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OPEN LETTER TO PARTICIPANTS IN THE INTERNATIONAL CONFERENCE ON RECONSTRUCTION ASSISTANCE TO AFGHANISTAN

As the International Conference on Reconstruction Assistance to Afghanistan meets in Tokyo on 21 and 22 January 2002 to support the task of institution building and reconstruction in Afghanistan, Amnesty International urges that human rights protection, verification and rebuilding the rule of law are given a central place from the outset. Decisions on development assistance should be taken in the light of human rights considerations and aid and technical assistance programs should be directed towards human rights protection and sustainable human rights institution building.

Afghanistan's needs for rebuilding its physical infrastructure are acute. The country has been ravaged by over two decades of war, during which its physical infrastructure has been destroyed. The priority of the international community must be concerned with rebuilding Afghanistan, as well as creating conditions in which economic activity can start again. Previous experience has shown that for rehabilitation and recovery to be achievable it must be undertaken within a climate of respect for the rule of law. This requires fostering a culture that respects human rights and creating a strong and independent judiciary and judicial institutions.

One of Amnesty International's principal recommendations is therefore for adequate resources to be made available immediately to establish an effective and independent criminal justice system to ensure:

1. independence of the judiciary
2. adequate detention facilities
3. establishment of a civilian police force
4. the combatting of impunity

Establishing an effective and independent criminal justice system

Amnesty International urges those attending the meeting in Tokyo to consider providing resources and expertise to ensure the rapid development of an effective and independent criminal justice system that conforms to international standards. An effective criminal justice system should protect the rights of suspects at all stages of the proceedings. Essential to the establishment of such a system are an independent judiciary, a professional civilian police force, and detention facilities all of which conform to international standards.

Adequate personnel and financial resources should be urgently provided to create an independent and impartial expert commission to advise on how to rebuild the criminal justice system in line with international human rights standards. That expert commission should also advise on the

mechanisms best suited to address past human rights abuses, the abuses committed during the present conflict, and abuses taking place during the transitional period. It should include members with specific expertise in women's rights and could benefit from international expertise.

Independence of the judiciary

As recognised in the Bonn Agreement, an independent and impartial judicial system is a fundamental guarantor of the rule of law¹. Legislative guarantees for judicial independence should be complemented by the establishment of policy and practice for securing and promoting independence. Key elements must include an impartial selection procedure and security of tenure protected by law to ensure that judges are protected from political, economic and other pressures, comprehensive and mandatory training for judges, prosecutors, criminal defense lawyers and other legal professionals, an independent and impartial judicial oversight mechanism, and Codes of Ethics based on the international standards for judges, prosecutors and lawyers. Measures should be taken to ensure that suitable persons with the necessary qualifications and of high moral character, impartiality and integrity are selected for judicial office.

Donors could offer to contribute financial and technical resources to training programs, and could use their policy dialogue with the government to stress the creation of an independent judiciary. An early assessment of the training needs of judges, prosecutors and other legal professionals should be made. This training should be comprehensive and mandatory and incorporate substantive areas on international human rights standards relating to fair trial as well as on the practical application and interpretation of international law including human rights law.

Donors should provide resources and technical expertise for the establishment of a judicial oversight body, including legal and human rights experts, to monitor and publicly report on the functioning of the judiciary, and to recommend action required to improve and reinforce the competence, independence and impartiality of the judiciary.

Adequate detention facilities

Measures are needed to ensure that all detention and prison facilities meet with basic standards for the treatment of prisoners². This should include the separation of different categories of prisoners, including men and women, detainees awaiting trial and untried and convicted prisoners. Female guards should be provided for female prisoners. Detention and imprisonment of children should be avoided if possible, but if it proves necessary, special facilities should be provided.

Donors should offer to assist in the design and funding of a regular independent monitoring and program of unannounced visits to places of detention. This is an important safeguard against torture and ill-treatment, and can be instituted in cooperation with non-governmental organisations (NGOs). Resources must be committed to the training of all officials involved in the custody, interrogation or treatment of prisoners, which makes it clear that torture and cruel and inhuman or degrading treatment or punishment are criminal acts. The training programs must include a strong human rights component, including a gender component.

The establishment of a civilian police force

A human-rights based approach should be the basic philosophy of policing in Afghanistan,

¹ See UN Basic Principles on the Independence of the Judiciary

²including those contained in the UN Standard Minimum Rules for the Treatment of Prisoners, the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the UN Standard Minimum rules for the Administration of Juvenile Justice

implemented through training, the creation of a Code of Ethics and the establishment of an independent monitoring body, for which resources must be made available.

Resources must be committed to the recruitment and training of Afghan police officers, and donors with experience in this area should make funding and technical expertise available. Members of the new police force should receive training in international human rights standards as part of their training and emphasis should be placed on the practical implementation of these standards for policing, including proper procedures for arrest and detention, and the importance of acting independently of political considerations. Particular attention should be paid to eradicating the use of torture and cruel, inhuman or degrading treatment or punishment and extrajudicial executions³. Special training should be provided to police enabling them to deal sensitively with issues of violence against women. A civilian police force should include female police officers to safeguard the rights of women who come into contact with the justice system - whether as suspects, victims, witnesses or relatives of suspects.

Amnesty International also considers it essential that resources are made available to create an independent monitoring mechanism to appraise the performance of police officers and to receive and investigate complaints promptly, effectively, independently and impartially. The mechanism should have the ability to act upon its findings and take steps to intervene when problems are identified.

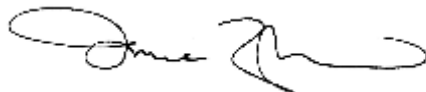
Combatting impunity

To build a future for Afghanistan based on justice and rule of law, responsibility for past abuses must be addressed. There must be a clear break with the past, in which a climate of impunity has persisted and encouraged further abuses. Donors should provide appropriate technical and financial support for strengthening the mechanisms for conducting full and impartial investigations into serious abuses of human rights and international humanitarian law and bringing those responsible to justice. The issue of impunity should be addressed in policy dialogue with Afghan authorities.

Technical and financial assistance should also be provided to NGOs involved in monitoring and investigating past and present abuses, and assisting victims thereof. Strengthening ties between donors and civil society organizations can also serve to increase monitoring and communication, which can provide early warning of, and effective response to, human rights abuses. They can assist with the establishment of systems to provide reparations to victims of human rights abuses, including medical and other counselling to victims of torture.

Amnesty International urges that these recommendations will be addressed by governments and international bodies participating in the Tokyo conference when discussing the reconstruction of Afghanistan.

Yours sincerely



Irene Khan
Secretary General

³Training of police should include training in the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. Training in the application of non-violent means of carrying out their duties, using force or firearms only as a last resort, is essential.