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

REFERENCE:
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9 December 2019

Excellency,

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 the attention of your Excellency’s Government information I have received concerning two separate incidents involving Afghan government supported forces in the district of Zurmat of Paktia province in August 2019 and December 2018 that resulted in the alleged extrajudicial killings of seventeen civilians.

According to the information received:

11 August 2019 Raid by the National Directorate of Security Special Forces in Kulalgo village, Zurmat district, Paktia province

On 11 August 2019, National Directorate of Security (NDS) Special Forces based in Urgun district, Paktika province, locally known as Shaheen forces, and allegedly belonging to Unit 01, supported by United States intelligence and military actors conducted a raid targeting several homes and shops in Kulalgo Village, Zurmat district, Paktia, Province, and shot dead 11 civilians.

The raid began at approximately 10.30 p.m. on 11 August and lasted until 3.00 a.m. on August 12. According to eyewitnesses, the NDS Special Forces were dropped at three different locations in the Kulalgo Village by helicopters. They split up into groups of five to six people, and included at least one United States operative. The groups searched fifteen walled compounds with several houses and other buildings inside each compound.

In a first house, the soldiers checked the identity of four men, including three residents of the house and a guest who had joined to celebrate Eid. The four men were separated from the rest of the family and taken to other rooms where they were shot dead. Multiple witnesses reported that the victims were shot in the eyes or the mouth.

The victims were:

1. Shafiullah, son of Dr Ulfatullah
2. Ansarullah, son of Qudratullah
3. Hayatullah, son of Muhammad Mokhtar
4. Enamullah, son of Dr Ulfatullah
In a second house, the operatives killed a farmer.

In the third house, the operatives killed two more farmers.

To access the fourth house, the operatives blew up the front gate of the compound, setting ablaze vehicles and motorbikes parked inside. Once inside, they shot dead four men: two shopkeepers, a teacher, and a student.

According to witnesses, more people would have been killed if not for the intervention of female members of the families who either protected the men with their bodies or by holding up the Quran in front of the men.

NDS Special Forces took the responsibility for the raid on social media by tweeting that “eleven members of the terrorist Taliban group were killed, including two group leaders (sar grup).” The same day, NDS Special Forces issued a press release stating that it eliminated eleven members of the Taliban in a raid in Kulalgo Village.

Despite the admission of NDS Special Forces, Paktia Provincial Governor and the head of the Afghan National Directorate of Security rejected allegation regarding the involvement of Afghan Government Forces in the raid. Some sources suggested that other pro-government armed groups participated in the raid, particularly naming the Khost Protection Force.

On 15 August 2019, the Afghan Office of the National Security Office ordered an investigation into the Kulalgo killings. Information about the investigation’s progress or any findings are unknown at this point.

About the forces involved

The Paktika-based NDS Special Forces, also locally referred to as Shaheen forces, ostensibly operate within the structure of the NDS, but function outside the official and regular chain of command of the Afghan National Directorate of Security. They are reported to receive financial and operational support from the United States Central Intelligence Agency and the United States military forces, including aerial support.

30 December 2018 Raid by the Khost Protection Force in Surkai village, Zurmat district, Paktia province

On 30 December 2018, operatives of the Khost Protection Force conducted a raid in Surkai village, Zurmat district, Paktia province, and shot dead six civilians.

The raid began at approximately 10.00 p.m. Members of the Khost Protection Force were dropped off by helicopters 500 meters away from the compound of Naim, son of Haji Fazal Haq, a commander, member of the provincial peace council and a tribal leader who was active in the local peace negotiations with the Taliban. The Khost Protection Force blew up the main gate of the compound, destroying two vehicles in the process.
Once inside the compound, the operatives knocked on the doors of various houses and separated Commander Naim, his three sons, his brother and his nephew from the female members of the family. The six men did not resist. The Khost Protection Force then killed them, shooting each one in the head.

The six victims included:

1. Haji Mohammad Naim Faroqi, son of Haji Fazal Haq
2. Atiquallah Faroqi, son of (Commander) Naim
3. Mohammad Karim Khawreen, son of (Commander) Naim
4. Faturahman Afghan, son of (Commander) Naim
5. Sayed Husain Paktyawal, son of Haji Fazal Haq
6. Mohammad Omar, son of Ghazi Khan

Four men who also resided in the compound managed to escape. The operatives allowed one man to escape after he identified himself as a university student. Additionally, when Sayed Husain was being taken by the operatives, he shouted a warning. Three men who were staying in neighbouring house heard the warning and fled. The operatives shot at them and threw a grenade. Although one was wounded by shrapnel, they all managed to survive the raid.

