



AIHRC

# The Report on the Investigation of Human Rights and Humanitarian Rights Situation in Kunduz Province Armed Conflict

Picture: Department of Urban Development Affairs in  
Kunduz Province





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## Introduction

The AIHRC as a national human rights institution, was established based on the Presidential Decree and the provisions of the Bonn Agreement, on 16.03.1381. After the adoption of the Constitution and enshrining of Article 58 in it in 1382, the AIHRC found a strong legal base.

Upon the approval of the Law on the Structure, Duties and Mandates of the AIHRC in 1384, the structure, mandate and basis of action of the AIHRC was defined. Based on Article two of this Law, “the AIHRC is established in the framework of the Islamic Republic of Afghanistan and operates independently. The AIHRC carries out its activities and duties under the provision of the Constitution and other effective laws of the country.”<sup>1</sup>

Monitoring human rights, promotion and protection of human rights, monitoring the situation of human rights and individuals’ access to their rights and freedom, investigation of violations of human rights and adoption of measures to improve the human rights situation in the country constitute the five objectives of the AIHRC. <sup>2</sup> Article 21 of the Law on Structure, Duties and Mandates of the AIHRC has clearly defined and formalized the main duties and mandates of the AIHRC within 35 paragraphs to investigate violations of

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1. Ministry of Justice, the law, on Structure Duties and Mandates of the AIHRC, Official Gazette No.: 855, Date of publication: 1384, Article II (2)

2. *ibid*, Article (5)

human rights and collect relevant documents, evidence and information.

Civil War is one of the areas where widespread and grave human rights violations occur, the AIHRC on the basis of the above mentioned statutory mandates and duties has always monitored the internal armed conflict in the country and has investigated cases of violations of human rights and humanitarian law during the conflict, and by preparation and publication of relevant reports and press releases, and presenting clear recommendations to the parties involved in the country's civil conflict, tried to abate the level of violence and occurrence of inhumane acts during the armed conflict between the government and the anti-government armed opposition.

The present report is the result of an investigation on the attack carried out by the anti-government armed elements on the Kunduz City in which widespread and gross violations of human rights and humanitarian law that resulted in grave consequences were committed. The AIHRC, from the very beginning, monitored the process of the conflict and documented the incidents by deploying a delegation in the region and appointing its staff in the neighboring provinces. So far, the AIHRC has issued three press releases<sup>3</sup> in this regard.

The AIHRC has set all the principles and rules of humanitarian law and human rights, which governs internal armed conflict, as the criteria for its assessment. The issues such as civilian casualties, targeted killings and arbitrary executions, rape, torture and beatings, the use of civilians as human shields hostage taking, plunder and looting of public and private property, restrictions on access to basic services (food, drinking water, health services and education, electricity, transportation, etc.), blocking roads, paving the way for the escape of prisoners, displacement of families, wrong and inhumane treatment of prisoners of war and preventing the presentation of humanitarian aid to those in need, are the main topics of the present report.

This report is prepared based on a precise investigation and study made by the AIHRC's staff in Kunduz City as well as interviews with reliable references such as eyewitnesses, victims, elders, hospital officials, human rights activists and volunteers, representatives of the Provincial Council, officials and other security organs and the relevant competent

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3. [http://www.aihrc.org.af/home/press\\_release/5025](http://www.aihrc.org.af/home/press_release/5025)



authorities, in person and through telephone calls. It should be noted that the present report presents the initial information on Kunduz case. When the security situation in the Kunduz City is improved the AIHRC will prepare and publish a more detailed and documented report.



▲ AIHRC's Provincial Office in Kunduz (Admin Office)



▲ Kunduz Provincial Council Office

## **International Humanitarian Laws and Responsibility of the Parties to the Conflict**

Humanitarian laws are a collection of conventional or customary international rules governing the actions and behaviors of the parties to the conflict during armed conflicts (international or non-international) and all parties to the armed conflict are obliged to observe them. The main source of humanitarian laws are the Four Geneva Conventions of 12 August 1949. These four conventions were adopted on 12 August, 1949 at a conference convened in Geneva for the establishment of international conventions for the protection of war victims. All Geneva Conventions entered into force on 21 October, 1950.

