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# Afghanistan

## All who are not friends, are enemies: Taleban abuses against civilians

### 1. Introduction

Afghan civilians have paid a heavy price since hostilities between the Taleban and US-led coalition forces began in October 2001 – and they continue to do so. The international armed conflict<sup>1</sup> formally ended with the conferral of power to the Afghan Transitional Government in June 2002. Since then civilians have been directly targeted for attack by the Taleban and other armed groups. They have also been caught up in the crossfire in the ongoing armed conflict between the Afghan army and foreign forces on the one side, and the Taleban and other armed groups opposed to the Afghan government and presence of foreign troops on the other.<sup>2</sup> Both sides have committed serious human rights abuses and violations of international humanitarian law – the ‘laws of war’ – resulting in the deaths or injury of Afghan civilians.<sup>3</sup>

The Taleban have been responsible for hundreds of civilian deaths. According to the Afghan Independent Human Rights Commission (AIHRC),<sup>4</sup> around 600 civilians were killed

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<sup>1</sup> Under international humanitarian law, the conflict in Afghanistan evolved from an international conflict to a non-international conflict when the Transitional government was established in Afghanistan following the Loya Jirga (Grand Council) of June 2002. The participation of foreign forces in the ongoing armed conflict in Afghanistan does not affect this status. The conflict differs from an international conflict in that foreign forces are fighting alongside the state against an internal enemy rather than against the state.

<sup>2</sup> There are two simultaneous military engagements in Afghanistan: (i) “Operation Enduring Freedom” is a US-led Coalition of approximately 11,000 troops with a counter-terrorist and training mission; (ii) The NATO-led, UN mandated International Security Assistance Force (ISAF) supports the extension of Afghan Government control across the country. ISAF conducts security and stabilization operations, including the direction of Provincial Reconstruction Teams (PRTs) which, in addition to fostering security, support security sector reform and facilitate reconstruction and development across Afghanistan. ISAF consists of approximately 35,000 personnel from 37 countries.

<sup>3</sup> International humanitarian law, also known as the laws of war or law of armed conflict, is a set of rules which seeks to limit the effects of armed conflict. It includes rules to protect persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. The key rules and principles of international humanitarian law are found in the four Geneva Conventions of 1949 and their two Additional Protocols of 1977.

<sup>4</sup> The Afghan Independent Human Rights Commission (AIHRC) is a national institution established by the Bonn Agreement of 22 December 2001 and the Presidential Decree of 6th June 2002 with a

or wounded in the first seven months of 2006. Around 70 per cent of these casualties were linked to Taleban attacks.<sup>5</sup> The Taleban have targeted and killed civilians whom they consider to be “spies” or “collaborators”, including Afghan and foreign reconstruction and aid workers, religious leaders, government administrators, women’s rights activists and teachers. The Taleban have attacked civilians and civilian objects, such as school buildings, with little or no effort to distinguish between these and military targets, such as soldiers and combat vehicles.

Hundreds of people have been killed or injured, including children, as a result of indiscriminate attacks using car bombs, suicide attacks and improvised explosive devices, such as roadside bombs, aimed at military convoy patrols and bases of the foreign forces. Targets of indiscriminate attacks have also included government administrators, police and private individuals.

Many of these killings constitute war crimes or crimes against humanity. As such, there is an obligation on both the Afghan government and the international community at large to ensure that the perpetrators of these crimes are identified and brought to justice. International humanitarian law clearly identifies certain acts as war crimes irrespective of the causes of a conflict or the grounds on which the contending parties justify their involvement.

While Amnesty International has reported elsewhere on its concerns over the past two years relating to abuses by international forces,<sup>6</sup> this report focuses on violations of international humanitarian law and human rights abuses by the Taleban, covering the period January 2005 to March 2007, including threats, intimidation and attack targeting civilians and indiscriminate attacks, including suicide bombings attacks on schools, abductions and unlawful killings of captives. The report urges all parties to the conflict to adhere to

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mandate to monitor, promote and investigate abuses of human rights in Afghanistan. The Bonn Agreement, concluded on 22 December 2001, provided a roadmap for a six-month interim government in Afghanistan under the leadership of Hamid Karzai.

<sup>5</sup> Amnesty International telephone interview with a Commissioner of AIHRC, 20 September 2006; *Agence France Presse (AFP)*, “600 Afghan civilians killed, hurt in violence this year”, 22 July 2002.

<sup>6</sup> See for example:

- Amnesty International Public Statement, *Afghanistan: NATO member states must uphold human rights standards through the establishment of body to investigate alleged violations of Afghanistan’s human rights laws, empowered to provide restitution*, (AI Index: ASA 11/020/2006):

<http://web.amnesty.org/library/Index/ENGASA110202006?open&of=ENG-AFG>

- Amnesty International, *Afghanistan: Amnesty International’s campaign to stop torture and ill-treatment in the ‘war on terror’*, (AI Index: ASA 11/005/2006):

<http://web.amnesty.org/library/Index/ENGASA110052006?open&of=ENG-AFG>

- Amnesty International, *USA / Afghanistan: More deaths and impunity*, (AI Index: AMR 51/172/2005): <http://web.amnesty.org/library/Index/ENGAMR511722005?open&of=ENG-AFG>

- Amnesty International, *US detentions in Afghanistan: an aide-mémoire for continued action*, (AI Index: AMR 51/093/2005): <http://web.amnesty.org/library/index/engamr510932005>

international humanitarian law by which they are bound and to operate within a human rights framework, and makes detailed recommendations to the Taliban and other armed groups.

Amnesty International is independent of any government, political persuasion or religious creed. It neither supported nor opposed the war in Afghanistan in October 2001, and takes no position on the legitimacy of armed struggle against foreign or Afghan armed forces. As in other international or non-international armed conflicts, Amnesty International's focus has been to report on and campaign against abuses of human rights and violations of international humanitarian law by all those involved in the hostilities.

### **Methodology**

This report is primarily based on secondary sources. Primary sources used include interviews with individuals working in the human rights and development sectors in Afghanistan. Testimonies were provided to Amnesty International delegates in December 2005 from individuals formerly resident in Zabul province, southern Afghanistan. Testimonies from people in southern Afghanistan were also provided to Amnesty International by an independent observer present in the country from May to October 2006. Telephone interviews were conducted with Qari Yousef Ahmadi who maintains to represent the Taliban and is widely cited in media reports claiming responsibility for attacks as their "spokesperson".<sup>7</sup> Ahmadi is one of several Taliban "spokespersons". It is difficult to determine how reflective Ahmadi's views are of the Taliban's leadership, as well as the accuracy of the information he provides. Media statements from different spokespersons have sometimes been contradictory.

In addition, Amnesty International has drawn upon documents published by the Taliban, including their military rulebook, the *Layeha*. Published material such as newspaper and press agency bulletins and articles, as well as reports from international policy think tanks were also consulted.<sup>8</sup>

For the most part, Amnesty International has chosen to highlight cases of attacks targeting civilians and indiscriminate attacks, including suicide bombings, abductions and unlawful killings of captives, for which the Taliban have claimed responsibility. The cases

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<sup>7</sup> See for example:

- *BBC News Online*, "Taliban appoint 'new spokesmen'", 14 October 2006:

[http://news.bbc.co.uk/2/hi/south\\_asia/4342478.stm](http://news.bbc.co.uk/2/hi/south_asia/4342478.stm)

- *Radio Free Europe/Radio Liberty*, "Neo-Taliban appoint new spokespersons", 17 October 2005:

<http://www.rferl.org/newsline/2005/10/6-swa/swa-171005.asp>

"Qari Yousef Ahmadi" also appears as "Qari Mohammad Yousef" in various sources. However, to avoid confusion, this report uses "Qari Yousef Ahmadi" throughout.

<sup>8</sup> It is extremely difficult to obtain first-hand information from the southern provinces of Afghanistan owing to the volatile security situation. A staff member of the UN Assistance Mission in Afghanistan (UNAMA) told Amnesty International that "all the reports that we receive are first-hand from local sources but they will be receiving it second and third-hand from local contacts...it is very difficult to verify the information."

cited in the report were also selected as examples of widespread human rights abuses and violations of international humanitarian law.

## 2. Background

### Who are the Taleban?

The make-up of the insurgency in Afghanistan is diverse and complex and it is not always clear who is behind the violence. Many armed groups are said to be operating in Afghanistan, including al-Qa'ida, Jeysh-e-Mohammadi, Lashkar-e-Tayyiba and the armed political group, Hezb-e-Eslami. The term "Taleban" has often served as a catch-all tag for armed groups or elements hostile to the central government and foreign forces. As a result, some attacks attributed to the Taleban by the media may have been carried out by al-Qa'ida, or the armed political group Hezb-e-Eslami, headed by Gulbuddin Hekmatyar. Hezb-e-Eslami and al-Qa'ida each oppose the international intervention. Other elements attributed to the Taleban might include local warlords, criminal gangs involved in the drugs trade or private individuals. Wherever possible, every effort has been made in this report to distinguish between those attacks carried out by the Taleban and other armed elements operating in Afghanistan.

The Taleban overwhelmingly comprise Pashtuns from southern Afghanistan. Widespread support for the Taleban movement is also derived from Pashtuns living across the border in Pakistan, largely in the Northwest Frontier Province and the Federally Administered Tribal Areas. In these two regions, as well as parts of Baluchistan, the majority people are of Pashtun ethnicity and share the same history, norms and religious beliefs as their Afghan counterparts. Many Pashtuns in both countries do not recognize the porous Pakistan-Afghan border and cross it at will.<sup>9</sup>

In 2003 the Taleban's leader, Mullah Omar, created a 10-member council (*Rahbari Shura*) of commanders to lead Taleban military operations in Afghanistan. The council has since expanded to 33 members and includes members of the older Taleban leadership, who led campaigns against US military operations in 2001-2002, as well as newer fighters recruited from religious seminaries or *madrassas* in Pakistan.<sup>10</sup> A small portion of the

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<sup>9</sup>The Pakistan-Afghan border, known as the Durand Line, was imposed by the British in 1893 and is continuing source of tension between Pakistan and Afghanistan. In 1949 Afghanistan declared the border invalid following India's independence. The 2,640 kilometre (1,610 mile) border divides the Pashtun ethnic group. Today there are some 28 million Pashtuns living on the Pakistani side of the border.

<sup>10</sup>It is generally estimated that around 13,000 *madrassas* (religious schools) in Pakistan provide free religious education, shelter and food for about one million children, mainly boys from poor families. They are financed by charities and function autonomously. Children at these religious seminaries also include those from among Afghan refugees.

movement consists of foreign fighters, including Arabs, Chechens and Iranians.<sup>11</sup> Currently, there are believed to be 5,000 “core” fighters and 10,000 “part-timers” in the Taleban’s ranks.<sup>12</sup>

Financial support for the Taleban flows in from supporters in the region but is also thought to come from wealthy donors from the Persian Gulf states. Other sources of income are derived from the illegal drugs trade, kidnappings in which ransoms are demanded and the smuggling of goods. The Taleban also receive money and support in strongholds in southern Afghanistan either by coercion, for example, by the demanding of food and shelter, or by *Zakat* (the religious obligation of Muslims to make an annual charitable donation as defined by the Qur’an).

With regard to their international legal obligations, the Taleban’s Constitution makes clear the limits of the Taleban’s acceptance of international law. The Constitution states: “The Islamic Emirate of Afghanistan supports and upholds...the Universal Declaration of Human Rights and other accepted treaties, as long as they do not contravene Islamic doctrine...”<sup>13</sup> The Taleban have repeatedly claimed that their policies are in accordance with Islamic law and Afghan culture, and thus not open to question. The Taleban leader, Mullah Mohammad Omar, has been reported as saying: “We do not accept something which somebody imposes on us under the name of human rights which is contradictory to the holy Quranic law.” “Anybody who talks to us should be within Islam’s framework. The holy Qur’an cannot adjust itself to other people’s requirements. People should adjust themselves to the requirements of the holy Qur’an.”

### **Taleban ousted but insecurity prevails**

The failure to win “hearts and minds” in the ongoing armed conflict and to establish security in the country has led to an erosion in public confidence in the Afghan government and US-led intervention. The US removal from power of the Taleban in 2001 was generally welcomed across Afghanistan. Over time, however, public support seems to have declined.

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<sup>11</sup> *Jane’s Intelligence Review*, “Taliban insurgency shows signs of enduring strength”, 16 October 2006: <http://frp.janes.com/public/frp/index.shtml>

<sup>12</sup> *Bloomberg*, “NATO troops need reinforcement to defeat Taliban in Afghanistan”, 25 January 2007: <http://www.iiss.org.uk/whats-new/iiss-in-the-press/january-2007/nato-needs-reinforcement-to-defeat-taliban>

<sup>13</sup> The Taleban Constitution, Chapter Nine, “Foreign Affairs”: <http://www.alemarah.org/>  
The basic rules of international humanitarian law, for example, the obligation to protect wounded people, detainees and civilians, were discussed in relation to Shari’a law with 42 religious leaders across Afghanistan and the International Committee of the Red Cross (ICRC) at the three-day conference in Kabul in September 2006. Following the conference the ICRC stated that “nothing in the essence of humanitarian law contradicted the basic rules of Shari’a law” and that “everyone able to influence the plight of the population should constantly remind the warring parties of their obligation to respect the rules applicable to armed conflict”.

Much of the discontent is attributable to human rights violations by the Afghan state forces and foreign forces. Between 2001 and 2004, foreign forces, alongside the Afghan national army, arrested and arbitrarily detained hundreds of men, in many cases without respect for human rights, including guarantees of due process. Many detainees were subjected to torture or other ill-treatment, and at least eight men died in US custody.<sup>14</sup> The detention of men, often the principal breadwinners in Afghan society, meant that family members left behind often faced poverty and destitution.

The thousands of civilian deaths resulting from foreign military operations since the US-led intervention began in 2001 has steadily increased discontent, especially in the south.<sup>15</sup> The aggressive, sometimes violent, conduct of foreign troops during house raids and the lack of cultural sensitivity shown towards women during house searches have also fuelled local resentments.

