

**Mandate of the Special Rapporteur on extrajudicial, summary or arbitrary executions**

REFERENCE:  
OL OTH 11/2018

23 March 2018

Mr Sher Mohammad Abbas Stanikzai  
Director of the Taliban Political Commission

I have the honour to address you in my capacity as Special Rapporteur on extrajudicial, summary or arbitrary executions, pursuant to Human Rights Council resolution 35/15.

In this connection, I would like to bring to your attention information I have received concerning the **attack on the Intercontinental Hotel in Kabul, Afghanistan on 20 January 2018 and the attack at the Ministry of Interior administrative compound in Kabul, Afghanistan on 27 January 2018 resulting in the death of at least 138 civilians and injuring at least 244 others.**

The attacks occurring during the period of 20 to 27 January are not unique. The Taliban has previously claimed responsibility for similar attacks intentionally targeting civilians.

According to the information received:

***Attack on the Intercontinental Hotel in Kabul, Afghanistan-20 January 2018***

On 20 January 2018, an attack against the Intercontinental Hotel in Kabul city resulted in the death of 24 civilians, 16 of whom were foreign nationals and injured another 15, 4 of whom were foreign nationals.

At approximately 8:15pm on that day, a group of five men wearing Afghan style clothing and tactical vests, armed with AK-47 assault rifles, pistols, and fragmentation grenades launched an attack on the Intercontinental Hotel in the Bagh-e-Bela area of Police District 4 in Kabul City. The hotel hosted approximately 200 civilian guests, staff and visitors when the attack began.

The attackers proceeded to attack outside the hotel entrance and at the hotel restaurant. They opened fire on the guests in these locations and after indiscriminately firing at individuals trying to escape, foreign nationals became the targets of the firing.

The attackers further proceeded to move upward into the hotel. They searched for hotel guests, room by room, and proceeded to shoot and kill a number of them in their rooms. They also used fragmentation grenades and deliberately started fires in the hotel. They seem to have sought to target foreign nationals as they avoided the first floor of the hotel that mainly accommodated Afghan nationals attending a telecommunications/information technology conference.

At approximately 12:44am on 21 January the Taliban began issuing claims of responsibility for the attack through social media, including the Taliban's Pashto and English websites and Twitter, stating that the attack targeted an "enemy meeting", carried out by "5 martyrdom seekers armed with heavy/light weapons entering Hotel & killing foreign nationals." Later the same day, a Taliban spokesperson justified the attack on the basis that in their view, the hotel was used for military purposes. This implication has not been supported by evidence.

The attack ended on 21 January 2018 at 11:30am after the Afghan National Security Forces, including the Afghan National Police Crisis Response Unit, supported by international special operations forces, arrived at the scene, cordoned off the area and commenced rescue and clearing operations.

On 23 January 2018, the Taliban posted an article on its Pashto website discussing the efforts that it takes to protect Afghan lives. The article confirmed the main target of the attack as "foreign nationals". It also alleged that the attackers made efforts to avoid killing Afghans, including postponing the attack due to a number of weddings scheduled for 19 January 2018 at the hotel. The article notes that the Taliban spared Afghans who stated their nationality to the attackers or who recited verses from the Koran and that "suffocation/asthma" and "special forces" firing indiscriminately caused all Afghan casualties.

#### ***Attack at the Ministry of Interior (MOI) administrative compound-27 January 2018***

On 27 January 2018, a suicide attacker detonated a vehicle-borne IED (SVBIED) inside a 'town ace' vehicle painted to look like an ambulance outside of a Ministry of Interior (MOI) administrative compound in the Seddarat Sq area of PD-2, Kabul City resulting in 114 deaths and injuring another 229 others.

The blast was very powerful, causing extensive damage to buildings in the area and was heard and felt across a distance of several kilometers. The Jamhuriyat hospital building, located on the same road as the MOI administrative compound, was severely impacted causing patients inside the hospital to suffer injuries.

This attack has had wider and longer term implications due the extensive damage to the hospital and reported injury of staff and patients. The damage and destruction to hospital buildings has impeded its ability to provide necessary medical services to the victims of the attacks as well as others.

The Taliban has claimed responsibility for the attack on its English, Pashto, and Dari websites and on Twitter, stated that it targeted the MOI compound and that "246 military personnel suffered casualties." The MOI compound however, has been reported as a civilian government object and the individuals working in and accessing this compound are civilians.

I strongly condemn these attacks which resulted in a large number of casualties, and which may amount to war crimes. In particular, I express grave concern regarding the acknowledged use of methods that intentionally targeted civilians at the attack at

the Intercontinental Hotel and, the indiscriminate nature of the attack at the Ministry of Interior administrative compound. I am also seriously concerned that this is not the first time the Taliban has claimed responsibility for attacks intentionally and indiscriminately targeting civilians.

