

Afghanistan

Police reconstruction essential for the protection of human rights

Introduction

“the true and patriotic police officer is the friend of the people. People always approach them to get rid of oppression. If police officers do not have these qualities people would rather prefer to live under oppression and injustice rather than going to the police since they know that applying to the police will bring them additional problems.” President Karzai speaking on Radio Afghanistan, 21 November 2002.

Afghanistan has been devastated by over 23 years of armed conflict. Civil society is fragile, and the lives of all Afghan people have been affected by many years of war. The only way to make a break from the past, a time when human rights in Afghanistan were routinely abused, is to establish the rule of law, with the protection of human rights at its centre. However, the institutions essential to implement the rule of law and to protect human rights are weak. The reconstruction of a professional police force, as an important enforcement mechanism for the rule of law across the country, needs urgent attention and must be made a priority by the Afghan authorities with the firm support of the international community.

The effective deployment of a policing service in a manner that respects human rights is one of the key means through which a state can fulfil both its obligations towards its own citizens and its international obligations. “Police agencies that operate effectively, lawfully and humanely are essential elements in securing a social order for all human rights to be realized.”¹

Amnesty International recognises that the task of rebuilding the police force in Afghanistan is extremely difficult. To date, there has not been enough support for the police, leaving them responsible for a vital job without the qualifications and basic resources to carry out their duties effectively. Rather than protecting all people in Afghanistan, some police officers are actually committing human rights violations.

Many police officers interviewed by Amnesty International talked of the police force’s role as “the ensurers of public security”, working “to serve the people”. However, there is a widespread lack of public faith in the police and, unless the problems highlighted in this report are addressed quickly, this will deepen, despite the good intentions of some police officers around the country.

Amnesty International has documented a widespread pattern of human rights violations committed by members of the police, including torture and arbitrary arrest. Extortion is

¹ Ralph Crawshaw and Leif Holmstrom, editors, *Essential Texts on Human Rights for the Police: A Compilation of International Instruments*, Kluwer Law International, The Hague, 201, p.3.

commonly practised by police officers. Human rights abuses by both state and non-state actors have also been documented. These will continue to be carried out with impunity in the absence of a functioning justice system.

Since the fall of the Taleban and the establishment of a new government in Afghanistan there have been many improvements but insecurity and instability remains.² The Afghan Transitional Administration (ATA), headed by President Hamid Karzai, in power following the holding of a *Loya Jirga* (General Assembly) in June 2002, is largely dependent on the international community to provide the financial and technical support needed to rebuild Afghanistan and its shattered infrastructure and institutions. The change in government and the process of institutional reconstruction and reform provide a unique opportunity for measures to protect human rights to be made central to all areas of the criminal justice system including the police.

The enormous task facing the ATA is to ensure protection of human rights in Afghanistan and, in particular, to ensure the implementation of measures to establish human rights based policing structures. Amnesty International urges the international donor community to increase its support to the ATA to rebuild a police force that is willing and able to protect the human rights of all. Without this, there is a danger that current problems will be further institutionalized, and the rule of law will not be entrenched, leading to a collapse of the fragile progress made.

The police in Afghanistan do not have the capacity to protect human rights. This report documents the problems facing the police, leaving them ill-equipped to carry out a policing role that upholds international standards. The report starts by looking at the legal framework for the police in Afghanistan. It continues with a focus on police training, resources and equipment, and accountability, before describing some of the human rights violations committed by some members of the police. Amnesty International then makes recommendations to address the institutional and operational difficulties facing the police that prevent them from operating according to human rights standards. This includes recommendations for the training of all police in professional skills and human rights across Afghanistan, for the provision of essential funding to enable the police to carry out their role, and for the creation of an independent police complaints commission, as well as effective

² The Taleban emerged in 1994 to disarm local power holders in Kandahar province. The group included former members of different factions who were disillusioned with the widespread insecurity and the failure of the Mujahideen to establish an Islamic state. Because most of the core group had been trained in *madrasas* run by religious parties in Pakistan, they called themselves taleban, which means students. These Taleban were joined by other fighters from different factions, including foreign fighters from Saudi Arabia, North Africa and elsewhere. The Taleban are predominantly ethnic Pushtuns. From their southern power-base, the Taleban took control of large parts of the country between 1994 and 1996, when they captured Kabul. By October 2001, the Taleban were reported to control over 90 per cent of Afghanistan, although large pockets of central Afghanistan as well as the northeast were under the control of United Front, an alliance of many parties that formerly belonged to a coalition called the Northern Alliance.

structures within the police force to help ensure accountability. Continuing and sustained support from the international community, based on international standards for police, is needed for many years in order that solid foundations are laid to ensure future stability.

Amnesty International understands that the situation in Afghanistan is currently far from reaching standards set in international laws. However, these standards are the benchmarks which all institutions concerned with protecting human rights must aspire to, and all steps must be taken to set these standards as normal practice for the future.

