

# AMNESTY INTERNATIONAL

## Briefing Paper

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### **Afghanistan: No more empty promises in Paris**

The International Conference in Support of Afghanistan to be held in Paris on Thursday 12 June will bring together high level representatives from some 80 countries and organizations involved in rebuilding Afghanistan since the fall of the Taleban in 2001. The Paris Conference serves as a half-way review of the Afghanistan Compact, a framework agreed upon in January 2006 by the Afghan government and the international community to work toward five-year benchmarks on (1) security, (2) governance, rule of law and human rights and (3) economic and social development. It is by now clear that the international community and the Afghan government have fallen short of their commitments to the Afghan people.

Amnesty International acknowledges the advances made in rebuilding Afghanistan since the US and its allies ousted the Taleban in 2001. Many Afghans now dare to hope for a better future. Millions of Afghan children can now attend school, many women now have access to basic health care, and a small group of journalists and civil society activists have given voice to the Afghan people for the first time in decades. But improvements in economic, political and security conditions have levelled off. In large parts of the country (particularly the south and southeast) these conditions seriously deteriorated due to escalating armed conflict with the Taleban and other anti-government groups. Afghans continue to suffer from extreme poverty, lawlessness associated with a burgeoning narcotics trade, poor governance, endemic corruption, a weak and inept justice system and lack of respect for rule of law. The international community and the Afghan government have not met their pledge to provide the Afghan people, particularly women and girls, with better security, more responsive governance, and sustainable economic development. In particular, Amnesty International urges the representatives gathered at the Paris conference to deliver on commitments to (1) reform the justice system and establish the rule of law, (2) combat impunity for past and present human rights violations, (3) protect and uphold women's rights and (4) strengthen freedom of expression.

The Afghanistan Compact set out benchmarks for the Afghan government and international community, and established the Joint Co-ordination and Monitoring Body (JCMB), a high level, Afghan-international decision making body entrusted with overseeing implementation of the Compact's commitments. The JCMB admitted in its February 2008 Status Report that there are "significant funding gaps" from the international community, as well as serious problems in coordination of aid between bilateral and multilateral projects in addition to lack of sufficient information about conditions on the ground. The JCMB has also characterized some of the principles established under the Compact as "too broad to provide practical guidance". Aggravating these shortcomings is the failure of the international community and the Afghan government to prioritize respect for human rights and the rule of law. Instead, both have focused on short-term political stability and the conflict against the Taleban and other anti-government groups, often through counter productive strategies of relying on ostensibly pro-

government warlords and corrupt officials. These failures provide a strong propaganda tool to the Taliban and other anti-government forces and help explain the ongoing instability that exposes thousands of Afghans to increasing violence and prevents millions from enjoying key human rights, such as access to food, shelter, health care and education.

The Afghanistan Compact identified “governance, rule of law and human rights” as one of the three pillars of Afghanistan’s development and its preamble affirmed a shared commitment to “*work towards a stable and prosperous Afghanistan, with good governance and human rights protection for all under the rule of law*”. The Afghan government and its international supporters have not achieved this goal yet. To satisfy the promises made in the Compact to the Afghan people, the Afghan government and its international partners must act immediately to meet these benchmarks.

In preparation for the Paris conference, the Afghan government has set forth a new US\$50 billion plan that focuses on strengthening the Afghan government so it can deliver improved governance, better security and economic development. This new Afghanistan National Development Strategy is more realistic and detailed than its predecessors, but it is still short of specific, credible benchmarks.

Amnesty International calls on the international community and the Afghan government to use the Paris Conference to improve the proposed development strategy and offer a factual and transparent assessment of what they have achieved and, more important, what challenges they face and how they will realistically meet their commitments to the Afghan people. In particular, Amnesty International urges the Afghan government and international community to move forward in achieving the Compact benchmarks in the following key areas:

### **1. Reform the justice system and establish rule of law**

Amnesty International welcomes progress in drafting and promulgating new laws; the training of several hundred judges and prosecutors; introducing representation of defendants by defence lawyers; and the creation of a national bar association. However, the Afghan judiciary suffers from systemic corruption and a lack of qualified judicial personnel across the country and remains susceptible to pressure by public office holders and armed groups affiliated with the government. Trials are marked by procedures that fail to meet international standards of fairness, including violations of the right to call and examine witnesses and the denial of defendants’ rights to legal defence and access to information. The JCMB’s January 2008 Status Update stated “there is a marked absence of a supporting environment for autonomy of the judges in making rules”. The JCMB criticized the Afghan government for not exhibiting the political will necessary to combat corruption and ensure proper behaviour in the judiciary.