While the failure to deliver on security is considered a key factor in the resurgence of the Taleban,<sup>16</sup> a failure in the state-building process has also contributed to distrust of the government. Following the overthrow of the Taleban and the Bonn Agreement of December 2001, Afghanistan and its international partners were provided with a key opportunity to build an effective, functioning state. The failure in the state-building process has resulted in institutions that are weak and corrupt,<sup>17</sup> notably the Ministry of Interior, the judiciary and the police force: "Without effective and honest administrators, police and judges, the state can do little to provide internal security – if the government does not provide security people will not recognize it as a government," noted Barnett Rubin, a director at the US-based Center on International Co-operation and an expert on Afghanistan, in his address to the US Senate Foreign Relations Committee.<sup>18</sup> These weak institutions have resulted in corrupt governance and the absence of rule of law across the country, leaving a security gap for the Taleban to fill.

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<sup>14</sup> See for example: Amnesty International, *US detentions in Afghanistan: an aide-mémoire for continued action*, (AI Index: AMR 51/093/2005):

<http://web.amnesty.org/library/index/engamr510932005>

<sup>15</sup> There are no official statistics on civilian casualties resulting from the international military intervention of October 2001. Neither the Afghan government nor the foreign forces have kept comprehensive records but various reports estimate casualties to be in the thousands (See for example: *The Guardian*, "Forgotten Victims", 20 May 2002 and Bi-Annual JCMB Report, November 2006).

<sup>16</sup> Between October 2001 and July 2006, the presence of foreign troops in southern Afghanistan was extremely sparse and large areas remained lawless and outside the reach of government, allowing the Taleban to effectively gain ground in the region.

<sup>17</sup> See for example:

- UN Security Council, *Report of the Security Council Mission to Afghanistan 11 to 16 November 2006*, (S/2006/935), 4 December 2006:

<http://daccessdds.un.org/doc/UNDOC/GEN/N06/631/38/PDF/N0663138.pdf?OpenElement>

- *Foreign Affairs*, "Saving Afghanistan", Barnett R. Rubin, January/February 2007:

<http://www.foreignaffairs.org/20070101faessay86105/barnett-r-rubin/saving-afghanistan.html>

<sup>18</sup> Barnett R. Rubin, *Foreign Affairs*, "Still Ours to Lose: Afghanistan on the Brink", testimony prepared for the US Foreign Relations Committee, 21 September 2006:

The government's harsh opium eradication campaign with little or no effort to provide alternative livelihoods to farmers has provoked local opposition, especially in the opium-producing centre of Helmand. The Taleban have effectively exploited this policy, winning the support of poppy farmers by providing them protection. Meanwhile, the poor provision of effective aid and development in the south and southeast, has increased public frustration and disillusionment towards the Afghan government and the international community.<sup>19</sup>

The prevailing situation has shifted some degree of public support towards the Taleban, with young men resentful of the international intervention joining their ranks. In addition, poverty and lack of economic opportunity has enhanced the Taleban's ability to boost their ranks. A Taleban fighter is paid around US\$300 a month, while an Afghan soldier's monthly salary is around US\$100, proving a financial incentive to many living in one of the world's poorest countries.<sup>20</sup> In addition, in areas where the Taleban have gained control, young men are often reportedly coerced into joining the armed group.

These factors, together with escalating violence, now threaten to reverse some of the earlier gains made in the country's political, social and economic development.<sup>21</sup> The Taleban have capitalized on the political, economic and security vacuum and have gained *de facto* control over large swathes of territory in the south and east of the country and attacks are reportedly growing near the outskirts of Kabul and in centres in the north-west along the border with Iran and Turkmenistan.<sup>22</sup>

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[http://www.cfr.org/publication/11486/still\\_ours\\_to\\_lose.html?breadcrumb=%2Fpublication%2Fby\\_type%2Ftestimony](http://www.cfr.org/publication/11486/still_ours_to_lose.html?breadcrumb=%2Fpublication%2Fby_type%2Ftestimony)

<sup>19</sup> See for example:

- UN Security Council, *Report of the Security Council mission to Afghanistan 11 to 16 November 2006*, (S/2006/935), 4 December 2006:

<http://daccessdds.un.org/doc/UNDOC/GEN/N06/631/38/PDF/N0663138.pdf?OpenElement>

- The International Crisis Group, *Countering Afghanistan's Insurgency: No Quick Fixes*, 2 November 2006: <http://www.crisisgroup.org/home/index.cfm?l=1&id=4485>

<sup>20</sup> According to the UN's 2004 Afghanistan National Human Development Report's 'Human Development Index', Afghanistan is the poorest country outside of sub-Saharan Africa. The country is ranked 173 out of 178 countries, above Burundi, Mali, Burkina Faso, Niger and Sierra Leone. See: <http://www.undp.org/dpa/nhdr/af/AfghanHDR2004.htm>

<sup>21</sup> "Poor governance resulting from a lack of accountability, widespread corruption and limited capacity, exacerbated by the large and growing narcotics sector, has deterred development efforts". Bi-Annual report by the Joint Co-ordination Monitoring Board, November 2006: See:

<http://www.ands.gov.af/ands/jcmb/>

<sup>22</sup> It is believed that Gulbuddin Hekmatyar's Hezb-e-Eslami armed political group is behind some incidents in Northern Afghanistan. Some attacks may be linked to local conflicts between feuding factions over resources.

As the insurgency gained ground in 2003, the resurgent Taleban began emulating tactics used in Iraq. These consist of suicide attacks, improvised explosive devices, assassinations and beheadings – all with scant regard for civilian lives.<sup>23</sup>

### **Pakistan connection**

Much of the strength and support for the Taleban can be linked to Pakistan's apparent tolerance of Afghan Taleban and local Taleban fighters in its border regions, notably the Northwest Frontier Province, the Federally Administrated Tribal Areas and parts of Baluchistan.<sup>24</sup> Taleban fighters – local and Afghan – have reportedly regrouped and resupplied from bases in these regions, directing attacks in Afghanistan from these strongholds, in many instances with little interference from the Pakistani authorities.<sup>25</sup>

A report in *Jane's Intelligence Review* notes that:

*“Taliban leaders based in Pakistan have divided their operations in southern Afghanistan into three areas of control.... From Quetta, operations are directed in Kandahar, Helmand and Uruzgan and sometimes in Farah. In Miranshah, leaders direct operations in Khost, Paktia and Paktika. In Peshawar, they direct operations in Jalalabad, Kunar and Logar and Laghman. ... According to a coalition expert, the commanders based in these cities use deputies to communicate with mid-level commanders in Afghanistan, who typically control 50 to 100 fighters, while smaller cells of 10 to 15 operate more independently.”*<sup>26</sup>

In March 2004 the Pakistan government launched its most intensive military operation in the Tribal Areas since its troops first entered the region early in 2002. The Pakistan government said it was committed to continue the campaign to “flush out at any cost” people associated with al-Qa'ida who remained in the region.<sup>27</sup> This offensive, along with Pakistan President Musharraf's continuing support of the US-led invasion, has radicalized sections of the local population and increased their hostility towards the Pakistan government.

In an attempt to diffuse the tension and violence following the 2004 military offensive in the Tribal Areas, the Pakistan government signed two peace accords in South

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<sup>23</sup> The Senlis Council, *Helmand at War: the changing nature of the insurgency in southern Afghanistan and its effects on the future of the country*, June 2006:

[http://www.senliscouncil.net/modules/publications/010\\_publication](http://www.senliscouncil.net/modules/publications/010_publication)

<sup>24</sup> See for example: UNAMA Press Briefing by Chris Alexander, UN Deputy Special Representative of the Secretary-General, and UN agencies in Afghanistan, 8 January 2006.

<sup>25</sup> International Crisis Group, *Pakistan's Tribal Areas: Appeasing the Militants*, 11 December 2006: <http://www.crisisgroup.org/home/index.cfm?id=4568&l=1>

<sup>26</sup> *Jane's Intelligence Review*, “Taliban insurgency shows signs of enduring strength”, October 2006: <http://jir.janes.com/public/jir/terrorism.shtml>

<sup>27</sup> Information Minister Sheikh Rasheed Ahmed: “This operation will continue at whatsoever the cost may be”, *Reuters*, 26 March 2004.

Waziristan in March 2004 and North Waziristan in September 2006.<sup>28</sup> The terms of peace deals effectively gave foreign fighters a “safe haven” and may have strengthened the insurgency. While attacks on the Pakistan military decreased following the 2006 agreement, NATO, US and Afghan officials recorded a threefold increase in attacks on their forces, increasingly by suicide bombers, particularly in areas in Afghanistan bordering North Waziristan. Some media reports claim that most of the suicide bombers who carry out attacks in Afghanistan come from across the border in Pakistan.<sup>29</sup>

Pakistan army intervention in the Tribal Areas is considered by many observers to have undermined the status and influence of tribal elders, government-appointed Political Agents<sup>30</sup> and local elected representatives. This leadership vacuum has increasingly been filled by militant clerics, pursuing and enforcing a strict Islamist agenda with the help of resurgent Pashtun groups under their leadership.<sup>31</sup> The Tribal Areas have witnessed a creeping “Talibanization” including the development of Taliban quasi-governmental structures, including administrative bodies, tax collection, judicial structures and a “penal code”.<sup>32</sup>

The Pakistan government’s military operations met with resistance, particularly from Islamic groups. The most prominent Pakistani religious political group in the region is the Muttahida Majlis-e-Amal (MMA), an alliance of six influential Islamic political parties, including Jamaat-i-Islami and Jamaat Ulema-i-Islam.<sup>33</sup> Many religious seminaries that

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<sup>28</sup> The South Waziristan peace deal of March 2004 stipulated that tribes cease harbouring foreign fighters and hand them over to the government or ensure their registration. The North Waziristan peace deal of September 2006, provided for the release of arrested tribal fighters, return of their weapons and withdrawal of troops and checkpoints in return for foreigners settled in North Waziristan respecting the law and renouncing attacks in Afghanistan.

<sup>29</sup> See for example:

- *New York Times*, “Pakistan link seen in Afghan Suicide attacks”, 14 November 2006:

<http://travel.nytimes.com/2006/11/14/world/asia/14afghan.html?fta=y&pagewanted=all>

- *Reuters Altermet*, “Suicide bomber cult is alive and well in Pakistan”, 25 January 2007:

<http://altermet.org/story/41660/>

<sup>30</sup> Political Agents hold wide executive and judicial powers under the Frontier Crimes Regulation, 1901, the law regulating the Federally Administered Tribal Areas.

<sup>31</sup> *Daily Times*, 25 May 2006. President Musharraf acknowledged that “extremism and Talibanization are spreading”. (*Reuters*, 26 May 2006.)

<sup>32</sup> See for example:

- Amnesty International, *Pakistan: Working to stop human rights violations in the “war on terror”* (AI Index: ASA 33/051/2006): <http://web.amnesty.org/library/Index/ENGASA330512006>

Between 2005-2006, more than 200 people were reportedly killed in attacks, including tribal leaders, government supporters and so-called American “spies”. See: *New York Times*, “Taliban and Allies tighten grip in North of Pakistan”, 11 December 2006:

<http://travel.nytimes.com/2006/12/11/world/asia/11pakistan.html?fta=y>

<sup>33</sup> “The Taliban’s political mentor and main Pakistani ally, Fazlur Rehman’s Jamiat Ulema-e-Islam (JUI-F), controls the two provinces that border on Afghanistan, running the government in the Pashtun-majority Northwest Frontier Province (NWFP) and in the ruling coalition with President Musharraf’s Pakistan Muslim League (Quaid-i-Azam) in Balochistan.” (The International Crisis Group, *Countering*

reportedly have links to the MMA Islamic parties have been implicated in nurturing insurgents for the Taleban cause. The International Crisis Group notes that: "President Musharraf is playing a double game, gaining international support as an ally in the "war on terror" while failing to change the policies of his government that feeds extremism. The Pakistan military government's political survival rests upon accommodation with the very Islamist parties who supported – and continue to support – the Taleban."<sup>34</sup>

While President Musharraf has repeatedly denied government support for the Taleban, in September 2006, a document prepared by an official of the Defence Academy, a think-tank linked to the UK's Defence Ministry, which was leaked to the press, alleged that the Inter Services Intelligence (ISI)<sup>35</sup> were supporting the Taleban.<sup>36</sup> Seth Jones of the Rand Corporation, a think-tank which works closely with the US military, said in November 2006 that the US government believed the ISI to be involved in providing training, money and sensitive information to the Taleban, especially "information ... about movement of US and NATO forces, in some cases very strategic information".<sup>37</sup>

Afghan government officials have repeatedly urged Pakistani authorities to stop Taleban infiltration. Similarly, while US officials praise Pakistan as a "key ally" in the "war on terror", they have called for the country to take more effective action against the Taleban.<sup>38</sup> Pakistani officials have rejected such criticism saying that Pakistan would take steps on any "actionable material as to where Taleban leaders are", provided by US or NATO forces.<sup>39</sup>

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*Afghanistan's Insurgency: No Quick Fixes*, 2 November 2006:

<http://www.crisisgroup.org/home/index.cfm?l=1&id=4485>)

<sup>34</sup> The International Crisis Group, *Countering Afghanistan's Insurgency: No Quick Fixes*, 2 November 2006: <http://www.crisisgroup.org/home/index.cfm?l=1&id=4485> See also: International Crisis Group, Media Release, *Pakistan Tribal Areas: Appeasing the Militants*, 11 December 2006:

<http://www.crisisgroup.org/home/index.cfm?l=1&id=4568&m=1>

<sup>35</sup> The Directorate for Inter-Services Intelligence, also known as the Inter-Services Intelligence or ISI, is the largest and most powerful of Pakistan's three main intelligence agencies. Its responsibilities include, gathering foreign and domestic intelligence, the co-ordination of intelligence between Pakistan's three main military branches, training spies, and maintaining security over the country's nuclear programme.

<sup>36</sup> *Reuters*, 1 October 2006; the UK government distanced itself from the report, saying that the report did not express its views.

<sup>37</sup> *The Guardian* (UK), "As Taliban insurgency gains strength and sophistication, suspicion falls on Pakistan", 13 November 2006: <http://www.guardian.co.uk/afghanistan/story/0,,1946279,00.html> During a Senate Foreign Relations Committee hearing on 21 September 2006, General James Jones, NATO's former supreme commander, reported that the Taleban headquarters remained in Quetta (*The New York Times*, "At the Border, Signs of Pakistani Role in Taliban Surge", 21 January 2007).

<sup>38</sup> Henry Crumpton, US State Department Coordinator on Terrorism commended the Pakistani government as a "vital security ally", but days later, on 6 May in Kabul said that Taleban and al-Qa'ida leaders were probably hiding in Pakistan and that Islamabad was "not doing enough in the war on terror". (Editorial in *The Friday Times*, 12-18 May 2006.)