Amnesty International in Afghanistan

This report forms part of a year-long project by Amnesty International which focuses on the areas of policing, the administration of justice, and prisons. There is a particular emphasis on access to justice for women. Other reports will be published on the above topics over the coming year, providing Amnesty International's findings in these areas and making recommendations to the ATA and the international community.

Amnesty International established a field presence in June 2002 to provide input on human rights protection and promotion at all levels as the system is being rebuilt. Two independent researchers with expertise on policing and human rights, and on prisons joined the field presence from September to November 2002. During this time, the Amnesty International delegation carried out research across Afghanistan, visiting districts in the provinces of Balkh, Bamiyan, Herat, Hilmand, Kabul, and Kandahar.

Amnesty International is grateful for the high level of cooperation extended to its staff by many police commanders and officers, and by the German project for support of the police in Afghanistan. As well as being given the opportunity to meet with officials from the ATA, the United Nations (UN), donor governments, international and national non-governmental organizations, and many police commanders and officers, it is very appreciative of the freedom it was given to visit facilities and interview detainees. Amnesty International is particularly grateful for the often frank discussions held with members of the police. Amnesty International also wants to thank all those interviewed in detention across Afghanistan who were willing to share their stories. Throughout this report, names have been changed to protect the identity and safety of individuals. This report, while critical, is written in the spirit of cooperation and the hope that the recommendations will make a positive contribution to the present and future protection of human rights in Afghanistan.

Background

In November 2001, US-led military action in Afghanistan resulted in the departure of the Taliban government, which had been responsible for many grave abuses of human rights, including the rights of women. On 5 December 2001, the framework for a transitional process intended to lead Afghanistan towards democratic rule was established. UN-brokered talks held in Germany ended in the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (Bonn Agreement). The Bonn Agreement provided for a six month interim authority, the Interim Administration,

“intended as a first step toward the establishment of a broad-based, gender sensitive, multi-ethnic and fully representative government” that shall act in accordance with basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party. The Interim Administration was tasked with preparing an Emergency *Loya Jirga* (General Assembly) followed by a Constitutional *Loya Jirga* within 18 months.

A *Loya Jirga* is a traditional body dating from the eighteenth century in Afghanistan. The assembly, which generally meets to appoint new leadership, determine national policy, or draft a constitution, last met in 1977. Under the terms of the Bonn Agreement, the Emergency *Loya Jirga* was to “elect a Head of the State for the Transitional Administration and will approve proposals for the structure and key personnel of the Transitional Administration” and was held in June 2002 resulting in the establishment of the ATA, headed by President Karzai.

The establishment of a Judicial Reform Commission, Constitutional Commission, and Human Rights Commission was laid out in the Bonn Agreement. According to the Bonn Agreement, the Constitutional Commission is tasked with preparing a new draft constitution in preparation for the Constitutional *Loya Jirga*, to be held no later than 18 months after the establishment of the ATA, and is currently scheduled to be held in October 2003.³

The Judicial Reform Commission was set up according to a Presidential decree of 2 November 2002. Under the Bonn Agreement, its role is “to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions.” Its work includes a law reform program of compiling, publishing and distributing all laws in force; recommending draft legislation to the ATA for the proper administration of justice; and selection and training of judges, prosecutors, lawyers and law enforcement officials in Afghanistan. Reform of the criminal procedure code is one of the current tasks being undertaken by a task force within the Judicial Reform Commission.

The establishment of an independent human rights commission was also laid out in the Bonn Agreement. The Afghan Independent Human Rights Commission was set up in June 2002 by decree of President Karzai. It has a large mandate, including the investigation and monitoring of human rights abuses, overseeing a process of national consultation on transitional justice, and instituting a program of human rights education. Due to its large mandate, constraints due to lack of expertise and capacity, and a lack of support by the ATA, the AIHRC is just beginning to undertake its work. A lack of awareness of the work of national human rights institutions by members of the ATA compounds problems facing the AIHRC as many problems are being referred to them that are not within their mandate.

³ General Provision 6 of the Bonn Agreement states; “A Constitutional *Loya Jirga* shall be convened within eighteen months of the establishment of the Transitional Authority, in order to adopt a new constitution for Afghanistan. In order to assist the Constitutional *Loya Jirga* prepare the proposed Constitution, the Transitional Administration shall, within two months of its commencement and with the assistance of the United Nations, establish a Constitutional Commission.”

In December 2001 the UN Security Council authorized the deployment of an international force in Kabul and its surrounding areas.⁴ The International Security Assistance Force (ISAF), currently led by Germany and the Netherlands, is credited with increasing security in Kabul and controlling levels of violence in the capital. In the rest of the country factional fighting continues between rival power holders and crime levels are high. There have been repeated calls from members of the Afghan Interim Authority and the ATA, the Secretary-General of the UN and non-governmental organizations (NGOs) working in Afghanistan for an expansion of the geographic mandate of ISAF to cover areas outside Kabul. However, to date the contributing countries have been unwilling to support such a move.