As one of their interim benchmarks, the Afghan government and international donors agreed to create a “senior appointments mechanism” by February 2008 to ensure greater respect for the rule of law and improve the Afghan government’s sagging legitimacy. This mechanism would cover “all senior level appointments to the central government and the judiciary, as well as for provincial governors, chiefs of police, district administrators and provincial heads of security”, according to the JCMB. But the JCMB’s January 2008 Status Update reported that the “mechanism” has not progressed much beyond developing terms of reference, and that the JCMB itself “has not been consulted since its formulation

except on the appointments of Deputy Ministers and on a couple [sic] occasions in the appointment of governors.”

The Afghan National Police (ANP) is poorly paid and trained and notorious for corruption and abusive behaviour. According to the JCMB, the Task Force on the Quality and Structures of the ANP (comprised of the Afghan Ministry of Interior, the EU policing authority, the UN Assistance Mission to Afghanistan, the Combined Security Transition Command – Afghanistan, and the US Embassy) recognized the ANP’s low public standing and lack of professionalism. A January 2008 review of the police force recommended “the establishment by the Mol [Ministry of Interior] and international community of a permanent joint body to oversee the vetting of police candidates and to review key leader performance”. The review also recommended “an external oversight mechanism to receive complaints, evaluate standards of service and sustain public dialogue”. Amnesty International welcomes these recommendations, but stresses that they highlight a significant failure of the international community to carry out its promises to the Afghan people.

The Afghan intelligence service, the National Directorate of Security (NDS), faces credible allegations of abusing detainees and operating secret detention facilities. Amnesty International has reported on dismal conditions in official detention facilities, in particular outside Kabul. Even in Kabul, the JCMB’s January 2008 Status Update characterized Pul-i Charkhi prison as “the most problematic” and asserted that “each of its wings has four to five hundred prisoners living in abysmal conditions but the promised assistance is not coming”.

The conduct of international military forces, in particular the United States, helps aggravate a climate of impunity. US forces continue to detain Afghans without clear legal authority and without adequate legal process. Hundreds of Afghans remain in detention at the US base at Bagram airport without facing a proper trial in “security internment” of indefinite length. People captured by International Security Assistance Force troops and handed over to the Afghan authorities are at risk of torture and other ill-treatment while in Afghan custody, particularly the custody of the NDS. Detainees have little recourse to the law, and government officials, particularly in the NDS, violate Afghan and international law with impunity.

In order to satisfy the benchmarks on rule of law and justice sector reform, Amnesty International urges the Afghan government to:

- Implement a clear and transparent mechanism (as outlined in the January 2008 JCMB report) to prevent the appointment of candidates with records of human rights abuses to senior levels of the central government and the judiciary, as well as for provincial governors, chiefs of police, district administrators and provincial heads of security;
- Enact and implement legislation criminalising torture or cruel or inhumane treatment, allowing for prosecution of those responsible for abuse, and providing reparations to any victims;
- Ensure that all detainees are brought promptly before a judge, and are either charged with a recognisable criminal offence and remanded by an independent, civilian court or else released;

Release prisoners that have served their sentences. Accurate prison registers would help identify such prisoners. All registers should clearly distinguish between pre-trial detainees and sentenced prisoners;

Regulate the NDS through legislation that prohibits the NDS from detaining prisoners, and allows independent human rights monitoring of all detainees, including by the Afghan Independent Human Rights Commission, with access to all places of detention and all detainees;

Immediately create a permanent Afghan-international body to oversee vetting of police candidates, as recommended by the Task Force on the Quality and Structures of the ANP, particularly to ensure that no candidates with records of human rights abuses are appointed to senior positions;