On 31 December, approximately 100 local residents brought the bodies of the six killed men to the capital of Paktia province, Gardez city, and staged a peaceful demonstration in front of the provincial government building. The deputy governor of Paktia Province promised to investigate the killing. However, subsequently the provincial governor defended the operation, criticized Commander Naim for not resisting the Taliban, and said that the government has a “kill list” of sixteen others.

The Khost Protection Force (KPF):

The Khost Protection Force has been active in the south-eastern region of Afghanistan at least since 2007. It operates as a pro-government armed group outside the official and regular military command and control structures. Its operations are often not coordinated with local or national authorities. However, Commanders of the KPF are reported to participate in the official provincial security meetings chaired by the Provincial Governor of Khost Province, and attended by the Afghan national security forces. The KPF is also reported to be supported by and to operate under the control of the United States Central Intelligence Agency (CIA), and to receive support from the United States military forces. The helicopters that dropped the KPF operatives responsible for the aforementioned 6 killings are said to be owned and possibly operated by US military forces. The KPF operates out of Camp Chapman, a CIA base in Khost.
Although the relationship between the Khost Protection Force and the Afghan Government or the US army is not officially formalized, it would seem that the Afghan and United States military and intelligence actors maintain links with the Khost Protection Force, including through the sharing of operational and intelligence information.

While I do not wish to prejudge the accuracy of these allegations, should they prove to be true, several of these would contravene the right of every individual to life, as set out in article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International Covenant for Civil and Political Rights (ICCPR), ratified by Afghanistan on 24 January 1983. The right to life is non-derogatory and the obligations of your Excellency’s Government under international human rights law continue to apply in the context of an armed conflict.

Furthermore, any use of force must abide by the principles of proportionality and necessity, which seems not to have been respected by NDS Special Forces and the Khost Protection Force in the above mentioned incidents. I am particularly concerned that in at least several of the cases alleged, the death did not occur in the context of combat that the victims were unarmed, that they were taken in the custody of the soldiers and seem to have been summarily executed at point blank. The killings also point to multiple violations of international humanitarian law including 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; […]

(d) […] 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.

The killings of civilians in Kulalgo Village on 11 August 2019 were allegedly committed by NDS Special Forces. Your Excellency’s Government carries direct responsibility for the Unit’s actions as it is formally part of the Afghan security structure. According to the information received the 11 killed civilians were not armed, posed no threats to the attackers, could have been arrested, but instead were killed in what seems to have been deliberate summary executions. If it is indeed
confirmed that NDS Special Forces deliberately targeted civilians, their actions may qualify as war crimes for which Your Excellency’s government may be held responsible.

Concerning the six other killings attributed to the Khost Protect Force, while your Excellency’s Government does not seem to maintain direct control over this armed group, the information received indicates however, that (a) the six civilians killed were part of a government list of persons slated for killing; (b) the provincial governor defended the Khost Protect Force December raid; (c) Afghan national and provincial authorities reportedly maintain contact with the Khost Protection Force and invite its members to security briefings, sharing intelligence and operational information. In such circumstances, the Khost Protection Force may be considered as acting on the explicit or implicit behalf or instructions of the Afghan authorities, and thus engage Your Excellency’s Government’s responsibility for these (and any other similar) killings under international law.

I wish to stress that the uncertain status of the Khost Protection Force and the alleged independence of NDS Special Forces from the official chain of command severely limits transparency and accountability concerning their activities. Without clear reporting lines, victims have a hard time to seek justice for human rights violations committed by these groups; and to uncovering the truth behind these incidents. The lack of clear chain of command allows these units to operate with impunity.