In March 2002 the United Nations Security Council unanimously adopted resolution 1401 (2002), establishing the United Nations Assistance Mission in Afghanistan (UNAMA). On 26 March 2002 Deputy Secretary General Frechette announced that "human rights will be central to the purposes and functions of the new mission ... as it seeks to fully integrate human rights into its humanitarian, reconstruction and political activities, the rule of law and national capacity building". UNAMA was created with two 'pillars': one for political affairs, and the second one combining all humanitarian relief, recovery and reconstruction activities. Human rights was placed as a cross-cutting issue and is represented by a senior human rights advisor in the Office of the Special Representative of the Secretary-General.⁵

Despite many positive changes, there is a continuing lack of security around the country, creating a major obstacle to reconstruction. The ATA has been unable to assert control outside Kabul, where powerful regional commanders, who took part in the armed resistance to Taleban rule, continue to exert control. Many of these commanders have been incorporated into the ATA, including as commanders in the police service and in other high ranking positions. Such commanders have brought loyal Mujahideen with them into government, incorporating them directly into the police and other security forces.⁶ These men continue to act with a high degree of autonomy.

The international community played a central role in the downfall of the Taleban with US-led military action. This intervention was accompanied by a commitment to reconstruction, including financial support which is key to the reconstruction process. Over US\$4.5 billion was pledged in January 2002 at the International Conference on Reconstruction Assistance of Afghanistan in Tokyo. This amount is due to be delivered over a five year period. By the end of 2002, US\$1.8 billion had reportedly been received. Concerns have been raised by members of the ATA and NGOs that this money is taking too long to arrive, and that pledges made by donor countries have not been fulfilled. There are also fears that this amount will not be sufficient to cover the likely costs of reconstruction. In a speech in October 2001, British Foreign Secretary Jack Straw stated that, "Afghanistan's development needs will be huge. The cost of rebuilding Bosnia was \$5 billion. Afghanistan has four times Bosnia's population. ...But we have to be ready to bear the cost, because if we do not, the price we pay will be far

⁴ United Nations Security Council Resolution 1386, adopted on 20 December 2001.

⁵ There have however been continuing concerns about UNAMA's willingness and effectiveness at raising human rights concerns.

⁶ "Soldiers of Islam" used to refer to forces that fought successive Soviet-backed regimes.

greater.”⁷ In the event, half a billion US dollars less was pledged for Afghanistan than was pledged for Afghanistan.

Policing in the past

Throughout the last 23 years of armed conflict, there has been no civilian police force in Afghanistan. During the reign of former king, Mohammed Zahir Shah, in the 1960s and 1970s, there was a single police force in Afghanistan which received training from the Federal Republic of Germany and the German Democratic Republic. More recently, there has been no effective and professional police force in Afghanistan. In 1978, the People’s Democratic Party of Afghanistan (PDPA) took power in a coup, killing President Mohammad Daoud Khan, who himself had taken over from the king in a coup. The PDPA government attempted to suppress opposition through the use of repressive measures including the “disappearance” and summary execution of thousands of people. In September 1979, President Taraki, head of the PDPA government, was ousted, and the deteriorating security situation prompted military intervention from the Soviet Union in December 1979. From 1979 onwards, different armed groups controlled Afghanistan, assisted by international forces providing weapons and other support. Mujahideen forces based in Pakistan were mainly supported by the USA, while Soviet armed forces fighting in support of the PDPA grew. At this time, intelligence agencies carried out a policing role. Thousands of political prisoners were detained, held in security police detention centres, paramilitary police headquarters and sometimes Soviet military posts. They were routinely subjected to torture and ill-treatment during interrogation, including beatings, electric shocks, burning with cigarettes and sleep deprivation.

In 1989, a peace agreement (known as the Geneva Accords) was signed by governments of Afghanistan, the Soviet Union, the USA and Pakistan to settle the conflict. At this time, under the rule of the new President Najibullah, a Police Academy was established in Kabul to train new recruits to the police force. It closed after three years when, following the breakdown of the Geneva Accords, the northern Mujahideen alliance took power in Kabul. Human rights violations were widely committed with impunity, and Mujahideen groups reportedly detained, ill-treated and killed people they suspected of links with the government or rival Mujahideen groups. Armed opposition groups acted with impunity, arbitrarily detaining and torturing opponents.⁸ No institution provided protection for the rights of the people of Afghanistan.

From 1992 to 1995, the Mujahideen alliance, created by northern Mujahideen forces took power, led by President Borhanuddin Rabbani. The Mujahideen alliance was plagued by factional fighting, with parties battling for control of Kabul. In the absence of effective governance, lawlessness and fighting spread across most of Afghanistan, subjecting civilians

⁷ Speech to International Institute of Strategic Studies, 22 October 2001: “Order out of chaos: the future of Afghanistan”.