Establish an effective, adequately resourced and independent police ombudsperson as a priority, in keeping with the recommendations of the Task Force on the Quality and Structures of the ANP. This body must have the authority to investigate complaints against the police, including complaints of human rights violations perpetrated by the police and of police failure to investigate other human rights abuses;

Incorporate international human rights and humanitarian law standards as an integral and permanent component of police training. Ensure that training in such standards is practical, including proper procedures for arrest and detention, the appropriate use of force when it is necessary, and the interrogation of criminal suspects without recourse to torture or other ill-treatment in any circumstances;

Re-instate the de facto moratorium on the use of the death penalty that remained in place until October 2007, as a first step toward the total abolition of the death penalty.

Amnesty International calls on the international community to:

Ensure separate training programmes for judges, prosecutors and defence lawyers, including training in human rights.

In particular, Amnesty International calls on the United States government to:

Grant all Bagram detainees access to legal counsel, relatives, doctors, and to consular representatives, without delay and regularly thereafter;

Grant all Bagram detainees access to the courts to be able to challenge the lawfulness of their detention. Presume detainees captured on the battlefield during international conflicts to be prisoners of war unless and until a competent tribunal determines otherwise, in which case detainees should face trial or be released.

## **2. Combat impunity for past and present human rights violations**

Impunity for human rights violations undermines the delivery of justice, security and stability in Afghanistan. During nearly three decades of conflict, the Afghan people suffered gross violations of international human rights and international humanitarian law, including massacres, indiscriminate bombings and enforced disappearances. None of those responsible for these crimes, ranging from the time of the Communist government, through the civil war of the early 1990s and the rule of the Taliban, have been brought to justice. The Afghan Independent Human Rights Commission has documented the Afghan people's desire for a transitional justice process that will uncover the facts of their recent history and help them come to grips with it. The prominence in the Afghan government and parliament of several key figures accused of serious human rights violations significantly diminishes the government's legitimacy. Providing transitional justice plays a crucial role in the political process and in ongoing reforms in justice, security, and governance sectors.

The December 2005 Action Plan on Peace, Justice and Reconciliation sought to address abuses of the past and promote national reconciliation. The Afghan government committed itself in the 2006 Compact Agreement to implement the Action Plan, "with the support of the international community". The action plan encompasses five measures: (1) acknowledgement of the suffering of the Afghan people; (2) ensuring credible and accountable state; (3) truth-seeking and documentation; (4) promotion of reconciliation and national unity and (5) establishment of effective and reasonable accountability mechanisms.

Little headway has been made in these five key areas. The JCMB'S January 2008 Status Update admitted that "there has been little progress in the implementation of the Action Plan on Peace, Reconciliation and Justice. The three-year timeframe for the implementation of the Action Plan comes to a close at the end of 2008. Given the limited progress to date, full compliance with all the key action points is in serious doubt." Specific elements of the plan have been given little support by the government, such as Action point 2, which sought to set up an advisory panel to help the president vet senior political appointments outside the scope of the Civil Service Commission. Action point 5, addressing criminal accountability for war crimes, was undermined by the passing of the March 2007 Amnesty Bill, which sought to provide immunity from prosecution to suspected war criminals.

Amnesty International calls on the Afghan government and international supporters to:

- Implement all the recommended activities set out in the Transitional Justice Action Plan, within the agreed time-frame;
- Establish an Advisory Panel for Appointments, as set out in Action Point 2 of the Transitional Justice Action Plan, to bar those accused of having committed war crimes or serious human rights abuses from being appointed as government officials;
- Suspend all officials suspected of having committed war crimes or serious human rights abuses from government duty pending investigation;
- Formulate a truth-seeking mechanism to support and accelerate efforts to document past human rights in Afghanistan alongside any judicial proceedings;

In advance of the Presidential elections (2009) and parliamentary elections (2010), vet candidates with questionable human rights records and links to armed groups, militias and the drug trade;

Enact legislation that implements the Rome Statute of the International Criminal Court and allows the state to fully co-operate with the International Criminal Court.

