

AFGHANISTAN

Open letter to President Karzai regarding Amnesty International's recommendations for the rebuilding of the criminal justice system

12 July 2002

Dear President,

As you take up the office of President of the Transitional Administration in Afghanistan I would like to offer you Amnesty International's recommendations on priority areas for human rights protection in your country. Amnesty International hopes this will be the first step in establishing a constructive dialogue with your government concerning human rights in Afghanistan. The history of human rights abuse in Afghanistan is well known and, during your tenure, I hope that your government will take firm steps to improve the situation. Amnesty International would particularly like to draw your attention to the interrelated issues of impunity, accountability, and the reconstruction of the judicial system, which are essential to establish the rule of law and the protection of human rights in Afghanistan.

Amnesty International is a non-governmental organization with a worldwide membership of over one million people in 140 countries. It works to promote the human rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. Amnesty International is impartial and independent of any government, political persuasion or religious creed. We do not support or oppose any government or political system, nor do we support or oppose the views of the victims whose rights we seek to protect. During a visit to Afghanistan in March, our delegates had constructive meetings with members of the Interim Administration, and we hope that we will have an opportunity to meet with officials from your administration in due course to discuss the human rights situation in Afghanistan.

We call upon you to:

1. End impunity

During more than 23 years of armed conflict in Afghanistan a lack of accountability of the various armed groups and government officials perpetuated an environment in which human rights abuses were widespread. To build a future for Afghanistan based on justice and rule of law, responsibility for past violations must be addressed.

2. Establish Criminal Justice System according to international standards

In order to guarantee accountability for the perpetrators of human rights abuses, and to ensure that past abusers are held to account, Amnesty International urges the Transitional Administration to ensure the rapid development and implementation of a fully functioning criminal justice system that conforms to international law and standards relating to human rights.

Four of the elements essential to the establishment of such a system are an independent judiciary, a professional civilian police force, guarantees of the right to a fair trial, and adequate detention facilities. The task of developing and implementing this system must be undertaken at the outset of your administration as it is central to the effective protection of human rights.

3. Ensure an independent and impartial judiciary

As recognised in the Bonn Agreement⁽¹⁾, an independent and impartial judicial system is a fundamental guarantor of the rule of law. Key elements must include the selection of candidates according to professional expertise and security of tenure, comprehensive and mandatory training for judges, prosecutors and other legal professionals, an independent and impartial judicial oversight mechanism, and the implementation of codes of ethics for judges, prosecutors and lawyers. Amnesty International welcomes the Chief Justice's statement that the judiciary is independent,⁽²⁾ but urges that the key elements set out in detail in the United Nations Basic Principles on the Independence of the Judiciary are fully implemented in order to ensure such independence. Legislative guarantees for judicial independence should be complemented by the establishment of policy and practice for securing and promoting independence.

4. Policing

Amnesty International recommends that a comprehensive attempt be made to make a human-rights based approach the philosophy of policing in Afghanistan through training, a code of ethics and the establishment of an independent monitoring body. We believe that members of the new police force should receive training in international human rights law and standards and that emphasis should be placed on the practical implementation of these standards for policing. Amnesty International also considers it essential that mechanisms are established to appraise and monitor the performance of police officers and to receive and investigate complaints.

5. Prisons

Amnesty International urges that the Transitional Administration ensures humane conditions of imprisonment in all prisons in Afghanistan. All detention and prison facilities should meet with minimum international standards for the treatment of prisoners.(3) This should include provision for the separation of different categories of prisoners, including men and women, and untried and convicted prisoners. Amnesty International is concerned at reports that conditions in Shibarghan prison in particular fall considerably below minimum acceptable standards, and urges that improvements be made as a matter of urgency.

6. Rights of suspects

An effective criminal justice system should provide redress to victims and bring to justice suspected perpetrators in a manner which protects the rights of suspects at all stages of the proceedings. The Transitional Administration is responsible for ensuring that procedures and practice comply with international law and standards and that the rights of detainees and prisoners are fully respected. This responsibility includes ensuring that suspects are treated in accordance with the highest possible standards of fairness enshrined in international standards.

7. Human Rights Commission

Amnesty International welcomes the establishment of the Independent Afghan Human Rights Commission. The organization believes that this Commission will be fundamental to the promotion and protection of human rights for all people in Afghanistan, and is essential in order to address past abuses and promote protection in the future. For the Commission to function properly and effectively it is vital that a criminal justice system that adheres to international standards is established as a priority, so that recommendations regarding the elimination of impunity and fair administration of justice made by the Commission are implemented effectively. The two institutions, the Commission and the criminal justice system, should work on a complementary basis.

8. Address human rights abuse

I would also like to draw your attention to Amnesty International's concerns regarding recent reported human rights abuses, notably alleged intimidation, attacks and killings that have been reported during the *Loya Jirga* process. There have been several reports that voters and candidates were intimidated by the use of threats, beatings, imprisonment and other tactics of intimidation. According to reports, at least eight people were killed during the delegate selection process; four people in Kandahar, one in Kabul and three in the central province of Ghor. In order to break from the past, in which a climate of impunity prevailed, it is essential that these killings are investigated and that those responsible are held to account.

In Herat province, several candidates were arbitrarily detained and many others reportedly harassed and threatened. A United Nations spokesman cited "a number of incidents of intimidation" in several districts of Herat. In the provinces of Nimruz and Badghis, potential candidates have reportedly been detained without charge, and there have been reports of as many as 300 men arbitrarily arrested in order to prevent their participation as candidates in the *Loya Jirga*. Amnesty International urges that a full investigation is undertaken into all reports of violations and abuses in order to bring the perpetrators of these acts to justice.

Amnesty International was pleased to note the Interim Administration's request that all abuses should be reported to them in order that "such people may be brought to legal account and punished"(4). The organization urges that the Transitional Government follows this up by establishing full investigations into all allegations of threats, harassment and killing. The results of these investigations should be made public, and all those found responsible be held to account.

The recent killing of vice president Haji Abdol Qadir in Kabul underscores the essential need for the rapid development and implementation of an effective criminal justice system that conforms to international law and standards. Amnesty International notes the Transitional Administration's promise to hold to account those responsible for the killing of vice president Haji Abdol Qadir in Kabul, and again urges that this statement is followed by a full investigation, the results of which should be made public. This is essential to bring to an end the climate of impunity that has previously pervaded in Afghanistan.

Amnesty International urges you to focus on human rights and particularly the establishment of an effective criminal justice system as central to the future of Afghanistan. To that end, I look forward to a constructive dialogue with the Transitional Administration in the coming 18 months.

Yours sincerely

Irene Khan
Secretary General

(1) Agreement on provisional arrangements in Afghanistan pending the re-establishment of permanent government institutions.

(2) BBC 22/6/02 "Afghan Chief Justice says judiciary is independent in Afghanistan."

(3) This includes those contained in the UN Standard Minimum Rules for the Treatment of Prisoners, the

UN Body of Principles for the Protection of all person under Any Form of Detention or Imprisonment and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)

(4) BBC 9/5/02 "Afghans urged to inform government of abuses in Loya Jerga elections"