⁸ See *Afghanistan: International responsibility for human rights disaster*, Amnesty International, November 1995 (AI Index: ASA 11/09/1995).

to human rights abuses. Throughout this period, armed groups were in *de facto* control, in charge of maintaining security. No civilian police force was known to operate.

In 1996 Kabul was occupied once again, this time by the Taleban, who had gained power in several provinces from late 1994 onwards. The Taleban established the Department for the Promotion of Virtue and Prevention of Vice, known as the “Vice and Virtue Police”. This Department was an arm of the Taleban, carrying out arrests and ordering punishments, including amputations and sentencing people to death.

The reconstruction of Afghanistan following the departure of the Taleban at the end of 2001, and the installation of the new administration provides the opportunity for institutions including the police force to be rebuilt in conformity with international human rights standards.

Policing today

The founding concept of a police service is that it should serve the community not the state. Such a police service should have some basic structures to ensure that it operates effectively and in line with human rights standards. All members of a police service should be provided with human rights training which should be reviewed and evaluated. They should be provided with standard operating procedures, and their performance monitored and evaluated. The police service should be made up of civilians, accountable to the society it serves, and should be non-discriminatory and representative of the community.

Members of the police are recognised in international law as law enforcement officials and have various obligations set out in international standards. There is currently no police service in Afghanistan. Instead, approximately 50,000 people are working as police, but they are not a united, civilian police service, having often no police training or experience. Although the aim for the future should be the creation of a police service, this report refers to a police force, which is more representative of the current role of police in Afghanistan.

Much of the police force consists of former Mujahideen, who have extensive military experience but little or no professional police training or experience. Their loyalties rest with powerful regional commanders for whom they fought against the Taleban. These powerful regional commanders have been able to assert control in the provinces, filling the vacuum left by the departure of the Taleban, while the central government has effective control only in Kabul. Many of these former Mujahideen have been incorporated into the government and other power structures in an attempt to ally them to the central government. However, loyalties and allegiances to local regional commanders remain strong, and the central government as an entity does not command such loyalty. Many of the former Mujahideen have been involved in armed conflict for much of their lives, and are accustomed to acting with impunity. While there are some committed police officers, they are in the minority and their presence is insufficient to counter the overwhelming magnitude of the problems that prevent necessary police reform and professionalization.

Structure of police at a state level

It is difficult to provide a clear picture of the structure of the police throughout the country. There is a lack of clarity over the lines of command of the police structure in Afghanistan that must be addressed urgently.

In Afghan law, the police fall under the jurisdiction of the Ministry of Interior. According to Article 4 of The Law of Police and Gendarmes 1973 (Afghan Police Law), “the police office consists of Chief Commander of Police and Gendarmerie, police commander of Provinces, Gendarmerie Commandant of Provinces, local police office and other units which will be envisaged, when deemed necessary, in the organization of the Interior Ministry.”

In practice, within the Ministry of the Interior, it is unclear who is responsible for policing. At the time of research, at least five senior ranking officials held positions apparently with responsibility for policing. General Assefi was appointed as General Commander of the National Police in September 2002. Despite his title, he appears to have the least control over the police. When interviewed by Amnesty International, he admitted that he does not have authority over the police, who are loyal to local commanders rather than to central government. General Hellal, a former air force pilot, is Deputy Minister for Internal Security. He told Amnesty International that provincial commanders report to him regularly. General Salangi is the head of Kabul police, has a ten thousand strong force and holds much actual power. He has a military background. General Naseri, Special Adviser to the Minister of the Interior, also appeared to have some responsibility for policing.

General Jurat, the ‘Head of Security and Public Controls’ also holds a powerful role in Kabul, controlling his own force of approximately 4,000 police. They patrol Kabul 24 hours a day, and control checkpoints at the airport and at the gates of the city. His police force operates separately from the Kabul police force that is under the command of General Salangi. General Jurat told Amnesty International that he reports directly to the Minister of Interior.

At the time this research was carried out, the structure was further complicated as prisons were under the jurisdiction of policing in the Ministry of the Interior. On 23 January 2003 however, a decision was taken to move prisons to the Ministry of Justice.

On 28 January 2003, Ali Ahmad Jalali was appointed as Minister of Interior, replacing Taj Mohammad Wardak. The new Minister of the Interior is reported to have plans to restructure the Ministry. Amnesty International recommends that any such restructuring clarifies the roles of all those responsible for policing. A transparent chain of command structure will provide clear lines of reporting and control which are urgently required.

Structure of police at a field level

Afghanistan is divided into 32 provinces that are sub-divided into smaller administrative districts. Each district has a police commander who should report to the provincial police commander. Large cities are also divided into districts, for example Kandahar city is split into six districts. Provincial police commanders are then supposed to report directly to the Ministry of Interior.