<sup>39</sup> Army spokesman Major General Shaukat Sultan, quoted in *Daily Times*, 25 May 2006.

### 3. Attacks targeting civilians and civilian objects

*“there is no difference between the armed people who are fighting against us and civilians who are co-operating with foreigners.”* Qari Yousef Ahmadi, Taliban spokesperson, 25 October 2006

The Taliban consistently fail to distinguish between military targets and civilians or civilian objects thus breaching their obligations under international humanitarian law which strictly forbids the targeting of civilians. Scores of Afghan civilians have been killed by Taliban insurgents in the past two years, apparently because they were branded “spies” or “collaborators”. Targets have included election candidates, clerics, government administrators, teachers, health workers, and other civilians working for aid agencies or for the foreign forces.

#### **Taliban *fatwa* orders death to so-called “infidels”**

A *fatwa*, or religious edict, reportedly issued by the Taliban in December 2005 and signed by some 100 religious scholars in Afghanistan, orders the death of anyone who supports the US-led intervention.<sup>40</sup> Qari Yousef Ahmadi, Taliban spokesperson, elaborated:

“It says in the *fatwa* that people should have no sympathy for infidels, they should avoid friendship with them and should also avoid giving them any moral or material support. Anyone who supports them morally or materially should be killed.”

Ahmadi continued: “Government servants are told in the *fatwa* to quit government service. Anyone who has a father working for the Americans should cut their relations with them and treat them as an enemy because they are favouring the infidels.”

In the 2005 *fatwa*, the Ulema, or religious scholars, consider the current situation in Afghanistan. In their view “jihad” (in this context “jihad” means armed struggle) is a legal duty because the foreign forces are viewed by the scholars as an “occupying force”.<sup>41</sup>

The 2005 *fatwa* apparently follows a similar *fatwa* issued by the Taliban in Kabul in September 2001 which reportedly imposes the death penalty for spying.<sup>42</sup>

Under Common Article 3 to the four Geneva Conventions, which is binding on the Taliban, it is prohibited to attack “persons taking no active part in the hostilities”. Amnesty International is concerned that the sweeping language of the *fatwa* condones acts which would constitute war crimes.

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<sup>40</sup> *Afghan Islamic Press*, “Afghan Ulema ask for Jihad against Americans: Taliban, 13”, December 2005: <http://www.afghanislamicpress.com/site/default.asp?lang=en>

<sup>41</sup> *Afghan Islamic Press*, “Afghan Ulema ask for Jihad against Americans: Taliban”, 13 December 2005: <http://www.afghanislamicpress.com/site/default.asp?lang=en>

<sup>42</sup> See for example:

Attacks against non-governmental organizations (NGOs) and their staff by armed groups have resulted in humanitarian agencies scaling back their projects or operating in fewer districts, most notably in the south.<sup>43</sup> Immunization and health programmes have been curtailed and Afghanistan has seen a six-fold rise in the number of polio cases in 2006 – all but one of the 26 cases has occurred in the restive southern region.<sup>44</sup> The ability to deliver food aid has also been hindered by Taleban attacks on food convoys coming from Quetta in Pakistan.<sup>45</sup> The interruption of the delivery of essential aid and development to areas where it is most needed is affecting millions of already impoverished Afghans. A sustained reduction in access by humanitarian agencies may lead to large areas of the country remaining acutely under-developed.<sup>46</sup>

The Taleban are prohibited under a customary rule of international humanitarian law from attacking, destroying, removing or rendering objects that are indispensable to the survival of the civilian population.<sup>47</sup>

The Taleban have been accused by the International Security Assistance Force (ISAF) of using human shields. Colonel Tom Collins, ISAF spokesperson, reported that on 12 February 2007, “during an action in Kajaki district, Helmand province, Taliban extremists resorted to the use of human shields, specifically, local Afghani children, to escape fire.”<sup>48</sup> In

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- Amnesty Public Statement, *Afghanistan: Amnesty International condemns reported summary executions by the Taleban*, (AI Index: 11/025/2001):

<http://web.amnesty.org/library/Index/ENGASA110252001?open&of=ENG-384>

- Amnesty Public Statement: *Afghanistan: summary execution of civilians in Yakaolang*, (AI Index: 11/001/2001): <http://web.amnesty.org/library/Index/ENGASA110012001?open&of=ENG-AFG>

<sup>43</sup> ANSO/CARE, *Insecurity continues to impede aid delivery in Afghanistan*, May 2005:

[http://www.care.org/newsroom/articles/2005/05/20050505\\_afghansecurityreport.asp](http://www.care.org/newsroom/articles/2005/05/20050505_afghansecurityreport.asp)

<sup>44</sup> UNAMA Press Briefing by Adrian Edwards, Spokesperson for the Special Representative of the Secretary-General, and UN agencies in Afghanistan, 4 September 2005:

[http://www.unama-afg.org/news/\\_pb/\\_english/2006/\\_september/06sep04.htm](http://www.unama-afg.org/news/_pb/_english/2006/_september/06sep04.htm)

<sup>45</sup> *The Observer*, “Starving Afghans sell girls of eight as brides”, 7 January 2007:

<http://observer.guardian.co.uk/world/story/0,,1984396,00.html>

<sup>46</sup> A 2006 Bi-Annual report by the Joint Co-ordination Monitoring Board, warns that insurgent activity could result “in partial or total withdrawal of international agencies in a number of the worst-affected provinces”. The JCMB is a 28-member committee comprising Afghan government officials and members of the international donor community, charged with monitoring the implementation of the Afghanistan Compact, a five-year plan for reconstruction of the country agreed at a donor conference in London, 31 January to 1 February, 2006: See: <http://www.ands.gov.af/ands/jcmb/>

See also: International Crisis Group, *Afghanistan’s Endangered Compact*, 29 January 2007:

<http://www.crisisgroup.org/home/index.cfm?l=1&id=4631>

<sup>47</sup> Henckaerts and Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, Rule 54, pages 189-193 (Cambridge: Cambridge University Press & International Committee of the Red Cross 2005).

<sup>48</sup> Amnesty International email communication with ISAF spokesperson on 22 February 2007 and telephone interview on 28 March 2007. Reports of the Taleban’s use of human shields by ISAF have been difficult to corroborate and verify.

a separate incident in October 2006, former NATO chief, General James Jones reported that Taliban fighters had used human shields during military operations in the Panjwai district in Kandahar province in October 2006. Local officials were reported to have said that between 30 to 80 civilians were killed.<sup>49</sup> The Taliban are reported to have further endangered the safety of civilians under their control in Kandahar and Helmand by “transforming houses into bases and checkpoints”.<sup>50</sup>

A staff member of the UN Assistance Mission in Afghanistan (UNAMA) told Amnesty International that: “The moment that the Taliban says that this place is under our control, most of the population flee in the anticipation that there’s going to be fighting there... That’s certainly the case in Musa Qala... the population leaves in the expectation that ISAF or the Afghan National Forces will very shortly launch a military operation to take it back.”<sup>51</sup> A legal adviser working for AIHRC echoed the account given by the UNAMA official, saying that when the Taliban seized control of Musa Qala, the local population evacuated the area for “fear of being bombed”.<sup>52</sup>

International humanitarian law requires that each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.<sup>53</sup>

### **Taliban military rules**

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<sup>49</sup> *International Herald Tribune*, “NATO general says Taliban using civilians as human shields, apologizes for recent deaths”, 28 October 2006:  
<http://www.ihf.com/articles/2006/10/27/news/afghan.php>

<sup>50</sup> See for example: The Senlis Council, *Afghanistan Five Years Later: The Return of the Taliban*, September 2006: [http://www.senliscouncil.net/modules/publications/014\\_publication](http://www.senliscouncil.net/modules/publications/014_publication)

<sup>51</sup> Amnesty International telephone interview with UNAMA staff member on 5 March 2007. The UNAMA official also notes that the reach of government control over certain areas in the south has been limited, allowing the Taliban to easily fill the security gap.

<sup>52</sup> Amnesty International telephone interview with a legal adviser of AIHRC on 5 March 2007. In late September 2006, British commanders struck a deal with elders in the Musa Qala district in Helmand. They agreed that British troops and Taliban fighters would move out of the town centre. In exchange, the elders pledged to keep Taliban fighters out of the district centre and secure the area with their own auxiliary police unit, enabling the delivery of humanitarian aid. On 2 February 2007, the Taliban seized control of the district. See for example:

- *BBC News Online*, “Tough steps on road to Afghan Peace”, 8 February 2007:  
<http://news.bbc.co.uk/1/hi/uk/6342835.stm>

- *New York Times*, “Taliban Truce in District of Afghanistan Sets Off Debate”, 2 December 2006:  
<http://www.nytimes.com/2006/12/02/world/asia/02afghan.html?ex=1322715600&en=c90826508fbba306&ei=5088&partner=rssnyt&emc=rss>

<sup>53</sup> Henckaerts and Doswald-Beck, *Customary International Humanitarian Law, Volume I: Rules*, Rule 23, page 71 (Cambridge: Cambridge University Press & International Committee of the Red Cross 2005). This rule does not affect the obligations of parties to avoid disproportionate harm to civilians.

A Taleban military rulebook, or *Layeha*,<sup>54</sup> containing 30 rules was distributed to the Taleban's highest council, the *Rahbari Shura*, by Haji Obaidullah, the Taleban's former Defence Minister, during Ramadan 2006. The rulebook essentially covers three areas: the treatment of those believed to be "enemies"; discipline and conduct of soldiers; and the administration of justice. The rulebook has since been disseminated to fighters on the ground although it is difficult to determine how often it is referred to by Taleban fighters.<sup>55</sup> The rules, however, pay little or no heed to the provisions of international humanitarian law to which the Taleban are bound. The rulebook offers no explanation of who is a "civilian" and, compared to international humanitarian law, offers little in the way of their protection. International humanitarian law provides that civilians and others not actively engaged in hostilities must "in all circumstances be treated humanely", while the Taleban rulebook only requires the group to guarantee the "personal security" and "security of possessions" of those who "turn[s] [their] back on infidels".<sup>56</sup>

Some rules explicitly sanction the targeting and killing of civilians. Rule 25 states that a teacher who ignores warnings from the Taleban and continues to teach "must be beaten" and should they "continue to teach contrary to the principles of Islam, the [Taleban] district commander or a group leader must kill him". Rule 26 suggests that NGOs and humanitarian workers may be targeted: "Those NGOs that come to the country under the rule of the infidels must be treated as the government is treated...we tolerate none of their activities, whether it be building of roads, bridges, clinics, schools, *madrassas* or other works".

The existence of the Taleban military rulebook was confirmed by Taleban spokesperson, Qari Yousef Ahmadi. On 25 October 2006, Amnesty International interviewed him to gain an understanding of the Taleban views and interpretation of international humanitarian law. He revealed that the Taleban leadership's understanding of what constitutes a "civilian" is far removed from the provisions of international humanitarian law. Ahmadi asserted that attacking "unarmed" civilians who were not considered a threat by the Taleban was "forbidden". Legitimate targets, according to Ahmadi, are firstly "American and foreign troops" and, secondly, "people who are not armed but who are working and co-operating with foreigners". He added that, "there is no difference between the armed people who are fighting against us and civilians who are co-operating with foreigners."

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<sup>54</sup> See for example:

- *Signandsight.com*, "The new Taliban Codex", 28 November 2006:

<http://www.signandsight.com/features/1069.html>

- *Signandsight.com*, "A new layeha for the Mujahideen", 29 November 2006:

<http://www.signandsight.com/features/1071.html>

<sup>55</sup> Taleban fighters have been seen carrying the rulebook in several regions of Afghanistan. (See *Newsweek*, "By the Book: Taliban fighters play by their own rules", 3 December 2006:

<http://www.msnbc.msn.com/id/16011275/site/newsweek/>)

<sup>56</sup> *The Layeha*. Rule 1: "A Taliban commander is permitted to extend an invitation to all Afghans who support infidels so that they may convert to the true Islam." Rule 2: "We guarantee to any man who turns his back on the infidels, personal security and the security of his possessions. But if he becomes involved in a dispute, or someone accuses him of something, he must submit to our judiciary."

When asked to clarify what he meant by “co-operation”, Ahmadi stated that, for example, all employees working for the Ministry of Defence and most of those working for the Ministry of Interior were “fighting against the Taleban and co-operating with foreigners”. These employees were therefore considered legitimate targets for attack: “Several times we warned these people to stop co-operating with governmental agencies that are combatant forces”.<sup>57</sup> Institutions involved in “civilian activities” and “service provision” such as the Ministry of Public Health, Water and Electricity and the Red Crescent were not considered targets.

The rules contained in the *Layeha* and Ahmadi’s interpretations are inconsistent with the Taleban’s obligations under international humanitarian law. In practice, civilians appear to be targeted liberally by the Taleban.

The following cases are examples of civilians reportedly targeted and killed by the Taleban in violation of international humanitarian law.

