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Afghanistan: Justice and rule of law key to Afghanistan's future prosperity

Amnesty International calls on the government of Afghanistan and its international partners ahead of the Rome Conference to "seize" the moment and reaffirm their commitment to a long-term comprehensive, sustainable and strategic plan for reform of the justice sector and establishing the rule of law, so as to ensure that the human rights of all Afghans are respected, protected and fulfilled.

Amnesty International acknowledges steps that have been made in rebuilding the country's legislative infrastructure and its health and education sectors. However, the ongoing failure of the Afghan government to uphold the rule of law and effectively guarantee fair and transparent justice which meets international standards is impeding the country's progress, contributing to increased insecurity, poor governance, corruption, a burgeoning illicit drugs trade and widespread human rights violations being committed with impunity. In a vicious cycle, these factors in turn serve to undermine further the administration of justice and the rule of law.

Amnesty International is particularly concerned at the failure of the Afghan government to ensure protection of women's rights, including justice for women whose rights were abused. The October 2001 international military intervention was accompanied by a clarion call to protect Afghan women's human rights. However, today, the police, the courts and other justice sector officials seldom address women's complaints of violence, including rape and other sexual violence. Women victims and defendants have little recourse to justice and are discriminated against in the both the formal and informal justice systems.

In addition, Amnesty International is increasingly concerned that national bodies such as Afghanistan's intelligence agency the National Security Directorate (NSD), and provincial governments, who are charged with maintaining the rule of law are reportedly carrying out human rights violations, beyond the reach of justice. The NSD's mandate remains opaque as the Presidential Decree which set out its mandate remains classified. In practice, the NSD appears to have an extensive mandate that includes detaining, interrogating, investigating, prosecuting and sentencing persons alleged to have committed crimes against national or international security. That these functions are not separated clearly violates the human right of suspects to a fair trial, ensures impunity for perpetrators of human rights violations and undermines the rule of law. Amnesty International is deeply concerned at credible reports received about torture and other ill-treatment of detainees carried out by NSD officials.

In this context, Amnesty International is alarmed that under agreements between the Afghan government and NATO-contributing states, including Canada, the UK and the Netherlands, persons detained by NATO International Security Assistance Forces are being turned over to the NSD. Both international humanitarian and human rights law prohibit in all circumstances handing over persons to the authorities of states where there is a risk of them being tortured or otherwise ill-treated or persecuted.

There appears to be little or no effort on the part of the Afghan authorities to reform the NSD, ensure that its operation is properly regulated in transparent legislation which limits its powers to those which an arm of the Executive branch may legitimately hold, and put an end to human rights violations by NSD officials.

Other serious failings that continue to hamper the delivery of effective justice and rule of law in Afghanistan include:

- a judiciary with unqualified judicial personnel, susceptible to external pressure;
- a poorly trained, poorly paid police force, susceptible to external pressure;
- the threat to judicial independence by pressure from armed groups, persons holding public office, warlords and private individuals;

- unfair trial procedures, including violations of the right to call and examine witnesses and the denial of defendants' rights to legal defence and access to information;
- lack of confidence in or access to the formal justice system resulting in reliance on informal justice systems, especially in rural areas;
- a continued culture of impunity, notably the passing of the February 2007 Amnesty Bill, which absolved the Afghan government of responsibility to bring to justice suspected perpetrators of past human rights violations and crimes under international law, including war crimes and crimes against humanity.

Amnesty International fears that the government of Afghanistan and its international partners are failing to meet the benchmarks on justice and the rule of law set out in the 2006 Afghanistan Compact, including lack of sufficient progress on the rehabilitation and reform of the justice system by 2010 and implementation of the 2005 National Action Plan on Peace and Reconciliation and Justice by 2008. In order to accelerate progress, Amnesty International, as a matter of urgency, calls on the Government of Afghanistan and its international partners to co-ordinate efforts to reform the justice sector and establish the rule of law and provide sustained financial support that will result in meaningful change.

Amnesty International believes that long-term security and development in Afghanistan will only be achieved in a climate in which human rights and the rule of law are respected. This can only be assured if access to justice – and the administration of justice in accordance with international human rights law and standards – are guaranteed for all. The Rome Conference provides a unique opportunity to develop a comprehensive reform plan to realise these two essential goals.