In the provinces outside Kabul, members of the police are allied to different regional commanders. At a field level, Amnesty International was told by many centrally-appointed police commanders that they often have no effective control over the police in their district, who act with impunity. One provincial police commander told Amnesty International about the lack of control he has over 15 of the 21 officers under his supposed command. These officers are all former Mujahideen, and only six of the officers had received professional training over ten years earlier. They have their own weapons, and loyalties to local power holders. Without any consistent reporting procedures, accompanied by the inability to pay, equip or train police officers, the police commander holds no power over them.

In Kandahar, only 120 out of 3,000 officers have received any training, all of it over 10 years ago. In Bamiyan, of a 700-strong force, 350 graduated from the police academy previously, or were trained abroad, and 350 are former Mujahideen. In Karukh district, Herat province, there are 120 police, only six of whom have received training from a police training academy prior to Taleban rule.

In interviews with Amnesty International, the majority of interviewees referred to high-ranking police officers as ‘officers’ while lower-level officers were called ‘soldiers’, blurring the distinction between military and police.⁹

Other state actors carrying out a policing role

The police have the powers to arrest and detain according to the law, a responsibility that is not afforded to other state bodies or institutions. However, in Afghanistan, state actors other than the police are carrying out a policing role without any clear legal basis. This undermines any attempts by the police to establish themselves in Afghanistan. As long as other law enforcement systems are in operation, the police will not be able to enforce the rule of law, and will not have the powers to carry out their duties effectively. There should be a single, united, civilian police force across the country that is trained and equipped to carry out its duties, with effective monitoring and oversight.

National Security Directorate

The National Security Directorate (NSD), Afghanistan’s intelligence service, was established during the period of Soviet rule, and in theory reports directly to the Head of State. There are widespread reports that the NSD engages in ordinary police work at the provincial level through its local offices and uses its influence with powerful local armed groups that operate their own, unofficial “police forces”.

The legal basis for these activities is unclear. According to a member of NSD interviewed by Amnesty International, the power to arrest and detain is delegated by the central government to the NSD. Article 23 of the Criminal Procedure Law states, “When the ministries and public or private institutions resort to actions which [are] part of police duties, the written approval of [the] authorised department of police must be obtained.” However, it is not known whether police authorities have given this permission to the NSD.

⁹ Amnesty International’s use of the term ‘officer’ does not denote rank.

Members of the NSD have committed human rights violations, including arbitrary detention and torture. Indeed, one member of NSD admitted to an Amnesty International delegation that torture was being committed by NSD officers. To Amnesty International's knowledge, at least three men have been permanently disabled due to the torture inflicted in NSD detention centres.

Amnesty International spoke to the family of one man "Agha Jan" who was taken by NSD in mid-September 2002.¹⁰ Having initially been accused of possessing weapons, he was then accused of stealing office goods. Amnesty International met Agha Jan's family in mid-October 2002. He had been detained for one month, during which time he was tortured. His arms were tied behind his back. His hands and legs were tied at all times. A stick was placed between his tied arms and was used to hang him from the ceiling. While in this position, he was beaten. Amnesty International believes that the arrest was made arbitrarily in order to extort money from Agha Jan and his family. NSD had demanded a payment of 40,000 Pakistan rupees (approximately US \$690) to secure Agha Jan's release. His family are struggling to live without any income, which was lost as a result of his detention.

Recommendations

The ATA, with the support of the international community, should:

- ◆ *ensure that the National Security Directorate does not carry out arrest and detention outside its jurisdiction and that it works in conformity with the law and in consultation with the police*
- ◆ *provide an explicit guarantee in law that nobody except the police holds the powers to arrest and detain.*
- ◆ *close parallel structures of arrest and detention as a matter of priority.*

Public confidence in the police

"We want the security officers to respect the rights of the people." A slogan used in an anti-police protest in west Kabul on 1 March 2003.

On 1 March 2003, hundreds of protestors took to the streets of west Kabul to demonstrate against the local police, who reportedly attempted to assault a woman. The demonstration is illustrative of a nationwide lack of confidence in the police. A survey carried out by the NGO Action Aid in northern Afghanistan illustrated this, as nobody mentioned the police when asked who they would turn to in the event of a problem.¹¹ Instead of turning to the police, alternative judicial mechanisms may be used, which are not under the jurisdiction of the central authorities.

¹⁰ Name changed to protect the individual.

¹¹ Surveys undertaken by Action Aid, a NGO in Jowzjan, Samangan and Balkh provinces in 2002.

There is a widespread perception that the police are responsible for perpetrating human rights abuses, rather than preventing or addressing them. They are seen as lacking in professionalism and effectiveness, continuing to behave as Mujahideen. ISAF, operating solely in Kabul, is seen by many to be the only security force working to improve security and protecting people's rights in Afghanistan.

The alienation people feel in relation to the police has a negative impact on the police's ability to fulfil their proper role, as public confidence is a key to their ability to detect and prevent crime, and carry out investigations accurately and effectively.