In light of the above, I express my support for the recommendation made by the United Nations Assistance Mission in Afghanistan (UNAMA) to the Government of Afghanistan to immediately disband and disarm all armed groups and militias, including the Khost Protection Force, or to formally incorporate its members into the Afghan national security forces following a robust vetting procedure. Similarly, I support UNAMA’s call to reintegrate NDS Special Forces in the official Afghan national security forces’ chain of command. Contribution to the full respect and protection of the right to life in the ongoing and brutal conflict in Afghanistan can be achieved only by creating clear reporting lines and regulating the activities of armed forces under the authority and control of the government. Anything less will simply contribute to perpetuate the cycle of violence and hate.

The full respect and protection of the right to life in the ongoing, brutal conflict in Afghanistan can be achieved only by creating clear reporting lines and regulating the activities of pro-government forces.

In connection with the above alleged facts and concerns, please refer to the Annex on Reference to international human rights law attached to this letter which cites international human rights instruments and standards relevant to these allegations.

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As 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 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 explain the relationship between NDS Special Forces and the Khost Protection Force with the United States Central Intelligence Agency and the United States armed forces operating in Afghanistan.

3. Please provide detailed information on what basis, and under whose instructions, have the NDS Special Forces and the Khost Protection Force carried out their respective raids on 11 August 2019 and 18 December 2018 in the villages of Kulalgo and Surkai respectively, and reportedly killed 17 persons;

4. Please explain the precise circumstances of these killings. According to the information received the victims were unarmed, posed no threats to the assailants, were taken separately from their families, and summary executed. Why were they not taken in custody if suspected of any criminal or other offence? Why were they killed?

5. Please explain the relationship between the Afghan Government, and specifically NDS, and the aforementioned NDS Special Forces, and the Khost Protection Force.

6. Please provide detailed information, including for the specific instances described in this communication, about the chain of command linking the NDS Special Forces, and United States intelligence and military actors involved in the raid, and the decision-making throughout the operation.

7. Please provide information and clarification on the chain of command and oversight mechanisms of these groups.

8. Please clarify the current policies and directives concerning the rules of engagement and the use of lethal force applicable to the armed forces of your Excellency’s Government and government supported armed groups with regard to the protection of civilians and the procedures for the enforcement of such policies, the mechanisms of control of these operations, and for accountability of the personnel involved.

9. Does Your Excellency’s Government have a protocol to investigate the incidents above? Please share it if it does. If it does not have such a protocol, how does Your Excellency’s Government investigate civilian deaths committed by State and non-state armed groups?

10. Please indicate whether any investigation has been launched on the operations described in this communication and which have resulted in the death of 17 persons; and what have been the results of those
investigations. If no investigation has been conducted, please explain how this is consistent with the obligations of the Government of Afghanistan under international law.

11. Please provide information on the existing measures that are in place to prevent the recurrence of such serious violations, and how they are being effectively implemented.

This communication and any response received from your Excellency’s Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, I urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

I may consider to express publicly my concerns in this case in the near future as the information upon which this communication is based indicates a matter, which if confirmed, warrant the most serious attention. Given the seriousness of the facts alleged, I believe that the wider public should be alerted to their human rights implications. Any public expression of concern on my part will indicate that I have been in contact with your Excellency’s Government’s to clarify the issue/s in question.

Please note that a letter expressing similar concerns was sent to the Government of the United States of America.

Please accept, Excellency, the assurances of my highest consideration.

Agnes Callamard
Special Rapporteur on extrajudicial, summary or arbitrary executions
Annex

Reference to international human rights law

In connection with above alleged facts and concerns, I would like to refer your Excellency’s Government to article 3 of the Universal Declaration of Human Rights which states that “Everyone has the right to life, liberty and security of person”; and to article 6 (1) of the International Covenant on Civil and Political Rights which states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

States parties must respect the right to life and have the duty to refrain from engaging in conduct resulting in arbitrary deprivation of life. States must also exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities, whose conduct is not attributable to the State, such as non-government militias and armed groups. Furthermore, States must “organize all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life, including establishing by law adequate institutions and procedures for preventing deprivation of life, investigating and prosecuting potential cases of unlawful deprivation of life, meting out punishment and providing full reparation.” (General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the Right to Life)

The right to life is non-derogatory and the obligations of your Excellency’s Government under international human rights law continue to apply in the context of armed conflict, as acknowledged by the International Court of Justice (Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996, paras. 24-25; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004, para. 106.), the Human Rights Committee (General Comment 29, States of Emergency, para. 3) and the Committee on Economic, Social and Cultural Rights (Concluding observations on the initial report of Israel; 2001, para. 12) and the Committee on Economic, Social and Cultural Rights (Concluding observations on the initial report of Israel; 2001, para. 12).