Two Additional Protocols to these Conventions were adopted later; one was related to the protection of victims of international armed conflicts and the other related to the protection of the victims of the national armed conflicts. Both of these protocols were adopted on 8 June 1977 in Geneva Diplomatic Conference regarding reaffirming and developing humanitarian international laws applicable during armed conflicts. They came into force on 7 December 1978.<sup>4</sup>

During international armed conflicts, all the provisions set forth in the said conventions and their additional protocols are to be observed. However, Article 3 Common to the Geneva Conventions of 1949 and Additional Protocol (II) of the said Convention, the rules governing the internal armed conflict and rules set forth in this document and other international customary rules are applicable to internal armed conflict, and all belligerent groups in these wars, are obliged to observe this set of rules.

Serious and grave violations of humanitarian law, is considered a war crime which is within the competence of the International Criminal Court, the International Criminal Court established in 1998 and has jurisdiction over four crimes: genocide, crimes against humanity, war crimes and crimes of assault (crimes against peace). This court will investigate crimes that are committed after the entry into force of this Statute, and the country's accession to the Statute and if the State become a Party to the Statute after its entry into force.<sup>5</sup>

The government of Afghanistan signed the ICC memorandum in 2003 and acceded to it.

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4. Dr. Hussein Mehrpour, international human rights system, information dissemination, 1390, p. 251

5. –Kryang Sak Kitty Shyayzy, International Criminal Law, translated by Youssefian, Samt publisher, second edition 1391, p. 62





ICC is authorized to proceed and investigate crimes committed in this country and the government of Afghanistan can refer cases of crimes that are beyond its ability to address or may not be able to provide the necessary facilities to handle the case.



▲ The Shops on the north of Sari-Chawk



### **Violations of human rights and humanitarian law in Kunduz**

Around 10 PM on Monday night, 6th of Mizan 1394, anti-government armed elements started attacking from several sides on Kunduz City and its related areas. At first they brought the first, second and third districts under their control, and after few hours fighting, the government and non-governmental offices came under attack. Later on, the security offices, the Governor's Office, Security Police Department, the National Security Department and other government organs fell into the hand of the anti-government armed elements. All the government forces and personnel drew back to the airport. By the end of Tuesday, the residential complex of Sardara where the regional office of the AIHRC locates fell into the hand of the insurgent groups.

After reinforcement of the government security forces, counter attacks started on Mizan 9, 1394 and parts of the city were retaken from Taliban. According to the latest news ob-



▲ A Shop on Haji Meri Street

tained, the city was cleared up from the insurgent groups on Mizan 20, 1394, however, the anti-government armed elements were actively present around the city and were fighting against the government forces. The city of Kunduz remained as the main center of the war between belligerent forces for 15 days.

Since the beginning of this attack by the anti-government armed elements on Kunduz City and capturing of that city, widespread and grave human rights violations have been committed by the anti-government armed elements and large number of civilians who had no role in the fight have been victimized. In this part of our report, we evaluate those rules of humanitarian law governing the internal armed conflict and human rights in any situation (War and Peace) and were clearly violated during armed conflicts in Kunduz.

### **Targeted Killing of Individuals**

Life is a gift from God and the natural right of every person. No one has the right to illegally deprive anyone of this right.<sup>6</sup> The Constitution of Afghanistan, the Universal Declaration on Human Rights, and the Convention on Civil and Political Rights clearly recognized this right as one of the fundamental human rights and provides that its observance is obligatory under all conditions, war and peace.

Similarly, Article 3 Common to Geneva Conventions prohibits physical and mental harms, especially killing, and obliges the parties to the conflict to observe these humanitarian rules under any condition.<sup>7</sup> Purposeful killings, including killing of prisoners of war, arbitrary killing of civilians living in the war zone are prohibited.