Legal framework

The law enforcement and justice systems have been completely disrupted over the last two decades. Although the judicial system in Afghanistan is weak and laws are not being adhered to or implemented, it is vital that national legislation incorporates international human rights treaties and standards to provide safeguards protecting the human rights of all people. It may not be possible to implement international standards in policing at the current time, but it is important that the framework is laid now for the highest standards to be upheld in the future.

International obligations regarding policing

Afghanistan is a party to the following major human rights conventions

- * the International Covenant on Civil and Political Rights
- * the International Covenant on Economic Social and Cultural Rights
- * the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- * the International Covenant on the Elimination of All Forms of Racial Discrimination
- * the Convention on the Rights of the Child

It has signed but not ratified the Convention on the Elimination of All Forms of Discrimination against Women.¹²

Although Afghanistan has suffered tremendous economic and infrastructural damage over the course of more than 23 years of conflict, there are influential changes that can be made through political will; leaders can emphasize that violations of human rights will not be tolerated. The government has responsibility under international human rights law, and must take every possible step to ensure that arrangements for the policing of Afghanistan protect, rather than violate, the rights of all the people of Afghanistan.

¹² This means that although it is not bound by the terms of the Convention, Afghanistan has committed itself to its aims and is bound by international law not to do anything which conflicts with the object and purpose of the treaty. Other human rights treaties contain obligations to respect and ensure that the rights in the treaty are implemented equally for both men and women; Article 3 of the ICCPR, "The State Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant."

Many aspects of policing are governed by international standards, such as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, the Standard Minimum Rules for the Treatment of Prisoners, Rules for the Protection of Juveniles Deprived of their Liberty, Code of Conduct for Law Enforcement Officials, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. These standards have been agreed by the international community through the various United Nations (UN) bodies and all states should implement these in full.

What are the applicable laws?

Parts of the 1964 Constitution remain in force in Afghanistan while a new Constitution is being drafted. The Afghan Law of Police and Gendarmes (1973) provides the legal framework in which the police operate. There is a second closely related statute called the Afghan Law of Employment, Promotion and Retirement of Police and Gendarmes (1973). Other legislation with a direct impact on policing includes The Penal Code dating from 1976 and the Criminal Procedure Law from 1965. These key laws that the police seek to enforce themselves contain serious deficiencies leading in many cases, to a situation in which the police commit human rights violations simply by upholding domestic law. National law does contain some human rights safeguards but there are also serious gaps that need to be addressed to ensure that domestic legislation is in line with international law and standards.

The Constitution and international standards

Although there is no explicit provision providing for rule of law in the 1964 Constitution, there are many specific provisions which go a long way towards establishing rule of law in the criminal justice system. These are all contained in Article 26, and include guarantees that no one may be arrested, detained, or punished except “in accordance with the provisions of the law”. While this provides some guarantees for the rule of law, an explicit statement should be made guaranteeing the rule of law and stating that all officials must act within the law. All laws must be compatible with international human rights standards and treaties.

There is also no explicit guarantee of equal protection of the law in the 1964 Constitution. There is a guarantee of equal rights without discrimination in Article 25, “The people of Afghanistan, without any discrimination or preference, have equal rights and obligations before the law.” While this is an important provision, it stops short of explicitly providing equal protection of the law, which creates a positive obligation for the government to protect the rights of all. This is particularly important for the effective protection of the rights of women and minorities.

The Law of Police and Gendarmes (1973) and international standards

The UN Code of Conduct for Law Enforcement Officials (UN Code of Conduct) contains provisions safeguarding the human rights of all persons and stipulates that these should be incorporated into national legislation. A comparison of the UN Code of Conduct and the Afghan Police Law reveals many gaps in the domestic legislation.

Use of force and firearms

Article Three of the UN Code of Conduct requires that restrictions be placed on the use of force by law enforcement officials, who “may use force only when strictly necessary and to the extent required for the performance of their duty.” Article Three of the Afghan Police Law requires that all measures taken by the police be “legal”, “appropriate”, and “necessary” but there is no reference to the concept of proportionality. Chapter Five of the Afghan Police Law lists eight “compulsory measures” that may be used by the police in carrying out their duties.¹³ Chapter Six sets out permissible adjuncts to the use of physical force in terms of wide ranging equipment.¹⁴ Amnesty International has serious concerns about the absence of protective standards such as those contained in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (UN Basic Principles). All police equipment can be used to commit human rights violations if strict monitoring, accountability and training systems are not in place. Guidelines on restraint and proportionality contained in the UN Code of Conduct and the UN Basic Principles should be incorporated into domestic legislation as soon as possible.