The Human Rights Committee, in its General Comment 31 (Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004)), established that the ICCPR applies also in situations of armed conflict to which the rules of international humanitarian law are applicable. While, in respect of certain ICCPR rights, more specific rules of international humanitarian law may be especially relevant for the purposes of the interpretation of Covenant rights, both spheres of law are complementary, not mutually exclusive.

Violations under international humanitarian law fall within the mandate of the Special Rapporteur. The Human Rights Council in Resolution 35/15 of 19 June 2017 acknowledges the key role of the Special Rapporteur on extrajudicial, summary or arbitrary executions in preventing crimes against humanity and war crimes. The General Assembly, in resolution 71/198 of 17 December 2016, dealing with the mandate of the Special Rapporteur acknowledges “the important role of the Special Rapporteur in identifying cases where extrajudicial, summary or arbitrary executions
could amount to genocide and crimes against humanity or war crimes, and urges the Special Rapporteur to collaborate with the United Nations High Commissioner for Human Rights and, as appropriate, the Special Adviser to the Secretary-General on the Prevention of Genocide in addressing situations of extrajudicial, summary or arbitrary executions that are of particularly serious concern or in which early action might prevent further deterioration.”

International humanitarian law, through Common article 3 to the four Geneva Conventions, establishes the minimum standards that all parties involved in a non-international armed conflict should observe concerning the treatment and protection of civilians. While humanitarian law recognizes that some civilian casualties are inevitable during armed conflict, it imposes a duty on parties to the conflict to take all feasible precautions to avoid, and in any event, to minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. To achieve this goal, international humanitarian law obliges States to distinguish between combatants and civilians, and to target only combatants and other military objectives. States are required to take all feasible precautions to avoid and minimized incidental loss of civilian life, injury to civilians and damage to civilian objects (Rule 15 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross). The only exception to this rule is if the “civilian objects” are used for military purposes. For instance, when military forces are deployed into what are normally civilian objects, such as a house or a home. However, “in case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used. The attacking force must presume it to be civilian” (Protocol I, article 52(3)).

The State is responsible for violations of international humanitarian law attributable to it, including violations committed by its armed forces, entities it empowered, or groups acting on the State’s instruction or control, as well as violations committed by groups that the State acknowledges and adopts as its own (Rule 149 of the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross). Article 91 of Additional Protocol I provides that a party to the conflict is responsible for “all acts” committed by persons forming part of its armed forces. A State can also be held responsible for the actions of groups which are neither its organs nor entitled, under national law, to exercise governmental authority, if these persons or groups act in fact on the instructions of, or under the direction or control of, that State (Draft articles on State Responsibility, article 8). A State can be held responsible for acts committed by groups, regardless of the fact that the group was not at the time of the commission of the acts an organ of the State and was not mandated to act on behalf of the State, if there is subsequent acknowledgement and adoption of the acts of these groups by the State.

Both international humanitarian and human rights law require States to carry out thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, and war crimes committed by their nationals or armed forces, or on their territory by a foreign State, or over which they have jurisdiction. This obligation is enshrined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International
Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly Resolution 60/147, Chapter II, paragraph 3).

The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, (resolution 1989/65 Economic and Social Council) recall that even exceptional circumstances including a state of war, internal political instability or any other public emergency may not be invoked as a justification of extrajudicial execution executions, and that it is States’ duty to conduct thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions, and bring to justice all persons identified by the investigation as having participated in those executions.

Furthermore, as set forth in the forth in the Minnesota Protocol on the Investigation of Potentially Unlawful Death, “where, during the conduct of hostilities, it appears that casualties have resulted from an attack, a post-operation assessment should be conducted to establish the facts, including the accuracy of the targeting. Where there are reasonable grounds to suspect that a war crime was committed, the State must conduct a full investigation and prosecute those who are responsible” (para. 21).

The responsibility of a State for “all acts committed by persons forming part of its armed forces” is a long-standing rule of customary international law, first enshrined in article 3 of the 1907 Hague Convention (IV) and repeated in article 91 of Additional Protocol I.

The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.