The organization also calls on the international community to:

Earmark funding to the 2005 Action Plan on Peace Justice and Reconciliation to help realise the recommended activities;

Provide technical support and train forensic experts to enable Afghan officials to document past human rights abuses and prepare for judicial proceedings;

Investigate and where there is sufficient admissible evidence, prosecute, in fair trials without recourse to the death penalty, persons found in their territories suspected of crimes under international law. If states are not willing to investigate or prosecute such persons, they must extradite suspects to states that are able and willing to do so or surrender such persons to international criminal courts.

### **3. Protecting and upholding women's rights**

Amnesty International welcomes advances in respect for women's rights since the fall of the Taleban, notably through the establishment of the Ministry for Women's Affairs, the National Action Plan for Women, improved access to education and representation of women in parliament. But Afghan women and girls still encounter discriminatory laws, policies and practices, which include physical attacks on them as women. Women and girls face endemic domestic violence, trafficking, forced marriages, including child marriages, and being traded in settlement of disputes. The police, the courts and other justice sector officials seldom address women's complaints of abuses, including beatings, rape and other sexual violence. Women victims and defendants have little recourse to justice and are discriminated against in both the formal and informal justice systems.

The general benchmark on gender outlined in the Afghanistan Compact states that: "By 20 March 2011, the National Action Plan for Women in Afghanistan will be fully implemented; and in line with Afghanistan's Millennium Development Goals, female participation in all Afghan governance institutions, including elected and appointed bodies and civil service, will be strengthened". In May 2007, the JCMB announced that it had conducted training sessions for women parliamentarians, provincial council members, and senior civil servants, and promised the creation of a Gender Studies Institute at Kabul University by mid 2007. The JCMB also committed to "re-doubling efforts" to recruit women civil servants, but as of the time of publication it is unclear to what extent this promise has been fulfilled.

In addition, a further Compact benchmark on women states that: "By end-1389 (20 March 2011), the number of female-headed households that are chronically poor will be reduced by 20% and their employment rates will be increased by 20%." To date little progress has been made in the advancement of the status of women, according to the status reports provided by the JCMB. The Ministry of Women's Affairs reported back to the JCMB that it could not meet this benchmark due to the lack of baseline data

to measure progress. In response, in May 2007 the JCMB announced a “comprehensive study on the situation of chronically poor women has started and will be completed by August 2007”. The JCMB has not provided public data to indicate whether this study has been completed.

Women and girls also face serious obstacles to social progress, notably in education and health. Six years on since the ousting of the Taleban only 35 per cent of girls attend school and according to the UN Development Programme 2007 Afghanistan Human Development Report “only an estimated 12.6% of women are literate, compared to 32.4% of men”. In the south and south east, lack of access to education for women and girls is compounded by the security situation – many girls and women face risk of serious injury and death for attending a school or teaching in one. With hundreds of schools closing in the southern provinces owing to the security situation, many are denied their right to education. According to the UNDP report, Afghanistan also has one of highest maternal mortality rates in the world, with an estimated 1,600 deaths per 100,000 live births.

Amnesty International calls on the government of Afghanistan and its international partners to:

- Evaluate the adequacy of current levels of funding and resources to improve educational programmes for women and girls, and to ensure access to health facilities and health practitioners, including skilled midwives, in order to reduce maternal mortality in Afghanistan;
- Provide adequate funding and resources to increase the capacity of the Ministry of Women’s Affairs and its provincial offices to ensure that it is able to implement, co-ordinate and monitor the National Action Plan for Women across the country;
- Provide adequate funding and resources to strengthen the reform of the criminal justice system including comprehensive training of the judiciary and police in order to implement international law and standards which promote and protect the rights of women;
- Ensure that laws protecting women and girls are not circumvented through parallel legal systems and traditional practices;
- Ensure that women and girls have equal input into all shared reconstruction projects.