The UN Basic Principles provide a framework in which police officers can resort to the use of force and firearms when there is a direct threat to life. Specific situations that allow for the use of firearms given in Chapter Six of the Afghan Police Law are broadly defined and are not based on the principle that firearms should be used only when there is a direct threat to life. Some restrictions on the use of firearms are given in the Afghan Police Law. These include a prohibition on the use of firearms against children, a prohibition where the use of firearms would endanger the public, and a prohibition on the use of firearms without notice. Specific requirements are also laid out before firearms may be used against a crowd. However, the Afghan Police Law fails to direct that firearms should be used only as a last resort, when there is a direct threat to life and all other means are exhausted.

Torture and cruel, inhuman and degrading treatment

Article Five of the UN Code requires that law enforcement officials are prohibited from inflicting, ordering, or tolerating torture or any other cruel or degrading punishment. An explicit ban on torture is contained in the 1964 Afghan Constitution, “Torturing a human being is not permissible.”¹⁵ Common excuses given by law enforcement officials to legitimise torture are cited and dismissed in Article 26 of the Constitution, upholding the standard that torture is never excusable in any circumstance. A provision also specifies that statements obtained under compulsion are not legally valid. One provision of the Penal Code makes

¹³ Article 9 of Chapter 5 of the Afghan Police Law; warning; stopping the people for determination of their identity; making one leave the location; summons; financial punishment; putting under detention; searching of persons and goods and entry and search of houses; taking goods into custody.

¹⁴ Article 19 of Chapter 6: “The authority of police to utilize means of enforcement and occasions therefore. 1. Physical strength. 2. Auxiliary means for physical strength: a) Police vehicles, b) Water hose, c) Technical obstructions, d) Police dogs, e) Police horse, f) Handcuff. 3. Weapons: a) clubs, b) sharp-edged instruments, c) firearms, d) explosive material. In using the type of enforcement means, police will take into consideration the steps arranged in this Article and use where possible the lightest means.

¹⁵ Article 26 of the 1964 Afghan Constitution.

torture a criminal offence, subject to five to 15 years' imprisonment.¹⁶ If death occurs as a result of torture, the torturer can be charged with intentional murder. The Afghan Police Law specifies in Article 31 that law enforcement officials are not obliged to carry out orders which are against the law, but does not contain an explicit ban on torture. Relevant provisions relating to torture are scattered amongst three different laws.

Corruption

Article Seven of the UN Code of Conduct places an explicit prohibition on corruption within law enforcement, with the requirement that officials "rigorously oppose and combat all such acts". The Afghan Police Law contains no anti-corruption provisions, nor does the Law of Employment, Promotion and Retirement of Police and Gendarmes.

Upholding the UN Code of Conduct

Article Eight of the UN Code of Conduct requires not only that law enforcement officials respect the law and the UN Code of Conduct, and that they attempt to prevent violations of either, but that they also report such violations by other law enforcement officials. The Afghan Police Law contains no similar article. Article Nine of the Penal Law for Crimes of Civil Servants and Crimes Against Public Welfare (1962) requires officials to take action when aware of criminal offences committed in their departments. However, it is unclear if this statute applies to police or if this provision is actually in force.

Amnesty International's 10 Basic Standards for Law Enforcement Officials (AI's Basic Standards)¹⁷

AI's 10 Basic Standards reinforce existing international human rights instruments. They provide added safeguards regarding the treatment of victims, access of detainees to family and legal representatives, and a prohibition on extrajudicial executions and "disappearances" that are not included in the UN Code of Conduct.

AI's Basic Standard Two requires that law enforcement officials "treat all victims with compassion and respect, and in particular protect their safety and privacy". There are no similar provisions in the Afghan Police Law or any other Afghan legislation regarding policing.

AI's Basic Standard Seven requires that detainees be afforded prompt access after arrest to family and legal representation. Article 14 of the Afghan Police Law states that, "if the revelation of secrets is not in question, the person under detention will be given permission to inform his relatives or legal representative." This does not require that prompt access be granted, it is made conditional, and it only allows access to either family or a legal representative, not both.

¹⁶Article 275, Misbehaviour of Officials of Public Services Before Individuals, (Book Two, Section One, Chapter Five).

¹⁷See appendix for full text of *Amnesty International's Ten Basic Human Rights Standards for Law Enforcement Officials* (AI Index: POL 30/04/98)

AI's Basic Standard Nine calls on law enforcement officials to refrain from carrying out, ordering, or covering up extrajudicial executions or "disappearances" and calls on them to refuse orders to do so. The issues of extrajudicial executions and "disappearances" are not directly addressed in any Afghan national legislation and should be incorporated into future legislation. Article 31 of the Afghan Police Law does specifically state that police are not required to obey illegal orders.

AI's Basic Standard Six states "Arrest no person unless there are legal grounds to do so, and the arrest is carried out in accordance with lawful arrest procedures". The Afghan Police Law lacks any specific provision on arrest powers or procedures. Minimal legal protection is provided in Article 31 of the Criminal Procedure Law, that "no one may be arrested or detained except on the order of a lawfully authorised organ".