The findings by the AIHRC indicate that, after the capture of Kunduz City by Taliban, the Taliban killed a number of people. Killing of 3 civilians who were first taken out of their homes and then killed in a very brutal way is documented by the AIHRC. They were killed because they were government officials. It is provided that the arbitrary killing of individuals in any way and under any condition is prohibited by law and it is considered a clear violation of international humanitarian law and human rights standards.

### **Targeting of Civilians**

All parties to the conflict, both domestic and international, are obliged not to target the

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6. Afghan government, constitution, adopted in 1392, Article 23

7. International Committee of the Red Cross, the International Convention of Geneva, 1949, common Article 3

civilians, civilian properties and non-military areas during armed conflicts. This is the first and the main principle of humanitarian law and they are applicable in all types of armed conflicts.

The evidence and witnesses found by the staff of the AIHRC show that around 50 civilians were killed and 350 people were injured during this armed conflict in Kunduz. A total of 62 injured people, including 13 children and 7 women were transferred to Takhar provincial hospital. A headmaster of an evening school was killed by the anti-government armed elements. According to a staff of the AIHRC who is an eyewitness, 15 civilians were shot dead along the road in the area of Maidan-e-Pukhta while fleeing from their homes. 5 other civilians were killed in the area of Bala Hessar and 25 others were injured.

It is worth mentioning that the above statistic was obtained from the hospitals that were open in Kunduz City. Those civilians who were killed or injured, but not transferred to the hospitals are not included in this report. Therefore, the number civilian casualties may be much more than what is mentioned in this report. Precise statistic of casualties requires further investigation.

As a result of an air attack on MSF's Hospital on Sunday, 11 Miazan 1394 by the pro-government international forces, 22 people (12 staff members and 10 patients) were killed and 37 others (19 staff and 18 wounded and patients) were injured as it was stated by MSF's doctors.

As mentioned earlier, civilian and public buildings should not be targeted. Attacks that spread horror and terror among civilians are prohibited.<sup>8</sup> Therefore, targeting civilians and non-military areas are considered violation of international humanitarian law and norms, and the belligerent parties are obliged to observe these humanitarian rules, and they should take all necessary measures for the protection of civilians and non-military areas.

### **Sexual Assaults**

Sexual Assault is a clear violation of human dignity. Pursuant to Article 24 of the Con-

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8. International Committee of the Red Cross, the Additional Protocol II to the Geneva Conventions, 1977, paragraph 2 of Article 13



stitution, freedom and human dignity are inviolable, because human dignity is one of the fundamental rights of human beings. Therefore, no one is allowed to violate this principle under any condition (war or peace). According to the common Article 3 of the Geneva Conventions and other humanitarian laws' binding documents, sexual assault is prohibited, and it is provided that all parties to the conflict are obliged to respect human dignity, and do not commit sexual assaults.

Based on the aforementioned international documents, all types of sexual abuse committed by the use of force, threat or intimidation is prohibited, and the perpetrators should be punished.

Some evidences and witnesses found by the staff of the AIHRC show that during the war in Kunduz, the anti-government armed elements have committed sexual assaults. Similarly, some international organizations and media also reported on the occurrence of such crime. In addition, the presidential office through a publication declared that, "the Taliban assaulted on women and public honors"<sup>9</sup>. Some displaced people also reported to the staff of the AIHRC that some women were sexually assaulted in their homes by the men related to the Taliban groups.

But, given the security and traditional – social limits the victims of sexual assault are rarely ready to express their views in this regard, and on the other hand, since the security situation in Kunduz city is not good it is not possible to have sufficient access to eyewitnesses. Therefore, the AIHRC has not been able to collect reliable documents for documentation of this crime. Investigations in this area are continuing and the new findings will be published in the next detailed reports.