- On 23 July 2005, Judge Qazi Namatullah was shot dead by two suspected Taleban gunmen on a motorbike in Panjwai district in Kandahar province. A Taleban spokesperson said that he was killed by the Taleban because he worked for the government.<sup>58</sup>
- On 9 August 2005, Taleban insurgents reportedly dragged a woman from her house in Mirzan district in Zabul province and shot her dead. Taleban spokesperson, Abdul Latif Hakimi, was reported to have said that the Taleban killed her “because she was spying for the American invaders”.<sup>59</sup>
- On 21 August 2005, Taleban insurgents reportedly killed Maulawi Abdullah Malang, the Deputy Head of the Ulema Shura (Council of Religious Scholars), and his colleague while they were on the way to their mosque. Latif Hakimi claimed responsibility for the attack on behalf of the Taleban, saying: “We will continue to carry out such attacks in the future.”
- On 12 October 2005, suspected Taleban insurgents reportedly killed five and injured three staff of the Afghan Health Development Services. The two doctors, one

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<sup>57</sup> Afghans working with foreign organizations or for NATO-ISAF bases have reportedly been threatened by the Taleban with “extreme forms of punishment” unless they stop “‘supporting’ the foreigners”. (See: The Senlis Council, *Afghanistan Five Years Later: The Return of the Taliban*, September 2006: [http://www.senliscouncil.net/modules/publications/014\\_publication](http://www.senliscouncil.net/modules/publications/014_publication))

<sup>58</sup> *BBC News On-line*, “‘Taleban’ shoot dead Afghan judge”, 23 July 2005: [http://news.bbc.co.uk/1/hi/world/south\\_asia/4710699.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4710699.stm)

<sup>59</sup> See for example: *BBC News Online*, “Militants kill Afghan woman ‘spy’”, 10 August 2005: [http://news.bbc.co.uk/1/hi/world/south\\_asia/4137538.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4137538.stm)

pharmacist, one nurse and an administrator were reportedly killed in the district of Zherai south of Kandahar city while returning from a visit to a village.<sup>60</sup>

- On 3 January 2006, suspected Taleban insurgents reportedly targeted and shot in the head Engineer Mirwais, an Afghan aid worker, while he was praying in a mosque in Lashkar Gar.<sup>61</sup>
- On 23 May 2006, a doctor, two nurses and their driver working for the Afghan Health Development Services were reportedly killed by a remote-controlled bomb that targeted their vehicle in Wardak province. Interior Ministry spokesperson, Yousef Stanizai, blamed the attack on “enemy elements of Afghanistan”, a term often used to describe Taleban insurgents.<sup>62</sup>
- On 15 June 2006, Taleban insurgents reportedly carried out a bomb attack on a minibus in Kandahar City, killing at least 10 people and injuring a further 15. The bus was transporting Afghan labourers to their workplace at a coalition military base in the city. A Taleban spokesperson claimed responsibility for the attack in a telephone call to a local news agency.<sup>63</sup>
- On 27 August 2006, Haji Atiqullah, a *Wolesi Jirga* (lower house of parliament) candidate, was shot dead in Uruzgan province when his convoy was attacked by 15 insurgents. Taleban spokesperson Abdul Latif Hakimi claimed responsibility for his killing on behalf of the Taleban.<sup>64</sup>

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<sup>60</sup> See for example:

- *AHDS Annual Report 2005*: <http://www.ahds.org/rep7annual2005.htm>

- *Reuters*, “Taliban kill five Afghan aid workers-agency”, 12 October 2005.

<sup>61</sup> See for example: *Pajhwok Afghan News*, “NGO worker shot dead in Helmand mosque”, 3 January 2006: <http://www.pajhwak.com/viewstory.asp?lng=eng&id=11273>

<sup>62</sup> See for example: *AFP*, “Bomb kills three Afghan health workers and driver”, 23 May 2006.

<sup>63</sup> See for example:

- *BBC News Online*, “Taleban target Afghan Civilians”, 15 June 2006:

[http://news.bbc.co.uk/1/hi/world/south\\_asia/5082042.stm](http://news.bbc.co.uk/1/hi/world/south_asia/5082042.stm)

- UNAMA, Statement of Tom Koenings, the Special Representative of the Secretary-General for Afghanistan, on the bus explosion in Kandahar city, 15 June 2006:

[http://www.unama-afg.org/news/\\_statement/SRSG/2006/06jun15.htm](http://www.unama-afg.org/news/_statement/SRSG/2006/06jun15.htm)

<sup>64</sup> See for example:

- Human Rights Watch, *Afghanistan on the Eve of Parliamentary and Provincial Elections*, Appendix

A: List of attacks on candidates, September 2005:

[http://hrw.org/backgrounder/asia/afghanistan0905/4.htm#\\_Toc114482188](http://hrw.org/backgrounder/asia/afghanistan0905/4.htm#_Toc114482188)

- AIHRC-UNAMA, *Joint Verification of Political Rights, Wolesi Jirga and Provincial Council Elections Third Report, 17 August - 13 September 2005*: [http://www.aihrc.org.af/jvr\\_on\\_election.pdf](http://www.aihrc.org.af/jvr_on_election.pdf)

### 3.1 Attacks on schools and teachers

*“With all that the children of Afghanistan have gone through, to expose them to this kind of terrible violence is appalling.”* Bernt Aasen, UNICEF representative in Afghanistan, 4 August 2006

Despite the five-fold increase in the number of children attending school since the fall of the Taliban in December 2001, seven million children are missing out on a formal education, according to the development agency Oxfam.<sup>65</sup> Currently, around 5 million children, including girls, attend school. In primary education Grades 1-6, there are approximately 1.73 million girls currently attending school, compared to around 3 million boys.<sup>66</sup> However, the unrelentingly violent campaign against schools by armed groups is seriously damaging the government’s ambitious education programme for the country, especially in the south and southeast.

Attacks on schools in Afghanistan have been attributed to a number of different groups, including the Taliban and Hezb-e-Eslami. Other attacks have been reportedly attributed to local warlords who target schools in an effort to undermine government intervention in their regions of control. Criminal gangs have also been implicated in school attacks apparently designed to divert attention away from their involvement in illegal activities such as drug-trafficking.<sup>67</sup> A clear and common motive behind these attacks is the intention to undermine the authority of the central government. A common effect of such attacks is that civilians are killed and injured and an already fragile education system is seriously undermined.

Violent attacks directed against the country’s education system have increased dramatically during the course of 2006 and have taken the form of missile attacks, bomb attacks and arson. Statistics on attacks on schools reveal the extent of disruption to the country’s education system.

- At least 172 violent attacks on schools took place in the first six months of 2006 compared with 60 for the whole of 2005.<sup>68</sup>

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<sup>65</sup> Oxfam Press Release, “Seven million Afghan children missing an education, warns Oxfam ahead of NATO summit on Afghanistan”, 27 November 2006:

[http://www.oxfam.org/en/news/pressreleases2006/pr061127\\_education](http://www.oxfam.org/en/news/pressreleases2006/pr061127_education)

<sup>66</sup> Figure provided by the Afghan Ministry of Education as of December 2006.

<sup>67</sup> Human Rights Watch, “Chapter III. Attacks on Schools, Teachers and Students”, *Lessons in Terror: Attacks on Education in Afghanistan*, July 2006:

[http://www.hrw.org/reports/2006/afghanistan0706/4.htm#\\_Toc139263887](http://www.hrw.org/reports/2006/afghanistan0706/4.htm#_Toc139263887)

<sup>68</sup> UN Press Release, *Special Rapporteur On Right To Education Appeals To Anti-Government Groups To Stop Attacks On Schools In Afghanistan*, 9 August 2006:

- 75 students, teachers and other school staff were killed in attacks between 2005 to 2006.<sup>69</sup>
- Between 2005-2006, 359 schools were closed in the provinces of Kandahar, Paktika, Zabul, Ghazni, Khost, Helmand Uruzgan and Daikundi due to security concerns for children and teachers, denying access to education for around 132,800 children.<sup>70</sup>
- 183 schools were burned in arson attacks across the country between 2005-2006.<sup>71</sup>
- Six children have died as a result of school attacks in 2006.<sup>72</sup>

Parents in various regions are now reluctant to send their children to school for fear of attacks. According to a Commissioner of the AIHRC: “Most of the schools have been closed because of the fear of attacks by Taleban and al-Qa’ida forces and, due to the insecurity that the people in the region [feel], parents are refusing to send their kids to schools.”<sup>73</sup> A Human Rights Watch report notes that: “Insecurity may reinforce conservative beliefs about girls’ education, for example by exposing girls to real physical risks either at school or en route and by preventing or discouraging female teachers from going to certain areas”.<sup>74</sup> The World Bank notes in a report:

*“[I]t is difficult to separate the issue of cultural barriers to mobility from those of security—how much of the constraint on women’s mobility, and allowing girls to walk to school, is related to the poor security situation—which may in fact improve as political stability comes about? How much of the demand is constrained by the lack of supply of female teachers, which in turn may be related to security as well as differing cultural norms?”<sup>75</sup>*

Like all civilians, students, teachers, and other school personnel must not be targeted for attack as long as they are not taking a direct part in hostilities in which case they would lose their protection as civilians. The deliberate killing of civilians, including teachers and students, is strictly prohibited under international humanitarian law. Targeting civilian objects such as school buildings is likewise prohibited. School buildings are considered civilian

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<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/20440808F17EFE70C12571C500242B99?opendocument>

<sup>69</sup> Afghan Ministry of Education figures at 22 February 2007.

<sup>70</sup> See footnote 68.

<sup>71</sup> See footnote 68.

<sup>72</sup> Press Release, *UNICEF alarmed as attacks on Afghan schools rise*, 4 August 2006:

[http://www.unicef.org/media/media\\_35196.html?q=printme](http://www.unicef.org/media/media_35196.html?q=printme)

<sup>73</sup> See for example: *Radio Free Europe/Radio Liberty*, “Afghanistan: Militants Are Targeting Schools”, 22 February 2006:

<http://www.rferl.org/featuresarticle/2006/02/162380e9-affd-47a2-8410-4ff416d865f3.html>

<sup>74</sup> See for example: Human Rights Watch, “Chapter IV. The Indirect Impact of Insecurity on Education”, *Lessons in Terror: Attacks on Education in Afghanistan*, July 2006:

[http://www.hrw.org/reports/2006/afghanistan0706/5.htm#\\_Toc139263900](http://www.hrw.org/reports/2006/afghanistan0706/5.htm#_Toc139263900)

<sup>75</sup> World Bank, *Afghanistan: National Reconstruction and Poverty Reduction – the Role of Women in Afghanistan’s Future*, p32, March 2005:

<http://siteresources.worldbank.org/AFGHANISTANEXTN/Resources/AfghanistanGenderReport.pdf>

objects unless they are, without doubt, being used for military purposes. Under the Rome Statute of the International Criminal Court “(i)ntentionally directing attacks against buildings dedicated to...education” is considered a war crime in both international and non-international armed conflicts.<sup>76</sup>

Furthermore, acts or threats of violence which aim to spread terror among the civilian population are prohibited under international humanitarian law.<sup>77</sup> The Taliban have issued threats in the form of “night letters” (*shab nameh*) – notes or posters pinned during the night to trees, mosques or the walls of school buildings warning of attacks against teachers or students.<sup>78</sup> In the southern province of Helmand, suspected Taliban insurgents distributed threatening night letters in several districts warning school staff to stop working. One such letter read: “If you want to be safe in the world and in the hereafter, then don’t go to the centres set up by the infidels.” The letter continues: “Teachers salaries are financed by non-believers. Unless you stop getting wages from them, you will be counted among the American puppets.”<sup>79</sup>

The concerted nature of these attacks and the threats to schools and teachers constitute a deliberate assault on the education system. The climate of fear generated by these attacks is undermining the right to education of thousands of children, particularly girls. Afghanistan is a party to several international human rights conventions that recognize the right to education, including the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. The UN Committee on the Rights of the Child, the body charged with monitoring the implementation of the Convention on the Rights of the Child, notes that provisions essential for the fulfilment of rights of children affected by armed conflict include, among other things, “access to food, healthcare and education”.<sup>80</sup>

Furthermore, article 4(3) of Additional Protocol II to the four Geneva Conventions provides that: “Children shall be provided with the care and aid they require, and in particular (a) they shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care”. Although Afghanistan is not a party to Additional Protocol II, this particular article provides an international standard for protecting education that the Taliban should adhere to.

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<sup>76</sup> Rome Statute articles 8(2)(b)(ix) and 8(2)(e)(iv).

<sup>77</sup> Additional Protocol II, Article 13(2).

<sup>78</sup> Human Rights Watch, *Commentary on Night Letters in Afghanistan*, July 2006:

<http://www.hrw.org/campaigns/afghanistan/2006/education/letter1.htm>

<sup>79</sup> See for example:

*Pajhwok Afghan News*, “Night letters’ scare Helmand teachers, residents”, 3 January 2006.

<http://www.pajhwak.com/viewstory.asp?lng=eng&id=11323>

<sup>80</sup> Committee on the Rights of the Child, Report on the Second Session, UN Doc. CRC/C/10, 19 October 1992, § 73.

The following cases are examples of teachers, students and schools reportedly targeted by the Taleban and other armed groups.

- On the night of 3 January 2005, Abdul Habib, the headmaster of Sheykh Matthy Baba School in Zabul province, was beheaded in his home in front of his children. The school was a mixed school teaching both boys and girls. The Provincial Education Director was reported to have said that insurgents sometimes displayed intimidating posters in the region demanding an end to girls' education and threatening to kill teachers.<sup>81</sup>
- On 18 October 2005, suspected Taleban insurgents shot dead headmaster Abdul Wali at his home in the Panjwai district of Kandahar Province. He was killed shortly after the murder of two senior government education officials in Paktika province.<sup>82</sup>
- On 14 December 2005, two suspected Taleban fighters reportedly dragged a teacher known as Laghmani from a classroom of students in Zarghon village in Nad Ali district, Helmand, and shot him at the school gates after he ignored letters (*shab nameh*) warning him to stop teaching girls.<sup>83</sup>
- On 27 March 2006, suspected Taleban militants reportedly set fire to a girls' middle school during the night in the Tanar area of Khas Konar District in Konar Province.<sup>84</sup>
- Late night on 3 September 2006, suspected Taleban insurgents reportedly arrived in Qarabaghi village, Ghazni Province. They threatened the residents not to send their daughters to the local school otherwise they would set fire to it.<sup>85</sup>
- On 9 December 2006, suspected Taleban insurgents broke into a house in Kunar province killing two sisters who were teachers, along with their mother, grandmother and a male relative. The Provincial Education Director reportedly said that the Taleban followed through a death threat that warned the sisters to stop teaching otherwise they would be killed.<sup>86</sup>

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<sup>81</sup> See for example: *The Guardian* (UK), "Headteacher decapitated by Taliban", 5 January 2006: <http://www.guardian.co.uk/afghanistan/story/0,1284,1678199,00.html>

<sup>82</sup> *Pajhwok Afghan News*, "Headmaster gunned down in Kandahar", 19 October 2005: <http://www.pajhwak.com/viewstory.asp?lng=eng&id=7828>

<sup>83</sup> See for example: *The Guardian* (UK), "Fears of a lost generation of Afghan pupils as Taliban targets schools", 16 March 2006: <http://www.guardian.co.uk/afghanistan/story/0,,1731929,00.html>

<sup>84</sup> *Pajhwok Afghan News*, "Girls' school torched in Kunar", 28 March 2006: <http://www.pajhwak.com/viewstory.asp?lng=eng&id=15627>

<sup>85</sup> *Aina TV*, Kabul/Sheberghan, 4 September 2006.

<sup>86</sup> See for example: *Associated Press*, "New Taliban rules target teachers", 9 December 2006: <http://abcnews.go.com/International/wireStory?id=2713281&page=1>

In a BBC *Newsnight* report,<sup>87</sup> a Taliban spokesperson, Dr Mohammad Hanif, denied that the Taliban were targeting schools. He stated that: “The Mojahedin of the Islamic Emirate don’t burn schools, they’re against burning schools. To destroy a school building or a hospital causes damage to the people. The Mojahedin do not do anything that can cause damage to people... Generally these schools are being burned by the soldiers of Karzai’s puppet government to discredit the Mojahedin. I say again: the Mojahedin do not burn schools.”

