



April 19, 2016

General John W. Nicholson  
Commander, Operation Resolute Support  
7115 South Boundary Boulevard  
MacDill AFB, FL 33621-5101

Re: Reported Increase in Civilian Casualties Resulting from U.S Operations in  
Afghanistan

Dear General Nicholson,

We are writing to request information and to express concern about reports of increased civilian casualties as a result of aerial operations carried out by international military forces in Afghanistan in 2015 and 2016. If accurately described, the sharp acceleration of civilian deaths raises important questions about whether underlying policies and protocols are in keeping with U.S. international legal obligations and policy interests with regard to protection of civilian life.

International military forces include all foreign troops forming part of NATO-led Operation Resolute Support and other U.S. Forces Afghanistan (including Operation Freedom's Sentinel).

Earlier this week, the United Nations Assistance Mission in Afghanistan (UNAMA) released a report on civilian casualties in the first quarter of 2016, finding a record number of civilian casualties. UNAMA reported an increase in civilian casualties by both the Afghan Air Force and international military forces, with 27 casualties (six deaths and 21 injured) compared to 16 civilian casualties during the same period in 2015.<sup>1</sup>

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<sup>1</sup> United Nations Assistance Mission in Afghanistan (UNAMA), "UN Chief in Afghanistan: Do More Now to Protect Civilians – UNAMA Releases Civilian Casualty Data for the First Quarter of 2016,"

In addition, in February UNAMA released its annual report for 2015. The annual report documented 103 civilian deaths from air actions by international military forces in Afghanistan in 2015.<sup>2</sup> This is a small increase from the 101 UNAMA reported in 2014. Yet when considering the relative rate, civilian deaths appear far higher: 1,136 U.S. air strikes and 101 civilian deaths from international military forces' aerial operations in 2014, as compared with only 411 U.S. air strikes and 103 civilian deaths from international military forces in 2015.<sup>3</sup>

Amnesty International has questions about this reported rise in the rate of civilian deaths. Particularly given the international military forces' strengthened operational safeguards of recent years that appeared to have previously resulted in decreased

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<https://unama.unmissions.org/un-chief-afghanistan-do-more-now-protect-civilians-unama-releases-civilian-casualty-data-first>

<sup>2</sup> UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2015," p. 60, online at

[https://unama.unmissions.org/sites/default/files/poc\\_annual\\_report\\_2015\\_final\\_14\\_feb\\_2016.pdf](https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf)

<sup>3</sup> These figures were calculated using UNAMA's civilian casualty numbers and U.S. Air Force data on air strikes in Afghanistan for each year. See UNAMA, "Afghanistan Annual Report on Protection of Civilians in Armed Conflict: 2015," p. 60, online at

[https://unama.unmissions.org/sites/default/files/poc\\_annual\\_report\\_2015\\_final\\_14\\_feb\\_2016.pdf](https://unama.unmissions.org/sites/default/files/poc_annual_report_2015_final_14_feb_2016.pdf); see also U.S. Air Forces Central Command Combined Air and Space Operations Center, "Combined Forces Air Component Commander 2010-2015 Airpower Statistics," online at

<http://www.afcent.af.mil/Portals/82/Documents/Airpower%20summary/31%20December%202015%20Airpower%20Summary%20corrected.pdf?ver=2016-01-26-170116-533>. The Bureau of

Investigative Journalism reported, based on this data, that "although [2014 U.S. air strike-related] deaths are slightly more than the 101 recorded in 2014, they came from a third as many airstrikes.

While there were 1,136 airstrikes in 2014, this number fell to 411 in 2015 – the first year after the withdrawal of most U.S. troops." Jack Serle, Abigail Fielding-Smith and Payenda Sargand, "US

airstrikes in Afghanistan killing civilians at greatest rate for seven years, new figures show," Bureau of Investigative Journalism, 18 February 2016, online at

<https://www.thebureauinvestigates.com/2016/02/18/us-airstrikes-afghanistan-killing-civilians-greatest-rate-seven-years-new-figures-show/>

civilian casualties from 2012-2014, the reportedly sharp increase of civilian casualties in 2015 merits closer examination.