These incidents indicate a lack of respect of the prohibition of murder, the principles of distinction between civilian objects and military objectives, proportionality, and precautions in attacks as enshrined in customary international humanitarian law which is binding on the Taliban, as party to the conflict. They also demonstrate a complete disregard for international human rights law, particularly the *jus cogens* norm prohibiting the arbitrary deprivation of life. The intentional murder of civilians constitutes a war crime.

I note the ‘Code of Conduct’ issued by Mullah Omar in 2009 and various statements by the Taliban leadership which prohibit attacks against civilians and directives ordering civilian casualties be prevented and avoided. However, these incidents and the statements released by the Taliban media indicating intentional targeting of foreign national civilians raise serious questions as to the extent to which these policies are implemented in practice.

It is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention. I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please provide the full details of any investigations which may have been ordered into these allegations, and if they were proven correct, of any proceedings that may have been or may be taken against those with direct or supervisory responsibility.
3. Please indicate what measures have been taken, and are being taken, to prevent civilian casualties in attacks conducted by the Taliban in Afghanistan and to ensure that attacks are conducted in accordance with the principles of distinction and proportionality as well as the *jus cogens* norm on the right to life. Please also clarify how these attacks and the statements made in relation to them comply with the Taliban’s directives ordering civilian casualties be prevented and avoided.
4. Please provide a copy of the Taliban’s policies on the protection of civilians. Please provide information on the steps taken to ensure they are implemented in practice.
5. Please provide information on the steps being taken by the Taliban to implement the recommendations directed to the Taliban by United Nations Assistance Mission in Afghanistan, including those included in the Afghanistan Protection of Civilians in Armed Conflict Annual Report 2017.

I would appreciate receiving a response within 60 days through Danielle Bell, the OHCHR representative for Afghanistan. Your response will be made available in a public report to be presented to the Human Rights Council for its consideration.

Given the seriousness of these cases, I may choose to publicly express my concerns in the near future as, in my view, the information appears to be sufficiently reliable to indicate a matter warranting immediate attention. I also believe that the wider public should be informed about these concerns. Any public expression of concern on my part would indicate that I have been in contact with you to raise the issues in question.

Kindly note that a copy of this letter has been sent to the authorities of Afghanistan.

Please accept the assurances of my highest consideration.

Agnes Callamard  
Special Rapporteur on extrajudicial, summary or arbitrary executions

## **Annex**

### **Reference to international law**

The Taliban is under the obligation to comply with the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”). The Customary Rules are applicable to all parties to the non-international armed conflict in Afghanistan. Under the Customary Rules, the Taliban is under the obligation to distinguish between combatants and civilians and to direct attacks only against combatants (as per Rules 1, 6 and 7 of the Customary Rules). Acts or threats of violence where the primary purpose of which is to spread terror among the civilian population are also prohibited (Rule 2 of the Customary Rules). Indiscriminate attacks are also prohibited (Rule of 11 of the Customary Rules). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14 of the Customary Rules). Parties to the conflict must “do everything feasible to verify that targets are military objectives” (Rule 16 of the Customary Rules) and take all feasible precautions to avoid and minimize incidental loss of civilian life (Rule 15 of the Customary Rules). ‘Killing, injuring or capturing an adversary by resort to perfidy is prohibited’ (Rule 65.) Perfidy is defined in Additional Protocol I as ‘[a]cts inviting the confidence of an adversary to lead him to believe that he is entitled to, or obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence’ (Art. 37). Thus, simulation of civilian status by a suicide bomber to enable him or her –to reach civilians or military personnel in safety would fall within this prohibition.

Common article 3 of the Geneva Conventions states that “persons 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.” It further prohibits “violence to life and person, in particular murder of all kinds.” I remind that breach of this provision constitutes a war crime (as per rule 156 of the Customary Rules).

I would like for further recall Human Rights Committee, General Comment No. 29: States of Emergency (Article 4) (CCPR/C/21/Rev.1/Add.11, 31 August 2001) in which the Human Rights Committee has identified a number acts that violate jus cogens norms including arbitrary deprivation of life. In the Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, (A/HRC/19/69, §106) the commission concludes that “at a minimum, human rights obligations constituting peremptory international law (ius cogens) bind States, individuals and non-State collective entities, including armed groups. Similar confirmations that jus cogens norms are binding on armed groups are contained in a number of other reports from the United Nations on different country situations.

I would like to recall Security Council Resolutions 1674 (2006), 1738 (2006), 1746 (2007), 2274 (2016) and 2344 (2017) that call for all parties to the armed conflict in Afghanistan to “comply with their obligations under international law including international humanitarian law and human rights law and for all appropriate measures to be taken to ensure the protection of civilians.”