Hanif’s denial contradicts the Taliban rulebook which confirms a Taliban policy of burning schools, targeting teachers and of restricting the right to education. Rule 26 declares: “If a school fails to heed a warning to close, it must be burned.” It also confirms the Taliban’s opposition to the country’s current education system under rule 24: “It is forbidden to work as a teacher under the current puppet regime, because this strengthens the system of the infidels.” The rule continues that “True Muslims should apply to study with a religiously trained teacher and study in a Mosque or similar institution. Textbooks must come from the period of the Jihad or from the Taliban regime.” All Afghans with aspirations to educate their daughters and sons within the current state system risk being considered collaborators.

In the same BBC *Newsnight* report Taliban fighter Haji Mullah Wahidullah’s views were consistent with the rulebook and contradicted Dr Hanif: “We are against those schools that teach western culture, secularism and obscenity, while our religious schools are being bombed and our Qur’an is torn apart. We do burn those schools. We are not against education; we have brains. But while they burn our religious schools and our Qur’an, we want to stop those schools that teach girls to wear a kind of uniform that reveals their bodies.”

During a telephone interview with Amnesty International, Taliban spokesperson Qari Yousef Ahmadi maintained that the Taliban were “closing” those schools whose “books have been printed in the USA” and whose “curriculum was developed by foreigners”. He asserted that the Taliban were “against the school curriculum; not school buildings.”<sup>88</sup>

In January 2007, Abdul Hai Mutmayn, another Taliban spokesperson, announced that the movement would open schools in 10 districts under its control during March-May 2007 at a cost of US\$1 million. No mention was made by Mutmayn of the Taliban’s violent campaign against state education. Lessons, he said, would be based on the same curriculum followed when the Taliban were in control of Afghanistan from 1996 to 2001.<sup>89</sup> The plan would establish boys’ schools “first” and girls’ schools “later”.<sup>90</sup> This development is of particular concern, given the Taliban’s record on education when they were in power. During

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<sup>87</sup> David Loyn, “Travelling with the Taliban”, *BBC Newsnight* report, broadcast 25 October 2006.

<sup>88</sup> Amnesty International telephone interview with Qari Yousef Ahmadi on 25 October 2006.

<sup>89</sup> Statement by the Taliban Leadership Council on *Al-Emarah* website announcing the opening of schools in 10 districts under their control: <http://www.alemarah.org/english-3-21-1-2007.html>

<sup>90</sup> See for example: *BBC*, “Taliban ‘to build Afghan schools’”, 23 January 2007: [http://news.bbc.co.uk/1/hi/world/south\\_asia/6291885.stm](http://news.bbc.co.uk/1/hi/world/south_asia/6291885.stm)

that time, women and girls were excluded from all areas of educational life, girls' schools were closed across the country and female teachers were banned from working. Severe restrictions were imposed on the country's curriculum with the emphasis on narrow religious instruction at the expense of other subjects. The Taleban's hostility to girls' education is still prevalent today and inherent in their current plan. The pledge to build girls' schools echoes a similar promise made by the Taleban during their rule, which was never kept.

### 3.2 Attacks on women

The Taleban's oppressive treatment of women while they held power from 1996 to 2001 has been well documented.<sup>91</sup> Under their hardline rule, women were discriminated against in all walks of life, including the denial of education, employment, freedom of movement and political participation and representation. They were excluded from public life and prohibited from studying, working or leaving the house without being chaperoned by a *mahram*, a male blood relative. The severe restrictions on their freedom of movement virtually confined women to the home.<sup>92</sup> The effects of these restrictions were particularly hard on widows and other women-headed households. Many forms of gender-based violence were also perpetrated by the Taleban state including stoning to death for "adultery".<sup>93</sup> During this period Amnesty International repeatedly expressed concern over these policies.<sup>94</sup>

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<sup>91</sup> Rashid, Ahmed, *Taliban: The Story of the Afghan Warlords*, Pan, 2001. This book was originally published in 2000 and titled, *Taliban, Militant Islam, Oil and Fundamentalism in Central Asia*.

<sup>92</sup> It should be noted that when the Taleban held power from 1996 to 2001, the group imposed as national law, customs and traditional practices which already existed in Afghanistan. The Taleban's view of the role of women and their treatment of women was extreme, but it is not alien to rural communities in southern Afghanistan.

<sup>93</sup> See for example:

- UN High Commission for Human Rights, *Report of the Special Rapporteur on violence against women, its causes and consequences, Ms. Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1997/44, Mission to Pakistan and Afghanistan* (1-13 September 1999):

[http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/10d49a98d398bd52802568be0051fd45/\\$FILE/G0011581.pdf](http://www.unhchr.ch/Huridocda/Huridoca.nsf/0/10d49a98d398bd52802568be0051fd45/$FILE/G0011581.pdf)

- *Associated Press*, "Taliban stone woman to death for adultery", 1 May 2001:

<http://www.rawa.org/stoning.htm>

- *Associated Press*, "Taliban beat a mother and daughter for immoral behaviour publicly", 19 April 1999: <http://www.rawa.org/lashes.htm>

<sup>94</sup> See for example:

- Amnesty International, *Women in Afghanistan: pawns in men's power struggles* (ASA 11/011/1999):

<http://web.amnesty.org/library/Index/ENGASA110111999?open&of=ENG-AFG>

- Amnesty International, *Women in Afghanistan: the violations continue* (ASA 11/005/1997):

<http://web.amnesty.org/library/Index/ENGASA110051997?open&of=ENG-AFG>

In the ongoing armed conflict, women continue to face attacks, threats and harassment by the Taliban and other armed groups. During the past two years women aid and health workers, election candidates, teachers, women's rights activists and other human rights defenders have been subjected to threats and attacks, in some cases resulting in death. Women have also been injured or killed in indiscriminate attacks like suicide bombings. As noted above, the country's education system has come under relentless assault from the Taliban and other groups, with girls' schools and their teachers subject to attack.

### **Attacks on women human rights defenders**

On 25 September 2006, *The Voice of Jihad; Islamic Emirate of Afghanistan*, also known as *Al-Emarah*, a website widely associated with the Taliban, posted an announcement that Safiye Amajan, Director of Women's Affairs department in Kandahar province, "was shot and killed by the Islamic Emirate Mojahedin for spying for the United States of America in the name of women's rights against the Mojahedin."<sup>95</sup> A Taliban commander, Mullah Hayat Khan, was reported as saying that Safiye Amajan had been "executed" because she worked for the government. "We have told people again and again that anyone working for the government, and that includes women, will be killed."<sup>96</sup>

When questioned about the killing of Safiye Amajan, Taliban spokesman Qari Yousef Ahmadi denied that the Taliban were responsible for her death despite the statement issued on the day of her killing on the *Al-Emarah* website.<sup>97</sup>

Safiye Amajan's death brought to greater attention the dangers that women's rights activists and human rights defenders face daily in the ongoing armed conflict in Afghanistan. Amajan's killing added to the climate of fear and insecurity for many women activists whose activities often engender hostility as they are perceived as defying cultural, religious or social norms about the role of women in Afghan society.<sup>98</sup>

Safiye Amajan's counterpart in the neighbouring province of Helmand, Fauzia Olumi, was attacked by armed men on a visit to the governor's office in April 2006.<sup>99</sup> She heads a women's centre that runs classes for women in tailoring, maths, computers, English and

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<sup>95</sup> Taliban statement on the *Al-Emarah* website confirming the killing of Safiye Amajan: <http://www.alemarah.org/4-25-9-2006.html> "The Islamic Emirate of Afghanistan" was the official name of Afghanistan while the Taliban were in power. See also: Amnesty International Public Statement, *Afghanistan: Killing of Safiye Amajan violates laws of war and signals need for protection of activists*, (AI Index: ASA 11/016/2006):

<http://web.amnesty.org/library/Index/ENGASA110162006?open&of=ENG-346>

<sup>96</sup> See for example: *Independent (UK)*, "The woman who defied the Taliban, and paid with her life", 26 September 2006: <http://news.independent.co.uk/world/asia/article1757264.ece>

<sup>97</sup> Amnesty International telephone interview with Qari Yousef Ahmadi on 25 October 2006.

<sup>98</sup> Amnesty International, *Afghanistan: Women still under attack – a systematic failure to protect*, (ASA 11/007/2005): <http://web.amnesty.org/library/index/engasa110072005>

<sup>99</sup> Amnesty International telephone interview with Fauzia Olumi, the provincial head of the Department of Women's Affairs in Helmand, 5 March 2007.

beauty treatments. Her accountant, who was doubling as her driver at the time, was killed in the attack. As yet, neither the Taleban nor any other armed group, have claimed responsibility for the attack. Fauzia Olumi has also received death threats, which were renewed following the killing of Safiye Amajan: "I receive phone calls at one or two in the morning and I do not know who these people are." She reports that in Girishk in Helmand, women frequently face threats and intimidation. Activities for women have virtually ceased in this district, while Lashkar Gar, the capital of Helmand, remains the only centre in the province where women's activities continue. Insurgent attacks have impacted severely on women, causing "psychological damage", she notes. "Executions, killings and assassinations have destroyed women," she adds.

Safiye Amajan's colleague in the eastern province of Nuristan told Amnesty International that she had faced threats to her security. These have been made by mobile phone, "night letters" and by messages delivered by hand to her place of work.

The provincial heads of the Ministry of Women's Affairs in the provinces of Nimrouz, Farah, Zabul, Khost, Uruzgan, Paktia, Logar and Paktika provinces have all reportedly faced death threats from unidentified men. Taken together, these provinces cover the entire south of Afghanistan, as well as parts of the centre and east of the country.

#### **Letter from woman human rights defender**

On 3 October, a prominent woman human rights defender in Kandahar wrote to Amnesty International describing "the challenges of defending women's rights in the southern province of Kandahar".<sup>100</sup> In her letter she wrote:<sup>101</sup>

*"Despite the severely deteriorating security situation in Kandahar City, I continue to work for women's rights in a circumspect manner and amidst real threats all around me. Struggling for women's social, economic and political rights, we hold our meetings in private houses to at least be able [to] express and discuss some of the core issues in regard to our civic rights and search for the few ways possible to secure them.*

*"What really threatens women in Kandahar province these days is their overall security and safety while outdoors; safety amid terrorist threats from the extremist and regrouped Taleban and the ongoing fighting between government forces and militants in the region. For this reason, women do not dare come out of their homes and send their girls to schools. On the other hand, job and food insecurity for women has further weakened their state in this conservative society.*

*"Almost every day there are suicide attacks, bomb blasts and fighting that always results in the killing of civilians in large numbers, including women and girls..."*

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<sup>100</sup> Name withheld for security reasons.

<sup>101</sup> More information on *Defending women's rights in Kandahar* and a longer version of this letter is available at: <http://web.amnesty.org/web/web.nsf/print/39BBDCF9BB32567780257225004E9BF3>

She continues:

*“Girls’ schools in rural areas are either being burnt down or closed due to continuing threats from Taliban. People in the war-torn areas now say ‘we now both (sic) hate Taliban and Government/Coalition’.*

*“I have also confirmed reports from the city districts that in the past nine months, seven women have been found dead in different parts of the city with no-one claiming responsibility for their killings. In most cases, the suspicion goes to domestic violence and the recent terrorist killings by the Taliban in order to stop women from coming out of their houses to work for their livelihood.*

*“So far as my personal security is concerned, I’m still on my own. I have no armed protection from government nor can I keep private guards to accompany me all the time. In the past few months, I have been receiving phone threats from unknown numbers and people threatening me if I don’t give up working for women’s rights they will kill me. As a precautionary measure, I am trying to keep my profile as low as possible these days and until it’s a bit safer to move around.”*

The human rights situation for women and girls has deteriorated progressively as the insurgency has deepened. Women are afraid to leave their homes and send their girls to schools, their freedom of movement is limited, including their ability to go out to work and participate in public life.<sup>102</sup> The attacks against women human rights defenders reveal the extent of insecurity these women face in Afghanistan. As a report by the UK non-governmental organization Womankind notes: “Insecurity remains the overwhelming challenge characterizing all aspects of daily life for women.”<sup>103</sup>

Common Article 3 of the four Geneva Conventions explicitly prohibits discrimination on the basis of gender. It provides, among other things, that “[P]ersons taking no active part in the hostilities... shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.” Common Article 3 prohibits, among other things, “violence to life and person” and “outrages upon personal dignity, in particular, humiliating and degrading treatment”.

Article 4 of Additional Protocol II specifically prohibits, among other things, “rape, enforced prostitution and any form of indecent assault.” These provisions are considered as reflecting rules of customary international law.<sup>104</sup> As noted, the Taliban have been perpetrators of violence against and oppression of women, both past and present. In the

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<sup>102</sup> Amnesty International, *The challenge of defending women’s rights in Kandahar*, October 2006: <http://web.amnesty.org/pages/afg-241006-feature-eng>

<sup>103</sup> Womankind, *Taking Stock: Afghan Women and Girls Five Years On*, October 2006: <http://www.womankind.org.uk/takingstockdownloads.html>

<sup>104</sup> See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume 1: Rules* (Cambridge: University of Cambridge Press, 2005), Rule 134.

ongoing armed conflict, they have a legal obligation under international humanitarian law to end these violations.

#### 4. Indiscriminate attacks resulting in civilian deaths

*“We have prepared a group of self-sacrificing attackers”* Mohammad Hanif, Taleban spokesperson, 11 September 2006

During 2005 and 2006 hundreds of Afghans were killed or wounded as a result of car bombs, improvised explosive devices such as roadside bombs, or suicide attacks attributed to the Taleban. Those killed and wounded include children.<sup>105</sup> Suicide bombings, unknown in Afghanistan until 2001,<sup>106</sup> are now a routine tactic of warfare by the Taleban. In November 2005, Taleban commander and former Defence Minister, Mullah Obaidullah, announced that the “Taleban have planned and prepared for suicide attacks since long ago and a large number of Taleban is present in all cities in Afghanistan, including Kabul, and are only waiting for orders to attack.”<sup>107</sup> Later in February 2006, Taleban commander Mullah Dadullah was reported to have said: “Praise be to God, we have announced some 200 suicide bombers, but that number is now in the thousands and more people are coming forward.”<sup>108</sup>

The number of suicide attacks carried out in the insurgency has surged since the national and provincial elections of September 2005. Figures provided by the UN Department of Safety and Security (UNDSS) indicate that suicide attacks have risen six-fold over the past two years. In 2006 there were 123 suicide attacks, while in 2005 there were a total of 17 suicide attacks.