In particular, we would welcome clarity regarding changes in tactical directives and operational procedures related to aerial operations in Afghanistan, including criteria required to establish positive identification and determination of status prior to targeting. We would also welcome further information about the operation of mechanisms to investigate and, where warranted, prosecute cases in which Afghan civilians have been unlawfully killed as a result of U.S. air strikes.

Amnesty International has long noted that, while civilian casualties in any given military operation may not necessarily be unlawful, any loss of civilian life can have a profoundly negative effect on the local population. From a policy perspective, if civilian casualties mount, the legitimacy of military operations is likely to be called into question. The reported rise in civilian casualties should receive your serious attention given both the legal obligations of the United States and its strong policy interest in limiting its negative impact on the civilian population in Afghanistan.

## **I. Changes in Tactical Directives and Operational Procedures**

Since 2009, tactical directives and other protocols have limited the use of force against residential compounds and improved the intelligence used for targeting operations. U.S. and other international forces have taken other steps that have had a positive impact on the protection of civilian life.<sup>4</sup> Indeed, although the available data has gaps and weaknesses, it appears that the frequency and magnitude of civilian casualties caused by international forces in Afghanistan have dropped substantially since 2009.<sup>5</sup>

In this context, the reported relative increase in civilian deaths from aerial operations, despite a significant decrease in U.S. air strikes in 2015, raises questions

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<sup>4</sup> See NATO/ISAF, Tactical Directive, 6 July 2009, online at [http://www.nato.int/isaf/docu/official\\_texts/Tactical\\_Directive\\_090706.pdf](http://www.nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf)

<sup>5</sup> Amnesty International, *Left in the Dark*, 2014, p. 18, online at <https://www.amnesty.org/en/documents/ASA11/006/2014/en/>

about whether standards and procedures intended to limit civilian casualties have recently been weakened. We urge you to disclose whether standards and procedures have been amended to be more permissive than those previously in place. We also urge you to evaluate whether current standards are consistent with U.S. international obligations and policy interests with regard to protection of civilian life, and publicly disclose your findings.

## II. Changes in nature of strikes

President Obama announced in May 2014 that U.S. combat operations would cease at the end of 2014, leaving a residual, gradually reduced on-the-ground troop presence.<sup>6</sup> Reports indicate that, since the end of combat operations in Afghanistan at the end of 2014, U.S. air strikes have consisted of counterterrorism measures against Taliban, al-Qaeda and associated forces, actions in defense of U.S. or coalition forces, and air support to Afghan forces.<sup>7</sup>

Although officials previously indicated that strikes in support of Afghan troops were “in extremis,” current and former military commanders have reportedly called for enhanced air support to Afghan forces to compensate for post-2014 reductions in on-the-ground support.<sup>8</sup>

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<sup>6</sup> Statement by the President on Afghanistan, 27 May 2014, online at <https://www.whitehouse.gov/the-press-office/2014/05/27/statement-president-afghanistan>

<sup>7</sup> See Statement of General John Campbell, U.S. Commander, U.S. Forces-Afghanistan, Senate Armed Services Committee, 12 February 2015, [http://www.armed-services.senate.gov/imo/media/doc/Campbell\\_02-12-15.pdf](http://www.armed-services.senate.gov/imo/media/doc/Campbell_02-12-15.pdf); Robert Burns, “Did US strike on Afghan clinic exceed combat authority?” Associated Press, 7 October 2015, online at <http://bigstory.ap.org/article/1eee47f7242e485382c373c0060a27c4/did-us-strike-afghan-clinic-exceed-combat-authority>

<sup>8</sup> James Mackenzie, “With fewer U.S. troops in Afghanistan, pressure grows for more air strikes,” Reuters, 10 February 2016, online at <http://www.reuters.com/article/us-afghanistan-usa-strategy-idUSKCN0VJ2PP>

We urge you to disclose whether strikes in support of Afghan forces have increasingly made up a greater share of overall U.S. air strikes. Furthermore, we urge you to evaluate and disclose whether the rate of civilian casualties for such strikes is higher than it is for other U.S. air strikes in Afghanistan.

