The perpetrators have carried out such an attack deliberately or as a result of negligence. According to the Geneva Conventions of August 1949, this is a war crime. Because the principle of distinction and the precautionary principle have been explicitly violated in this attack. While the video images of the reconnaissance aircraft show that the civilian population has gathered at the targeted site, the attack was probably carried out deliberately or due to negligence.

According to the Rome Statute, the explicit violation of the four Geneva Conventions is an example of a war crime and the perpetrators are prosecuted. Therefore, it is necessary to investigate the attack and the commanders, organizers and pilots involved in the attack should be inspected, in order to clarify the details of the case.

Recommendations:

1. The Government of Afghanistan, in particular the justice and judicial authorities is required to investigate the case comprehensively, and punish those who have neglected or deliberately carried out such an attack.
2. All officials of the country's defense and security forces are requested to train international humanitarian law for the troops involved in the operations, including those involved in air operations, and adopt effective measures to prevent civilian casualties.
3. The Afghan government is requested to take effective action to treat the wounded.
4. The ANA is requested to acknowledge the civilian casualties in the attack, and apologize to the local people to heal some of their pain.

5. The Afghan government is urged to provide adequate compensation to the victims of the attack, including the wounded.

The End.