UNDSS recorded a total of 237 civilian deaths as a result of suicide attacks in 2006.<sup>109</sup> In addition, figures provided by NATO indicate that 519 civilians were killed as a result of attacks using improvised explosive devices, such as roadside bombs, in the same year.<sup>110</sup>

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<sup>105</sup> *Radio Free Europe/Radio Liberty*, “A Chronology of suicide attacks in Afghanistan since 2001”, 17 January 2006: <http://www.rferl.org/featuresarticle/2006/01/9ac36a59-d683-4189-a2b9-94fe5fbf32ad.html>

<sup>106</sup> The first suicide attack carried out by Algerian suicide bombers targeted Ahmad Shah Masoud, the Northern Alliance commander on 9 September 2001, two days before the attacks in the USA of 11 September. The next suicide attack occurred on 9 June 2003 when a taxi filled with explosives rammed into bus carrying German ISAF soldiers.

<sup>107</sup> *Reuters*, “Afghan suicide attacks raise threat to US, NATO”, 17 November 2005.

<sup>108</sup> Afghan Islamic Press interview with Mullah Dadullah, 8 February 2006.

<sup>109</sup> The figures for civilian deaths do not include the deaths of suicide bombers.

<sup>110</sup> NATO press briefing, 2 November 2006: <http://www.nato.int/docu/speech/2006/s061102d.htm>

Suicide attacks, whether aimed at military or civilian targets, frequently cause a high number of deaths and injuries among the civilian population in the vicinity of the attack. In some cases suicide attacks have been directed at military targets such as convoys and bases but have also struck civilians and civilian objects (shops, market stalls, schools) causing disproportionate harm to civilians. In other cases attacks have targeted civilians not actively taking part in military operations, including police, governors, civil servants, ambassadors and private individuals.

Under international humanitarian law, targeting civilians – that is intentionally directing attacks at civilians not taking part in hostilities – is unlawful. Likewise, when the target of an attack is the military, the attack is unlawful if it causes disproportionate harm to civilians. Both types of attack are war crimes, including under the Rome Statute which Afghanistan ratified in 2003.<sup>111</sup>

Under international humanitarian law, members of the police and similar civilian security forces are considered civilians and therefore unlawful targets for attack, unless they take a direct part in the hostilities.<sup>112</sup>

The following cases are examples of indiscriminate attacks allegedly carried out by the Taliban:

- In mid-November 2005, three suicide attacks aimed at military convoys occurred in the space of three days, killing a German peace keeper and several Afghan civilians. Mullah Obaidullah, a Taliban commander and former Defence Minister during the time the Taliban controlled Afghanistan from 1996 to 2001 reported that “Taliban [fighters] have long planned and prepared for suicide attacks, and a large number of Taliban are present in cities all over Afghanistan, including Kabul, and are only waiting for orders to attack.”<sup>113</sup>
- On 5 January 2006, at least 10 people were reportedly killed and 50 wounded when a suicide bomber apparently targeted the US ambassador while he was visiting the governor’s office in Tirin Kot, Uruzgan. It is thought that all the victims were civilians. Qari Yousef Ahmadi claimed that Mullah Abdul Rahim, a resident of Uruzgan, carried out the attack on behalf of the Taliban.<sup>114</sup>

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<sup>111</sup> Rome Statute article 8(2)(e).

<sup>112</sup> Article 3(1) common to the four Geneva Conventions.

<sup>113</sup> See for example: Radio Free Europe/Radio Liberty, “A Chronology of Suicide Attacks since 2001”, 17 January 2006: <http://www.rferl.org/featuresarticle/2006/01/9ac36a59-d683-4189-a2b9-94fe5fbf32ad.html>

<sup>114</sup> See for example: *Pajhwok Afghan News*, “Suicide bombing kills 10; US ambassador escapes unhurt”, 5 January 2006: <http://www.pajhwak.com/viewstory.asp?lng=eng&id=11447>

- On 31 July 2006, the provincial governor of Nangarhar, Gul Agha Sherzai, reportedly survived a remote-controlled bomb blast that killed five policemen and three civilians. Five police and a further seven civilians were wounded. A police car exploded a few minutes before the governor left Hada mosque south of Jalalabad city. The Afghan Islamic Press reported Taleban spokesperson Muhammad Hanif stating that a Taleb fighter, Ahmad Baseer, had carried out the attack.<sup>115</sup>
- On 28 August 2006, a suicide bomber targeted a market in Lashkar Gah, killing 17 people and injuring 47. Qari Yousef Ahmadi reportedly claimed responsibility but regretted the high death toll, saying that the bomb was targeted at Khan Noorzai, a former police chief, who died alongside his son in the blast.<sup>116</sup>
- On 10 September, Abdul Hakim Taniwal, the Governor of Paktia and former Minister for Mines and Industry, was killed in a suicide attack along with his nephew and bodyguard. The attack occurred in the provincial capital of Gardez when a suicide bomber hurled himself at his car. Mohammad Hanif claimed responsibility for the attack and added: "Our Mojahedin will conduct similar attacks. We have prepared a group of self-sacrificing attackers."<sup>117</sup>
- On 18 September 2006, a suicide bomber targeted a patrol of Canadian soldiers as they were giving out pens and notebooks to a crowd of children in the village of Char Kota in Pashmul. At least four soldiers were reportedly killed and some civilians were among the casualties; a further 24 civilians were injured, most of whom were children. Qari Yousef Ahmadi claimed responsibility for the attack, saying that a Taleban fighter from Kandahar named Qudratollah carried out the attack against the Canadian patrol.<sup>118</sup>
- On 26 September 2006, Mohammed Daoud Safi, the governor of Helmand, was the target of a suicide bomb which reportedly killed at least 18 civilians, including pilgrims seeking paperwork to travel to Mecca for the Haj. The bomb was detonated

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<sup>115</sup> See for example:

- *Afghan Islamic Press Online*, "Taliban accepted responsibility of Nangarhar explosion", 31 July 2006: <http://www.afghanislamicpress.com/site/default.asp?lang=en>

- *Afghan Islamic Press Online*, "Two children among eight die in Nangarhar bomb blast", 31 July 2006: <http://www.afghanislamicpress.com/site/default.asp?lang=en>

<sup>116</sup> See for example: *The Guardian* (UK), "17 die in suicide bombing at Afghan market", 29 August 2006: <http://www.guardian.co.uk/afghanistan/story/0,,1860133,00.html>

<sup>117</sup> *The Independent* (UK), "Nato claims 100 Taliban dead, as provincial governor assassinated", 11 September 2006: <http://news.independent.co.uk/world/asia/article1466358.ece>

<sup>118</sup> See for example:

- *AFP*, "Suicide attack in crowd of children", 18 September 2006.

- *BBC News Online*: "Canadians die in Afghan bombing", 18 September 2006: [http://news.bbc.co.uk/2/hi/south\\_asia/5355478.stm](http://news.bbc.co.uk/2/hi/south_asia/5355478.stm)

at a security check point outside the front gate of the governor's home in Lashkar Gar. Qari Mohammad Yusof reportedly claimed responsibility, saying: "A Taliban member from Helmand, Sayfollah, carried out [the] suicide attack".<sup>119</sup>

- On 26 February 2007, a suicide bomber targeted the main US military base at Bagram in an apparent attempt to kill Dick Cheney, US Vice President, who was visiting the country. Twelve people were reportedly killed including two soldiers and a US government contractor. A further 27 were wounded. Taliban spokesperson, Mullah Hayat Khan, reportedly claimed responsibility for the attack.<sup>120</sup>

### Suicide teenager

The following testimony provides an insight into the thinking of a 15-year-old Taliban recruit ready and willing to conduct a suicide attack:

*I want to sacrifice my life for Islam.*

He continues:

*"This is our country and we are Muslim, and the British, sorry the foreigners, are here. So I wanted to expel the foreigners. That's why I'm ready to explode myself to kill them. To explode them. That's my duty."*

Source: Testimony provided by an independent observer present in Afghanistan from May to October 2006. Name withheld for security reasons.

Qari Yousef Ahmadi was asked by Amnesty International whether the Taliban consider it their legal duty to avoid disproportionate harm to civilians when carrying out attacks.<sup>121</sup> Ahmadi acknowledged that civilians had been killed in their attacks but said that the Taliban were "trying [their] best not to target civilians". He added, "I can say for sure that the number of civilians who have been targeted mistakenly are very little... in many cases some of our operations are being postponed because of safety of civilians." When asked about the suicide attack of 18 September 2006 (cited above) in which little regard had been paid to

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<sup>119</sup> See for example:

- *Afghan Islamic Press*, "Taliban accept responsibility of Lashkargah suicide attack", 26 September 2006:

<http://www.afghanislamicpress.com/site/default.asp?lang=en>

- *Associated Press/The Independent*, "18 killed in Afghanistan suicide attack", 26 September 2006

<http://news.independent.co.uk/world/asia/article1757409.ece>

<sup>120</sup> See for example: *Reuters*, "Taliban says targets Cheney in Afghan suicide blast", 27 February 2007.

<sup>121</sup> Amnesty International telephone interview with Qari Yousef Ahmadi on 25 October 2006.

the safety of children, Ahmadi rejected the numerous press reports which said that civilians and children were in the area.

The Taleban rulebook does not cover the subject of suicide attacks. This is treated in a separate 49-page document entitled *Omar's Missiles: A short-cut to heaven*. The authors of this document, the Islamic Mojaheddin, render suicide bombings legitimate through their interpretation of "Jihad" within the Qur'an, the Hadiths (the sayings of Prophet Muhammad), and religious decrees within the various schools of Islam.

## 5. Rough 'justice' and unlawful killing of captives

*"We are trying hard not to misbehave with prisoners"* Qari Yousef Ahmadi, Taleban spokesperson, 25 October 2006

In areas where the Taleban have control, incidents of torture and other ill-treatment towards civilians, including threats, beatings and killings, have been reported. Article 3 common to the four Geneva Conventions prohibits such treatment and provides that all persons taking no active part in the hostilities must "in all circumstances be treated humanely".

According to the Taleban rulebook, under Rule 16 fighters are not allowed "to search houses or confiscate weapons without the permission of a district or provincial commander". Rule 17 forbids seizing "money or personal possessions of civilians". However, numerous reports indicate that Taleban treatment of civilians appears to contradict their own rules.

In December 2005, locals from the districts of Zabul province reported to Amnesty International that Taleban insurgents threatened and beat villagers if they did not provide food, petrol and the use of vehicles or other supplies to the Taleban. In Shah Jui, Taleban insurgents reportedly forced farmers to pay a tax either in money or in kind. If this demand was refused, then the farmers faced the possibility of being beaten, shot or having their sons abducted.

A staff member with UNAMA reported that: "The nature of the Taleban actions has altered particularly in recent months and weeks as ISAF has been winning tactical military victories. Certainly since the end of last year it has become obvious that local Afghans native to their districts are less and less willing to support the Taleban. So the Taleban, in particular Taleban [insurgents] that are external, either from other districts, or other provinces or even from outside the country, are having to use rather more harsh persuasive measures to instil fear in the population to persuade the [local] population to fight for them. There have been unverified stories of people being threatened that they must provide a young male from the family to fight with the Taleban and stories of kidnappings."<sup>122</sup>

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<sup>122</sup> Amnesty International telephone interview on 5 March 2007. Name withheld for security reasons.

An independent observer<sup>123</sup> who visited a makeshift refugee camp in Helmand filled with people seeking temporary refuge from the fighting spoke to an Afghan man who fled his village when the Taleban arrived: “We came here to free ourselves from the *azaabs* (suffering). We did not wish to join them [the Taleban] and die for their money.” Another Afghan man from Lashkar Gar commented: “If for example a person is captured by the Taleban he will be forced to obey the Taleban. If he doesn’t then the Taleban accuse him of being a government official.”

In Taleban-controlled areas in Afghanistan, the Taleban rule partly through co-operation with local *shuras* (councils) but largely through fear and intimidation. Afghan civilians living in these areas frequently face harassment and ill-treatment. In Lashkar Gar, Helmand, suspected Taleban insurgents broke into a guesthouse and shaved the heads of a resident and his guests for listening to music. This was then followed by a beating. They were threatened with death if they listened to music again. A similar tale was recounted by a resident of Mian-Pista village. “You would be punished according to Shari’a if you listened to music or shaved your beard.”<sup>124</sup>

### **Abductions and killings**

Amnesty International is concerned at reports that scores of Afghans and foreign nationals have been abducted by insurgents linked to the Taleban. Many of those abducted were later killed. Most of the victims have been civilians, including reconstruction and aid workers, drivers and private contractors.

The Taleban and other armed groups have taken hostages for a variety of purposes, including as a lever to pressure foreign governments to withdraw troops, or compel foreign companies to suspend their commercial activities in the country. The Taleban have also used hostage-taking, abductions and killings to spread fear.<sup>125</sup> Recently aired footage from a Taleban video showed the armed group’s operations. One segment of the video entitled *The Fate of Spies* reportedly showed a Taleban commander, Mullah Dadullah, beheading five persons allegedly captured on “charges” of spying.<sup>126</sup> Some press reports say that eight captives were killed. The men are reportedly described as “spies” working for “Christians and crusaders”. The video appears to be part of a Taleban campaign to both gain recruits and instill fear in the local Afghan population to deter them from supporting or co-operating with the government and foreign forces.<sup>127</sup>

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<sup>123</sup> Name withheld for security reasons.

<sup>124</sup> *Pajhwok Afghan News*, “Taleban punish Afghan villagers for listening to music”, 5 December 2005.

<sup>125</sup> For the purposes of the report hostage-taking refers to a kidnapping in which some form of ransom (financial or otherwise) is demanded in return for the individual’s release while abduction refers to a kidnapping without the element of a demand.

<sup>126</sup> During the period of Taleban control over Afghanistan from 1996-2001, Dadullah was reportedly linked to massacres of Shi’a between 1998-2000 and the scorched earth policy of Shi’a villages in 2001. His methods were so brutal that he was reportedly disarmed for a period of time following an order from Taleban leader Mullah Omar.