### **Using Civilians as Human Shield**

International humanitarian laws prohibit use of human as a shield during armed conflicts. Article 28 of the 4th Geneva Convention 1949 reads, "The presence of a protected person may not be used to render certain point or areas immune from military operation".

Findings by the AIHRC show that the anti-government armed elements have usually used people as a shield for reaching their military goals and it is one of their techniques.

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9. President's Office, Press Release, publication date, 10 in 1394, address: <http://president.gov.af/fa/news/53399>



▲ A Shop on Sari-Chawk

During the fight in Kunduz, the anti-government armed elements by utilizing this technique positioned their forces and their military installations in residential houses to be safe from attacks by the security forces of Afghanistan. The majority of trenches of anti-government armed elements were stationed in residential areas, that were not evacuated and civilians were living there.

As mentioned above, the use of public buildings and residential areas where civilians live or spreading the war to residential areas is considered utilization of human shield in the international humanitarian laws. According to item 23, part B, paragraph 2, article 8 of ICC Charter, "Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations".

### **Hostage taking**

Hostages are usually innocent civilians in the occupied areas who are deprived of their

freedom illegally and mostly by the use of force or threat of death.<sup>10</sup> Arrest and detention of such people as a preventive measure against the opposing force are utilized for intimidation and punishment of the opposition forces. Hostage taking for any purpose or aim is prohibited according to article 3 common to 4 conventions of Geneva and other related documents. During the investigation and evaluation of the case of Kunduz, the AIHRC found out that the government opposition armed forces took more than 100 civilians and personnel of the security forces as hostages. After a series of investigations by their judges and attorneys a number of the hostages were released and the others were transferred to unknown places. Although the number of civilians released and the remaining hostages is not clear, one of the released civilian has stated to the staff of the AIHRC that he was released after he swore that he was not working in the government administration.

### **Destruction, Looting and Plundering of Public and private properties**

After the collapse of Kunduz City, the anti-government armed elements looted all government offices in 3 phases, and at least 6 government offices (Provincial Council Office, Municipality, Department of Fight Against Narcotics, First Police Station, Department of Rural Development and Urbanization Department) and UNAMA office in Kunduz were set on fire. Office facilities including vehicles, computers, chairs and tables and even the government's official documents were looted and confiscated as booties. The regional office of AIHRC, the UN regional office (UMANA) the UNHCR regional office, the Governor's Office and ..... are among the offices that were looted and their properties and other assets and facilities were plundered.

In addition to the government and public offices, some branches of the private banks were also looted and their office equipment and facilities were plundered. At the same time, more than 19 shops in different areas of Kunduz City were burned down during the fight and as a result heavy damages were inflicted on the owners of the shops. Based on Common Article 3 of the Geneva Conventions 1949 on internal conflicts, destruction and plundering of public or private properties are prohibited. The armed conflicting sides should not resort to destruction and plundering of public or private properties or even

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10. Giryank Sak Kitty Shyayzry, International Criminal Law, p. 292



properties related to the opposite side.

### **Internal Displaced People**

Prevention of forced displacement of individuals and civilian communities is one of the binding rules of humanitarian laws during internal armed conflicts. The conflicting parties should not force (directly or indirectly) the civilians to leave their residential areas due to reasons related to the armed conflict.<sup>11</sup> Indirect forcing means that sometimes it is not necessary for the civilians physically to leave the residential area. If one of the conflicting parties prepares the ground for the displacement of people through terror and intimidation, in fact they commit forced displacements of people.