Amnesty International calls on the Afghan government to:

- Improve the participation of women in all Afghan governance institutions, as required under the Compact benchmark;
- Recruit and train women police officers(including interrogators), prosecutors and judges in sufficient numbers so that women officers are ideally present whenever women are arrested and detained and, at a minimum, when interviewed by the police or prosecutors;
- Investigate promptly, impartially and thoroughly all murders, attempted murders and apparent suicides of women, with a view to bringing to justice all those responsible for acts of violence against women, including members of *jirgas* and *shuras* (local assemblies) that may have ordered the crimes;
- Modify or abolish existing laws (such as the Penal Code), regulations, customs and practices which discriminate against women in family matters. In particular ensure that women are given unqualified legal equality with men in law and in practice in respect of: the right to freely

choose a spouse; to enter into marriage only with full and free consent; and equal rights and responsibilities during marriage and its dissolution;

Explicitly define the following forms of violence as criminal acts: violence occurring in the family against women and girls, including sexual violence; the giving of girls and women in marriage as a means of dispute resolution forcing men or women to marry against their will; involvement in the marriage of children under age 18; and rape, including marital rape and rape of children; Publicly support the work of NGOs working to provide assistance and shelters to women at risk and to fund and support measures that will enable women to live free from violence, such as programmes of civic education;

Increase women's access to health services and seek to eliminate the social and cultural factors, including poverty, illiteracy and lack of female health professionals, to reduce maternal and infant mortality in Afghanistan.

#### **4. Strengthening freedom of expression**

The Compact Agreement stated that “the exercise of freedom of expression, including freedom of the media, will be strengthened” by 2011. But advances in freedom of expression have been seriously eroded over the past year. Journalists and media workers have come under increasing threats and attacks by state and non-state actors. Most recently on 7 June 2008 Abdul Samad Rohani an Afghan journalist working for the BBC in Helmand province was abducted and found shot dead the next day in the provincial capital Lashkar Gah. The Taliban have denied responsibility for his death. In June 2007, unknown gunmen shot and killed Zakia Zami, a female director and journalist of the private radio station Radio Peace in Parwan province. She had been critical of local warlords, who had warned her to close the station. She was shot seven times at her home while sleeping alongside her children.

The government, in particular the NDS and the Ulema Council (Council of religious scholars), have attempted to reduce the media's independence. In June 2006, the NDS issued a directive demanding that media outlets restrict their reporting activities, including an impermissibly vague restriction on coverage that is “against the national interest.” University student and journalist Perwiz Kambakhsh was sentenced to death on a charge of blasphemy by a provincial court in Mazar-e Sharif in Balkh province on 22 January 2008, for allegedly downloading material from the internet that examined the role of women in Islam. His case has had a chilling effect on other journalists. Amnesty International is also concerned at further reports of harassment of journalists by government officials. In 2007, the NDS detained Kamran Mir Hazar, editor of an online news website, *kabulpress.org*, apparently for publishing articles critical of the government's performance. In April 2007, at the instruction of the Attorney General Abdul Jabit, police officers raided the offices of Tolo TV, to arrest journalist Hamed Haidary as well as the station head, for “incorrectly” reporting Jabit's words in a news bulletin. These incidents suggest a growing trend of government intolerance towards criticism of its performance and abuse of government power to suppress media freedom and the right to freedom of expression in general.

Media freedom in Afghanistan could be further restricted by a revised media law that currently awaits President Karzai's approval. It contains several ambiguous provisions that could be used to restrict freedom of expression far beyond restrictions allowed under international human rights law, including a prohibition on content that is contrary to the principles of Islam. The new law also introduces an element

of government censorship and vetting in that it requires international and inter-governmental agencies to obtain prior approval from the Ministry of Culture before they publish material.

Amnesty International calls on the Afghan government to:

Ensure that all attacks on journalists, human rights defenders and others exercising their right to freedom of expression are investigated, and those suspected of committing them are prosecuted in proceedings trials that conform to international standards of fairness and without recourse to the death penalty;

Repeal or amend those provisions of the revised media law currently before President Karzai that restrict freedom of expression in violation of Afghanistan's constitution and international obligations.

As a matter of urgency, Amnesty International calls on President Karzai to pardon Perwiz Kambakhsh who was sentenced to death in January 2008 following an unfair trial.

Public Document

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