<sup>127</sup> See for example:

On the Taleban's legal duty to treat prisoners humanely, Qari Yousef Ahmadi told Amnesty International: "...we are trying hard not to misbehave with prisoners and this is not only our duty as humans, but our Shari'a obligations require us to behave properly with prisoners."<sup>128</sup> He added that former Taleban leader, Mullah Mohammed Omar, "always emphasizes good behavior, and prevention of... inhuman and degrading acts against prisoners". Ahmadi continued: "We are always acting in accordance with human rights and international law..." Ahmadi clarified, however, that "human rights and international conventions and treaties" were only acceptable to the Taleban in so far as they conform to Shari'a Islamic law: "We are against those rules and regulations that contradict our Islamic and Shari'a values."

The following cases of abductions followed by killings are examples of a pattern of abuse towards civilians.<sup>129</sup>

- On 29 April 2006, an Indian engineer, K. Suryanarayana, was reportedly abducted by Taleban insurgents who threatened to kill him unless their demand that all Indian workers pull out from Afghanistan was met. Suryanarayana, who was working for a Bahrain-based telecommunications company, was reportedly shot dead while attempting to escape. His body was discovered in Zabul province. Taleban spokesman, Qari Yousef Ahmadi, claimed responsibility for his death on behalf of the Taleban.<sup>130</sup>
- On 12 June 2006, suspected Taleban insurgents reportedly killed Jan Mohammed, a high court deputy judge, outside his home in Qara Bagh district of Ghazni province after abducting him. The armed men also reportedly abducted his young son.<sup>131</sup>
- On 11 August 2005, Taleban militants in the southern province of Helmand reportedly abducted two people, one of them a police officer, and beheaded them.

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- *Jane's Intelligence Review*, "Taliban insurgency shows signs of enduring strength", October 2006:  
<http://jir.janes.com/public/jir/index.shtml>

- *The Sunday Times*, "Taliban chief beheads 8 'spies' working for British", 15 October 2006:  
<http://www.timesonline.co.uk/article/0,,2089-2404313.html>

<sup>128</sup> Amnesty International telephone interview with Qari Yousef Ahmadi on 25 October 2006.

<sup>129</sup> Amnesty International has condemned such killings in the past. See for example:

- Amnesty Public Statement, *Afghanistan: armed group must end hostage-taking*, (AI Index: ASA 11/016/2004):

<http://web.amnesty.org/library/Index/ENGASA110162004?open&of=ENG-AFG>

- Amnesty Public Statement, *Afghanistan: Amnesty International condemns the reported beheading of Taleban prisoners*, (AI Index: ASA 11/011/2004):

<http://web.amnesty.org/library/Index/ENGASA110112004?open&of=ENG-AFG>

<sup>130</sup> See for example: *Financial Times*, "Hostage killing fuels Indian fears over Pakistan", 30 April 2006:  
<http://www.ft.com/cms/s/f75f844a-d870-11da-9715-0000779e2340.html>

<sup>131</sup> See for example: *BBC News Online*, "Taleban target Afghan civilians", 15 June 2006:  
[http://news.bbc.co.uk/2/hi/south\\_asia/5082042.stm](http://news.bbc.co.uk/2/hi/south_asia/5082042.stm)

Taliban spokesperson Abdul Latif Hakimi claimed responsibility: “We killed them. We beheaded them because they were American spies”. Hakimi also reported that two Afghans in the neighbouring province of Zabul were also beheaded for allegedly “spying”.<sup>132</sup>

- On 31 August 2006, the Taliban reportedly beheaded a man called Fakhruddin in the district of Greshk, in Helmand province. He was reportedly abducted three days earlier by insurgents. His body was found dumped on a river bank in the same district. According to Pajhwok Afghan News, a Taliban spokesperson Mullah Muhammad Usmani said that he had been beheaded by the Taliban for spying for US forces.<sup>133</sup>
- On 19 December 2006, as many as 26 Afghan males were reportedly killed by the Taliban in Panjwai district and their beheaded bodies put on display around a local village. Letters were pinned to their bodies stating that the Taliban would hang anyone found to be assisting foreign forces and anyone involved in distributing humanitarian aid.<sup>134</sup>

## 5.1. Killings after quasi-judicial procedures

### Taliban courts fill security gap

*“The failure to provide security has provided the Taliban with leverage in rural areas, as they can fulfil an albeit limited populist role by offering protection and in some cases a ‘justice’ service to rural communities. Some Afghan police carrying out extortion are also the first contact many locals have with the government, further undermining its legitimacy in the eyes of the population.”*

Source: *Jane’s Foreign Report*, “Winning hearts and minds in south Afghanistan”, 16 October 2006: <http://frp.janes.com/public/frp/index.shtml>

Amnesty International has received reports that in Taliban-controlled areas of Afghanistan the Taliban are employing quasi-judicial bodies charged with dispensing “justice”. Some locals, disillusioned with the official state system, turn to these Taliban

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<sup>132</sup> *AFP*, “Afghanistan’s Taliban beheads four alleged spies”, 12 August 2005.

<sup>133</sup> *Pajhwok Afghan News*, “Man beheaded on spying charges”, 31 August 2006: <http://www.pajhwak.com/viewstory.asp?lng=eng&id=23702>

<sup>134</sup> *CanWest News Service*, “Taliban execute 26 males”, 19 December 2006:

<http://www.canada.com/topics/news/story.html?id=368d29bb-a785-4669-9c7e-700155144307>

A subsequent report claimed that the number “executed” in this incident were between 3 and 10.

“courts” which they view as fairer and less corrupt than state justice system. Although information concerning the charges against individuals is limited, the majority of people who have come before such courts have been “charged” with spying, others have been charged with murder and prostitution. Many of those who come before such bodies have been abducted by the Taleban. In many cases death sentences have been issued and carried out. Few details about the nature of proceedings are known. A legal adviser at AIHRC said that: “the Taleban try to carry out the process quickly and leave no time for legal procedures like access to defence lawyers. In many cases, they decide to kill individuals without the presence of a court. They accuse people of spying to create an environment of fear and intimidation for others”.<sup>135</sup>

Common Article 3 to the four Geneva Conventions prohibits “murder of all kinds” and “the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court”.

On 8 June 2006, Leandro Despouy, the UN Special Rapporteur on the independence of judges and lawyers, condemned the public unlawful killing of an alleged murderer, Badshah Khan, in early May 2006. Khan’s “execution” followed a “trial” by a local Taleban court in Ququr village in the town of Gizab in Daikundi. “The administration of justice is a function that clearly belongs to the State of Afghanistan,” Despouy stated. “It is entirely unacceptable for a non-state entity, such as the Taleban, to exercise a state function by trying and punishing an alleged criminal.”<sup>136</sup>

The following cases illustrate the use of Taleban informal judicial bodies, resulting in summary killings:

- On 19 June 2005, following a *fatwa* (a religious edict) from mullahs, Taleban insurgents reportedly executed District Police Chief Nanai Khan and seven out of 31 other policemen whom they were holding captive in Kandahar. Taleban spokesperson, Abdul Latif Hakimi, claimed responsibility for the killings, saying that the men were shot following the orders of religious leaders during trials.<sup>137</sup>
- On 2 September 2005, Khan Mohammad Yaqoubi, a candidate for the *Wolesi Jirga* (the lower house of parliament) was abducted with four others in the Ghorak district

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<sup>135</sup> Amnesty International interview with an AIHRC legal adviser on 5 March 2007. Name withheld for security reasons.

<sup>136</sup> UNCHR Press Release: *UN Special Rapporteur On Independence Of Judiciary Condemns Public Execution Following Illegal Trial In Afghanistan*, 8 June 2006:  
<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/5D75CF314F0C8AA7C1257187002F10CD?openDocument>

<sup>137</sup> See for example:

- *BBC News Online*, “Taleban fighters ‘kill captives’”, 19 June 2005:

[http://news.bbc.co.uk/2/hi/south\\_asia/4108108.stm](http://news.bbc.co.uk/2/hi/south_asia/4108108.stm)

- *Reuters*, “Taliban say execute police chief among 31 held”, 19 June 2005.

of Kandahar when their vehicle was ambushed by gunmen. Their bodies, beheaded and riddled with bullets, were discovered on 9 September. Abdul Latif Hakimi reportedly telephoned the Afghan Islamic Press Agency, claiming responsibility on behalf of the Taliban, saying that the five were killed by firing squad following the orders of a Taliban court.<sup>138</sup>

- On 3 September 2005, the body of David Addison, a British engineer, was found in Farah province. He had been abducted three days earlier by Taliban insurgents. Taliban spokesperson, Abdul Latif Hakimi, reportedly told Afghan Islamic Press that Addison was believed to be a “military official” and that he was shot dead, along with five other hostages, following orders from a Taliban council.<sup>139</sup>
- On 12 March 2006, Taliban insurgents reportedly abducted three ethnic Albanian Macedonians and a German employee of the company, Ecolog, along with four Afghan colleagues. Taliban spokesperson, Qari Yousef Ahmadi, phoned *Pajhwok Afghan News* and claimed that the foreign workers were killed after the Taliban central council found them guilty of spying for US forces.<sup>140</sup>
- On 13 July 2006, Zahra Madadi was reportedly killed by the Taliban in southern Ghazni province. Zahra, 23, was working part-time with the Refugees and Returnees Affairs Department. Taliban insurgents reportedly abducted her for her alleged involvement in prostitution and, after keeping her for two days in captivity, killed her. Taliban spokesperson Mullah Hilal reportedly claimed that she was killed after being found guilty of prostitution by a Taliban court.<sup>141</sup>
- On 26 November 2006, four Afghan workers were reportedly killed by the Taliban in Manogay district of Kunar province after being abducted a day earlier by the group.

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<sup>138</sup> See for example:

- Joint Verification of Political Rights, *Wolesi Jirga and Provincial Council Elections Third Report*, 17 August - 13 September 2005:

[http://www.unama-afg.org/docs/\\_nonUN%20Docs/\\_Electoral%20Docs/Political-](http://www.unama-afg.org/docs/_nonUN%20Docs/_Electoral%20Docs/Political-)

- *Afghan Islamic Press Agency*, “Bodies of kidnapped Afghan official, four others discovered in Kandahar”, 8 September 2005.

<sup>139</sup> *BBC News Online*, “Afghanistan Briton ‘found dead’”, 3 September 2005:

[http://news.bbc.co.uk/1/hi/world/south\\_asia/4211424.stm](http://news.bbc.co.uk/1/hi/world/south_asia/4211424.stm)

<sup>140</sup> See for example:

- *Radio Free Europe/Radio Liberty*, “Bodies Of Kidnapped Foreigners Found In Southern Afghanistan”, 16 March 2006:

<http://www.rferl.org/featuresarticle/2006/03/68BE6182-40DC-405F-B1F7-BBE2C6F62F29.html>

- *Pajhwok Afghan News*, “Bodies of kidnapped foreigners found in Kandahar”, 16 March 2006:

<http://www.pajhwak.com/viewstory.asp?lng=eng&id=15118>

<sup>141</sup> See for example: *Pajhwok Afghan News*, “Taliban kill girl on charges of prostitution”, 13 July 2005:

<http://www.pajhwak.com/viewstory.asp?lng=eng&id=21266>

Taleban spokesperson Mohammad Hanif confirmed that the four had been killed after a Taleban Islamic court found them guilty of spying for the US forces.<sup>142</sup>

## 6. Applicable international law

International humanitarian law comprises principles and rules governing the conduct of all parties to international and non-international armed conflicts. Key provisions of modern international humanitarian law were set by the international community after the Second World War in the four Geneva Conventions of 1949 and later in their two Additional Protocols of 1977.<sup>143</sup>

Many of the provisions of international humanitarian law have become rules of customary international law, that is, rules which are derived from consistent practice by states and consistent consideration by states that they are bound by these rules. Certain rules originally formulated for international armed conflict are now understood to bind parties to non-international armed conflict as well.

The current conflict in Afghanistan is a non-international armed conflict – foreign forces are involved but fight alongside rather than against the state. All parties to a non-international armed conflict are obliged, as a minimum, to apply Article 3 common to the four Geneva Conventions, which protects all persons taking no active part in hostilities. This Article reflects principles and rules of customary international law, outlined below, which bind the Taleban, as well as the foreign forces and the Afghan National Army.

### **The principle of distinction**

A fundamental principle of international humanitarian law is that parties to an armed conflict must at all times distinguish between civilians and combatants, and between civilian objects and military objectives.<sup>144</sup> Operations may only be directed against combatants and military objectives. It is never permitted to target civilians or civilian objects for attack. This principle,

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<sup>142</sup> *Pajhwok Afghan News*, “Afghan Taleban kill hostages accused of spying for USA”, 26 November 2006: <http://www.pajhwak.com/viewstory.asp?lng=eng&id=27994>

<sup>143</sup> Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Geneva Convention II for the Amelioration of the Condition of the Wounded, Sick and Shipwrecked Members of Armed Forces; Geneva Convention III relative to the Treatment of Prisoners of War; Geneva Convention IV relative to the Protection of Civilian Persons in Time of War; 1977 Geneva Protocol I Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts; 1977 Geneva Protocol II Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts.

<sup>144</sup> Military objectives are defined in Additional Protocol I, Article 52(2) as including objects “which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definitive military advantage”.

known as the “principle of distinction”, is codified in Additional Protocol I to the Geneva Conventions and is a rule of customary international law, binding on all parties to armed conflicts, whether international or non-international.<sup>145</sup> Intentionally directing attacks against civilians is a war crime that comes within the jurisdiction of the International Criminal Court.<sup>146</sup>

According to international humanitarian law a civilian is any person who is not a member of the armed forces.<sup>147</sup> Members of the armed forces comprise all organized armed forces, groups and units which are under a command responsible to the party, including militia and volunteer corps forming part of such forces.<sup>148</sup> With regard to non-international armed conflicts, Article 3 Common to the four Geneva Conventions, which protects “persons taking no active part in the hostilities”, is understood to contain the principle of distinction as well.<sup>149</sup>

### **The principle of proportionality**

Attacks which although directed at a military target may cause disproportionate harm to civilians or civilian objects are also prohibited under international humanitarian law. Additional Protocol I’s definition of indiscriminate attacks includes:

*“...an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”*<sup>150</sup>

While there are no provisions for proportionality explicitly applicable to non-international armed conflicts, this obligation is considered to be inherent in the principle of humanity which is applicable to these conflicts.<sup>151</sup>

### **Humane treatment**

Common Article 3 extends protection to “persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* [those no longer involved in combat] by sickness, wounds, detention or any other cause...”. The Article provides that “in all circumstances” such people “shall be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria”. The Article prohibits certain acts against these people “at any time and in any place whatsoever”, including: “(a) violence to life and person, in

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<sup>145</sup> See Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law, Volume 1: Rules* (Cambridge: Cambridge University Press & International Committee of the Red Cross 2005).