Through intimidation and targeting of civilian residential areas and repeated violation of humanitarian laws during the armed conflict in Kunduz, the Taliban groups forced almost 14,000 families consisting of 70,000 to 100,000 people to leave their residential areas. Most of the displaced people took refuge in Kabul, Takhar, Baghlan, Marzar-e-Sharif, Samangan and Badakhshan provinces. Some of these families were not only forced to leave their residential areas, but reached to the northern borders and experienced very bad living conditions. Given the critical situation of displaced people because of armed conflicts in Kunduz City and based on rule 131 of the customary humanitarian law, all possible measures should be taken that displaced civilians should live under satisfactory conditions in terms of shelters, health, security and food.<sup>12</sup>

### **Destruction of Media, Threat and Intimidation against Journalists and Activists of Human Rights and Civil Society**

Journalists should be protected and respected during armed conflicts. In addition to prevention of attacks against journalists, the existing customary treaties provide that the journalists should be protected during the armed conflicts to carry out their professional activities. This role as a customary treaty is applicable in the internal and international armed conflicts.<sup>13</sup> Similarly, this role proves that in addition to journalists, activists of human rights and civil society can also benefit from this treaty. Their security during the war is based on the principle of prevention of attacks on civilians.

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11. International Committee of the Red Cross, the Geneva Conventions, Additional Protocol II, paragraph 2 of Article 17

12. International Committee of the Red Cross, Customary International Humanitarian Law, Volume I, published by Majd Scientific and Cultural Association, first edition in 1387, no 131, pp 662

13. *ibid*, Rule 35, Page 215

Although attacks on journalists are prohibited, 7 local media offices were looted and their facilities were plundered during the fight in Kunduz. Local media and radio stations, including Roshany, Cheragh, Zohra, Kaihan, Radio Kunduz, Badloon and the National Radio - TV are among the local media which were plundered and destroyed by the armed government opposition groups. Based on a pre-prepared list, the Taliban tried to search for the journalists and activists of civil society and human rights after holding control on Kunduz City, and they were searching for them all over the City.

Through publication of a press release by their military committee on 20 Mizan, 1394 the Taliban declared “Tolo TV and” 1TV” as “military targets” and their staff would be treated as “enemies”. The Taliban also declared in this statement that, “from now on no staff, announcer, office, journalists of these televisions would not be safe”. While, based on paragraph 2 article 4 of the second Additional Protocol to Geneva Conventions threat, intimidation and application of terroristic attacks against the media and other individuals under protection is considered a clear violation of human rights norms and especially humanitarian laws.

### **Preparing the Ground for the escape of the Prisoners**

The anti-government armed elements as soon as they entered into Kunduz City, they opened the doors of the jail and freed all the prisoners and detainees and prepared the ground for their escape, as a result 659 prisoners (111 detainees, 491 prisoners and 57 child detainees from child correction center). Most of these escapees were convicted to serious crimes by the courts inducing murder, sexual assaults, armed robbery and theft. The Taliban intended to use these escapees in the war against the government of Afghanistan.

Among these prisoners there were 35 women. Some sources claimed that the Taliban took away these female prisoners with them, but there is no reliable document to prove this claim. The destiny of these prisoners is not known.

This action of the anti-government armed elements is a violation of the provisions of the applicable laws in the country and is considered a clear violation of the rights of victims of the crimes committed by these prisoners. On the other hand, those criminals who were released by the Taliban will repeat their crimes and jeopardize the rights of other citizens.

## Humanitarian Assistancess

Since the beginning of the attacks by the anti-government armed elements on Kunduz City, the residents of this city became deprived of the right to shelter, education and health services, the right of access to food and potable water and other public services including electricity and transportation facilities. The aforementioned rights are the basic rights of citizens and are the main condition for a decent life. Based on article 14 of the second Additional Protocol to Geneva Conventions 1949, “exposure of civilians to hunger, destruction and taking away of essential goods including foodstuff.... and drinking water facilities are prohibited.”

Based on the findings by the AIHRC, since the beginning of the attack on the Kunduz City until now all universities and higher education institutions have been closed and the students are deprived of education during this semester. A total of 113 schools, including 43 high schools are closed and more than 100,000 students are deprived of their right to education. The students in Kunduz City suffered from war trauma and they will not be able to resume their education normally during the next semester when the education institutions reopen.

Similarly, 10 public and private hospitals and health clinics were closed and nearly 300,000 people were deprived of access to drinking water and electricity for 15 days. In the meantime, during the conflict all the people in Kunduz city were completely surrounded by armed groups and roads were blocked.