### **III. Mechanisms for accountability**

In its 2014 report, *Left in the Dark*, Amnesty International documented severe inadequacies in the U.S. military's investigative and prosecutorial practices with regard to unlawful civilian casualties as a result of U.S. operations in Afghanistan.<sup>9</sup>

It should be emphasized again that civilian deaths do not in themselves demonstrate that the laws of war have been violated. As you know, in carrying out lawful attacks against insurgents, international forces may cause incidental loss of civilian life. Yet if civilians appear to have been killed deliberately or indiscriminately, or as part of a disproportionate attack, the incident requires a prompt, thorough and impartial inquiry. If that inquiry shows that the laws of war were violated, a prosecution should be initiated.

While military leaders such as General Joseph Dunford have stated, "We take all allegations of misconduct by our personnel very seriously," and promised full investigations, Amnesty International's reporting reveals that such investigations rarely occur.<sup>10</sup> In numerous cases in which there is credible evidence of unlawful killings of civilians by U.S. air strikes, drone strikes, or Special Operations Forces night raids, the military has failed to conduct prompt, thorough and impartial investigations.

Amnesty International has identified important structural flaws in the U.S. military justice system that hinder the investigation and prosecution of crimes against civilians. Most importantly, the military justice system is "commander-driven" and,

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<sup>9</sup> See Amnesty International, *Left in the Dark*, 2014, online at <https://www.amnesty.org/en/documents/ASA11/006/2014/en/>

<sup>10</sup> *Left in the Dark*, p. 8

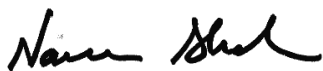
to a large extent, relies on soldiers' own accounts of their actions in assessing the legality of a given operation. It is only in the rarest of circumstances—where fellow soldiers are so appalled by another soldier's behavior that they insist on reporting it up the chain of command, where commanders support a prosecution, and, sometimes, where the media draws unwanted attention to flagrant abuses—that criminal cases involving civilian casualties go forward.<sup>11</sup>

We continue to urge prompt, thorough and impartial investigations after any incident in which civilians have been killed by U.S. military operations, including interviews with Afghan witnesses, survivors and family members. Wherever there is sufficient admissible evidence, suspects must be prosecuted in fair trials in line with admissible standards and without recourse to the death penalty. Such investigations should be carried out regardless of whether the operations involves U.S. service members, private security contractors, or members of the intelligence services.

Given the apparent recent increase in civilian deaths by U.S. air strikes, we urge you to disclose the mechanisms in place to protect against unlawful casualties. Additionally, we urge you to assess and disclose publicly whether current investigative and prosecutorial procedures comply with U.S. obligations to thoroughly assess instances of unlawful civilian harm and to carry forward prosecutions where appropriate.

I urge your careful consideration of the questions raised in this letter and look forward to your response.

Sincerely,



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Director, Security With Human Rights  
Amnesty International USA

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<sup>11</sup> *Left in the Dark*, p. 9

CC:

Sarah B. Sewall, Under Secretary for Civilian Security, Democracy, and Human Rights

Tom Malinowski, Assistant Secretary, Bureau of Democracy, Human Rights, and Labor

Michael McKinley, US Ambassador to Afghanistan

Samantha Power, US Permanent Representative to the United Nations

Tadamichi Yamamoto, UN Special Representative for Afghanistan and Head of the United Nations Assistance Mission in Afghanistan (UNAMA)