<sup>146</sup> Rome Statute articles 8(2)(e).

<sup>147</sup> See Jean-Marie Henckaerts and Louise Doswald-Beck, Rule 5, p.17.

<sup>148</sup> Additional Protocol I, Article 43.

<sup>149</sup> See Jean-Marie Henckaerts and Louise Doswald-Beck, Rule 1, pp.5-8.

<sup>150</sup> Additional Protocol I, Article 51(5)(b).

<sup>151</sup> See Jean-Marie Henckaerts and Louise Doswald-Beck, pp.48-49.

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”; and “(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...”.<sup>152</sup>

Common Article 3 binds both state parties and armed groups. Adherence is not based on reciprocity and one party to the conflict cannot excuse its own violations of Common Article 3 on the basis that the other party to the conflict is also violating it.

## **6.1 International criminal law and the responsibility of armed groups**

In Amnesty International’s view, many of the acts carried out by the Taleban as cited above constitute war crimes or crimes against humanity. War crimes and crimes against humanity are among the most serious crimes under international law, and are considered offences against humanity as a whole. Bringing perpetrators of these and other serious crimes to justice is therefore the concern and responsibility of the whole international community. This view is illustrated in the Preamble to the Rome Statute of the International Criminal Court, adopted in July 1998, which affirms “that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation.”<sup>153</sup>

The Rome Statute establishes the jurisdiction of the International Criminal Court over acts perpetrated within the specific context of armed conflict (war crimes) as well as acts perpetrated in any circumstances (genocide and crimes against humanity). The Rome Statute provisions on war crimes and crimes against humanity reflect the rules of customary international law. As noted, customary international law is binding on all parties in Afghanistan, including armed groups.

### **War crimes**

Under customary international humanitarian law, as reflected in Article 8 of the Rome Statute, war crimes are acts committed during international and non-international armed conflicts.<sup>154</sup> They include acts such as willful killing; torture or inhuman treatment; taking hostages; intentionally directing attacks against the civilian population; intentionally directing attacks against people involved in humanitarian assistance or peacekeeping; indiscriminate attacks,

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<sup>152</sup> Amnesty International opposes executions under any circumstances, by governments or armed groups, in line with its absolute opposition to the death penalty in all its forms.

<sup>153</sup> Rome Statute of the International Criminal Court, adopted on 17 July 1998 (A/CONF.183/9), entered into force on 1 July 2002, preamble.

<sup>154</sup> Customary international humanitarian law is largely reflected in Article 8 of the Rome Statute of the International Criminal Court (Rome Statute). See Jean-Marie Henckaerts & Louise Doswald-Beck.

which violate fundamental principles of international humanitarian law, including distinction between civilians and civilian objects, on the one hand, and members of armed forces and military objectives, on the other; killing those who have surrendered; attacking religious institutions; and “[k]illing or wounding treacherously a combatant adversary”,<sup>155</sup> for example by approaching enemy soldiers pretending to be a civilian so as to attack them by surprise.

Many of the acts reportedly perpetrated by the Taleban and other armed groups in the ongoing non-international armed conflict in Afghanistan, constitute war crimes.

The principle of command and superior responsibility, namely the responsibility of commanders or superiors for acts of people under their effective command and control, is applicable to leaders of armed groups just as it is to those of armed forces.<sup>156</sup>

### **Crimes against humanity**

Under customary international law, as reflected in Article 7 of the Rome Statute, crimes against humanity are acts which are committed as part of a “widespread or systematic attack directed against any civilian population”, “pursuant to or in furtherance of a State or organizational policy to commit such attack.”<sup>157</sup> Among the relevant crimes listed in the Statute are murder, unlawful imprisonment, torture and other inhumane acts.<sup>158</sup> Acts that constitute war crimes may also amount to crimes against humanity if they meet the requirements of the definition.

With regard to crimes such as war crimes, genocide, crimes against humanity and other crimes under international law, the question of whether the perpetrator belonged to an army of a state, an armed group or any other capacity is of little relevance – anyone responsible for such crimes may and should be brought to justice.

Many of the unlawful killings and other abuses by the Taleban described in this report are crimes against humanity, in addition to being war crimes. In particular, acts of murder, unlawful imprisonment and other severe deprivations of physical liberty in violation of fundamental rules of international law, and persecution have been committed by the Taleban in Afghanistan. These acts form part of attacks against the civilian population that have been widespread, as well as systematic, and under a publicly declared policy of targeting for killing civilians such as teachers and similar government employees, those perceived as supporting

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<sup>155</sup> Article 8(2)(e)(ix) of the Rome Statute of the International Criminal Court.

<sup>156</sup> See, for instance, *The Prosecutor v Aleksovski*, Judgment, Case No. IT-95-14/1, ICTY Trial Chamber, 25 June 1999; Zegveld.

<sup>157</sup> Rome Statute, Article 7(1), (2). Article 7(2)(a) of the Rome Statute defines an “attack directed against any civilian population” as “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

<sup>158</sup> Rome Statute, Article 7(1).

the government and the “foreigners” and international NGO workers, as well as the burning of schools. These crimes, therefore, satisfy the definition of crimes against humanity.

Both the government of Afghanistan and the international community must ensure that all those suspected of war crimes and crimes against humanity are investigated and, where there is sufficient admissible evidence, prosecuted in fair trials without the possibility of imposition of the death penalty. There can be no excuse for such crimes under international law, which clearly distinguishes certain acts as crimes irrespective of the causes of a conflict or the grounds on which the contending parties justify their involvement.

## **7. Recommendations**

Amnesty International emphasizes to all parties to the conflict that all persons taking no active part in hostilities, without exception, must at all times be treated humanely with respect for their rights, in accordance with relevant provisions of the Geneva Conventions and international human rights standards.

### **To the Taliban and other armed groups**

*Amnesty International calls on armed groups in Afghanistan to immediately cease:*

- attacks targeting civilians and civilian objects; attacks that do not attempt to distinguish between military objectives and civilians or civilian objects; all disproportionate attacks.
- in particular, attacks on teachers, students, education officials and school buildings, all attacks against members of local and international humanitarian organizations and agencies, and ensure unhindered and safe access for humanitarian agencies to all areas.
- locating military objectives among civilian concentrations and take all other necessary measures to protect the civilian population from the dangers arising from military operations.
- killing civilians, as a result of quasi-judicial procedures; and holding all such procedures.
- all abductions and hostage-taking.
- all torture and other ill-treatment.
- all harassment, and threats of death or abduction against civilians.

*Amnesty International calls on armed groups in Afghanistan to:*

- publicly condemn all attacks against civilians, and indiscriminate and disproportionate attacks; abduction, hostage-taking, unlawful killings, torture and other ill-treatment and issue instructions to members strictly prohibiting such acts in all circumstances.

- give immediate and clear instructions from the highest levels of leadership that all of their combatants are bound by all provisions of applicable international humanitarian law.
- remove any members suspected of abuses from positions and situations where they might continue to perpetrate abuses.

**To the government of Afghanistan and foreign forces**

*Amnesty International calls upon the government of Afghanistan, ISAF forces and US forces operating independently of ISAF to:*

- observe fully all relevant provisions of international humanitarian law and international human rights law in their operations against Taleban and other armed groups. All personnel must be informed in clear terms that violations of international law will not be tolerated.
- cease immediately any acts violating international law and those responsible, including commanders who have ordered or have failed to prevent violations, be brought to justice in proceedings which meet international standards of fairness.

**To the government of Afghanistan**

*Amnesty International urges the government of Afghanistan to:*

- ensure that perpetrators of human rights abuses, war crimes and crimes against humanity are brought to justice, in accordance with its obligations under international law. International law prohibits amnesties, or similar measures for crimes under international law, including war crimes and crimes against humanity. Such measures prevent the emergence of the truth, a final judicial determination of guilt or innocence, and full reparation for the victims.
- ensure that victims are provided with other forms of redress, including reparations. The government should explore all options for providing redress, including truth commissions or similar mechanisms.
- make every effort to keep a record of all civilian casualties in the ongoing armed conflict in Afghanistan.

**To the government of Pakistan**

*Amnesty International calls upon the government of Pakistan to:*

- unequivocally condemn all abuses by the Taleban and other armed groups and use its influence to urge such groups to stop abuses.
- prevent its territory being used by anyone to provide military or other assistance to the Taleban and other armed groups in Afghanistan that could contribute to abuses.
- bring to justice, in accordance with international standards for fair trials, anyone suspected of involvement in abuses against civilians who may be found in their jurisdiction and co-operate with the Afghan authorities in their efforts to bring to justice the perpetrators.

**To religious and community leaders in Afghanistan and abroad, and leaders of the diaspora community**

*Amnesty International urges religious, community and diaspora leaders to:*

- use their influence with respect to the Taleban and other armed groups and their supporters to convince armed groups not to commit abuses, including targeting civilians and other non-combatants, indiscriminate and disproportionate attacks, hostage-taking, unlawful killings, torture and other ill-treatment.
- publicly condemn, where possible, all attacks by the Taleban and other armed groups against civilians and civilian objects, in particular, attacks targeting local and international humanitarian agencies; teachers, students, education officials and school buildings; and women and groups promoting women's rights.

## **Appendix 1. Common Article 3 to the four Geneva Conventions of 1949 – Conflicts not of an international character**

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 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, colour, 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.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

## Appendix 2. Taliban military rulebook, the *Layeha*

Every Mujahid must abide by the following rules:

- 1) A Taliban commander is permitted to extend an invitation to all Afghans who support infidels so that they may convert to the true Islam.
- 2) We guarantee to any man who turns his back on infidels, personal security and the security of his possessions. But if he becomes involved in a dispute, or someone accuses him of something, he must submit to our judiciary.
- 3) Mujahideen who protect new Taliban recruits must inform their commander.
- 4) A convert to the Taliban, who does not behave loyally and becomes a traitor, forfeits our protection. He will be given no second chance.
- 5) A Mujahid who kills a new Taliban recruit forfeits our protection and will be punished according to Islamic law.
- 6) If a Taliban fighter wants to move to another district, he is permitted to do so, but he must first acquire the permission of his group leader.
- 7) A Mujahid who takes a foreign infidel as prisoner with the consent of a group leader may not exchange him for other prisoners or money.
- 8) A provincial, district or regional commander may not sign a contract to work for a non-governmental organization or accept money from an NGO. The *Shura* (the highest Taliban council) alone may determine all dealings with NGOs.
- 9) Taliban may not use Jihad equipment or property for personal ends.
- 10) Every Talib is accountable to his superiors in matters of money spending and equipment usage.
- 11) Mujahideen may not sell equipment, unless the provincial commander permits him to do so.
- 12) A group of Mujahideen may not take in Mujahideen from another group to increase their own power. This is only allowed when there are good reasons for it, such as a lack of fighters in one particular group. Then written permission must be given and the weapons of the new members must stay with their old group.

- 13) Weapons and equipment taken from infidels or their allies must be fairly distributed among the Mujahideen.
- 14) If someone who works with infidels wants to cooperate with Mujahideen, he should not be killed. If he is killed, his murderer must stand before an Islamic court.
- 15) A Mujahid or leader who torments an innocent person must be warned by his superiors. If he does not change his behaviour he must be thrown out of the Taliban movement.
- 16) It is strictly forbidden to search houses or confiscate weapons without the permission of a district or provincial commander.
- 17) Mujahideen have no right to confiscate money or personal possessions of civilians.
- 18) Mujahideen should refrain from smoking cigarettes.
- 19) Mujahideen are not allowed to take young boys with no facial hair onto the battlefield or into their private quarters.
- 20) If members of the opposition or the civil government wish to be loyal to the Taliban, we may take their conditions into consideration. A final decision must be made by the military council.
- 21) Anyone with a bad reputation or who has killed civilians during the Jihad may not be accepted into the Taliban movement. If the highest leader has personally forgiven him, he will remain at home in the future.
- 22) If a Mujahid is found guilty of a crime and his commander has barred him from the group, no other group may take him in. If he wishes to resume contact with the Taliban, he must ask forgiveness from his former group.
- 23) If a Mujahid is faced with a problem that is not described in this book, his commander must find a solution in consultation with the group.
- 24) It is forbidden to work as a teacher under the current puppet regime, because this strengthens the system of the infidels. True Muslims should apply to study with a religiously trained teacher and study in a Mosque or similar institution. Textbooks must come from the period of the Jihad or from the Taliban regime.
- 25) Anyone who works as a teacher for the current puppet regime must receive a warning. If he nevertheless refuses to give up his job, he must be beaten. If the teacher still continues to instruct contrary to the principles of Islam, the district commander or a group leader must kill him.

26) Those NGOs that come to the country under the rule of the infidels must be treated as the government is treated. They have come under the guise of helping people but in fact are part of the regime. Thus we tolerate none of their activities, whether it be building of streets, bridges, clinics, schools, *madrassas* (schools for Koran study) or other works. If a school fails to heed a warning to close, it must be burned. But all religious books must be secured beforehand.

27) As long as a person has not been convicted of espionage and punished for it, no one may take up the issue on their own. Only the district commander is in charge. Witnesses who testify in a procedure must be in good psychological condition, possess an untarnished religious reputation, and not have committed any major crime. The punishment may take place only after the conclusion of the trial.

28) No lower-level commander may interfere with contention among the populace. If an argument cannot be resolved, the district or regional commander must step in to handle the matter. The case should be discussed by religious experts (Ulema) or a council of elders (Jirga). If they find no solution, the case must be referred to well-known religious authorities.

29) Every Mujahid must post a watch, day and night.

30) The above 29 rules are obligatory. Anyone who offends this code must be judged according to the laws of the Islamic Emirates.

This Book of Rules is intended for the Mujahideen who dedicate their lives to Islam and the almighty Allah. This is a complete guidebook for the progress of Jihad, and every Mujahid must keep these rules; it is the duty of every Jihadist and true believer.

Signed by the highest leader of the Islamic Emirate of Afghanistan.<sup>159</sup>

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<sup>159</sup> Signandsight.com, "A new layeha for the Mujahideen", 29 November 2006:

<http://www.signandsight.com/features/1071.html>

The translation of the rulebook by the International Committee of the Red Cross differs slightly. This, however, does not affect the interpretation of the rules mentioned in this report.