The findings of the AIHRC’s investigation show that the situation of the civilian population in Kunduz City and neighboring provinces as well as in Kabul City has been critical, and the people have been in need of humanitarian assistance that were to be provided by the government and non-government organs. At the same time “displaced people have the right to voluntarily, immediately, and safely return to their homes or to their places of residence after the end of the difficult situation that forced them to be displaced”.<sup>14</sup>

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14. International Committee of the Red Cross, customary international humanitarian law, rule 132, p 669



## Conclusion

The findings of this report show that during the armed conflict in Kunduz City, the rules governing the internal armed conflict (non-international), that are provided in Common Article 3 of the Geneva Conventions 1949, Additional Protocol II to the said Conventions and customary rules of international humanitarian law, have widely been violated. .

Targeted and arbitrary killings, civilian casualties and targeting civilian areas, rape, destruction, plunder and pillaging communities property and civilian sites, the use of human shields, hostage-taking, putting limits to the public service ( food, drinking water, health services, electricity, transportation, etc.), blocking roads, paving the way for escape of prisoners, and forcing families to leave their homes, are the violations committed during the armed conflict in Kunduz and Taliban and its associated groups is responsible for all these violations except bombing of MSF's Hospital .

Serious and widespread violations of human rights based on the relevant international



▲ Private building on the Crossroad of school Street

instruments are war crimes and inquires a thorough investigation and prosecution of its perpetrators. During the armed conflict in Kunduz, as the report states, war crimes have been committed, and after a further investigation, its large and broad corners will become publicly evident.

## **Recommendations**

AIHRC, based on the report, presents the following recommendations to the Afghan government, the international community and anti-government armed groups, and urges all parties involved in the conflict to pay a serious attention to the AIHRC's recommendations:

1. The anti-government elements are once again reminded that, all parties to internal armed conflicts in accordance with the provisions of the 1949 Geneva Conventions and its additional protocols and customary international humanitarian law, including the anti-government rebels, are bound by the rules of the International Humanitarian Law during the armed conflict, and violations of these rules of humanitarian laws hold each of the parties to the conflict responsible and accountable.
2. Anti-government elements are once again recommended to stop the fighting and bring an end to the armed conflicts that every day take victims from innocent people of this country. Violation of human rights and humanitarian law as an inalienable natural rights will be investigated and prosecuted in all cases, conditions and time.
3. We make a serious demand for the Afghan government to investigate about the collapse of Kunduz City and address the violations of human rights and humanitarian law and prosecute all the perpetrators that have committed human rights and humanitarian law violations, and hold them accountable to the people's questions.
4. The AIHRC proposes that if the Afghan government is not able to prosecute war criminals and investigate crimes committed by anti-government armed elements or does not have the necessary facilities to deal with such crimes, the government of Afghanistan should refer such case of

war crimes to the International Criminal Court, so that the perpetrators of war crimes will not be exempted or remained unpunished.

5. It is suggested to the Afghan government and international pro-government forces to seriously respect the principles of human rights and humanitarian law, and by observing the principle of distinction, try to protect civilian lives and property.
6. With regard to the Afghan government's commitment regarding human rights and international humanitarian law, it is recommended to the relevant government organs (Ministry of Defense, Ministry of Interior and NDS) to teach the human rights standards and humanitarian law to all the officials and armed forces of such organs, and in case of violation of the law, to take action for their prosecution.
7. The government should pass the law on compensation, and make the reparation payment to individuals and families affected by the war, a systematic program, and guarantee the right to compensation and its practical payment.
8. The AIHRC calls on the Afghan government and international forces to make a serious and comprehensive investigation about the case of bombing MSF's Hospital and publish the results of their investigation to the people and the citizens of Afghanistan.
9. The relevant government agencies are asked to mobilize and coordinate all national and international humanitarian assistance and take practical actions to provide support to the people who were trapped in the city or were displaced in different provinces.