Recommendations

The ATA with the support of the international community should:

- ◆ *ensure that international human rights instruments are formally and systematically incorporated into Afghan law.*
- ◆ *incorporate provisions of the 1964 Constitution and other existing laws that promote and protect the human rights of all into the new Constitution and other legal provisions. Gaps in legislation should be addressed in the drafting of future legislation.*

Practical implementation of law

There is a widespread lack of awareness of the provisions of the Afghan Police Law across Afghanistan. As shown above, aspects of the law do not conform to international standards and must be amended accordingly. However, while the Constitutional and Judicial Reform Commissions carry out this task, policing must continue. Relevant international standards including the UN Code of Conduct, UN Basic Principles and AI's 10 Basic Standards should be translated into local languages and widely distributed. Police need to know what is required of them and what constitutes a misdemeanour which will result in disciplinary action. This is the first step in establishing operational accountability, laying out the professional and legal parameters in which the police must carry out their duties.

The Guidelines for Implementation of the UN Code of Conduct for Law Enforcement Officials (UN Guidelines) have two key provisions. One is that the elements of the UN Code of Conduct be incorporated into national legislation. The other is that efforts must be made to make law enforcement officials aware of the UN Code of Conduct through dissemination of the code and through training. No police commanders that Amnesty International met were aware of the existence of the UN Code of Conduct.

Recommendations

The ATA with the support of the international community should:

◆ *widely distribute the UN Code of Conduct and other important standards including the UN Basic Principles and AI's 10 Basic Standards. All police should be trained in the contents of the code and provided with a pictorial or simple Dari or Pashto guide.*

Obstacles to human rights based policing

The combination of problems facing the police in Afghanistan today leaves them ill-equipped to deal with their everyday policing role in a manner that respects human rights. Even police officers with the best intentions are impeded by the myriad problems facing them on a daily basis. Training for police is a requirement of international standards that must be implemented to enable police officers to respect human rights in their work. In Afghanistan no human rights training is being provided to serving police. The lack of training into investigative techniques is a human rights problem in itself. In the absence of these skills, police will turn to coercion in order to extract confessions. This is exacerbated by a lack of resources, leaving police officers unpaid, and preventing the purchase of essential equipment to carry out work that will safeguard human rights. This includes basic materials such as paper and pens. Without this, records of arrest will not be made, which provide an important safeguard against torture and ill-treatment in police detention.

All those police who used to serve in armed groups are accustomed to fulfilling a military function and need training in civilian policing skills in order to be able to work as police officers.

The structure of the police is confusing. There is no discernable chain of command, providing ineffectual leadership which is not accountable to the central government or to society. This is problematic in terms of the provision of funding and equipment to the provinces, but of particular concern to Amnesty International is the lack of internal systems that help to ensure accountability. No standardized operating procedures exist, informing police officers of how to carry out their duties. There are no registers controlling distribution of firearms, and no registers to record incidents and arrest.

The legal framework urgently needs to be laid to ensure that the police act with respect for human rights in the future. National law currently provides a minimum of provisions for safeguarding human rights. These must be strengthened and carried forward into new laws, while additional legislation is required to strengthen some of the safeguards already in existence and address serious protection gaps.

Unless all these issues are addressed promptly and effectively, those currently serving as police are unlikely to behave as professional police officers and respect human rights in their work.

Police training

“Training, training, training” response from the Deputy Police Commander of Spin Boldak district when asked by Amnesty International about his force's needs, 13 October 2002

There is very little or no professional training for police in Afghanistan. Professional training must include human rights as an integral part of all training, both practical and theoretical, enabling police officers to apply international human rights standards in their daily work in a practical way. The UN Basic Principles stress that in training of law enforcement officials, special attention should be given to “police ethics and human rights, especially in the investigative process”.¹⁸

There is a widespread lack of awareness among police officers of international human rights standards on policing or of domestic law concerning human rights and policing. This lack of knowledge is prevalent, with some exceptions, from the district level to the highest level. Although police commanders are familiar with some provisions of relevant laws, for example concerning arrest procedures, none knew of the existence of related international standards. It is particularly important that the practical implementation of these standards is part of police training, helping to ensure that the police force act in a consistent manner.

All the police commanders that Amnesty International interviewed emphasized a lack of training as one of the major barriers preventing police from working effectively. Some officers received training at least 10 years ago, and are called “professionals” in Afghanistan. Many others are not deemed “professional”, having a military background. Specific training is needed for the vast majority of current police who previously served in the Mujahideen and now must learn new civilian policing skills. These include proper arrest techniques, proper care of detainees, crowd control, and forensic crime investigation.

Training for new recruits

At an international donor meeting in Tokyo in January 2002, the German government agreed, at the request of the Interim Administration, to act as the lead government assisting the reconstruction of the Afghan police force. The German Project for Support of the Police in Afghanistan (German policing project) has provided important financial and technical support and expertise on policing to the ATA. The German policing project has five main areas of work: advising on structure and organization; training in the re-established Police Academy; reconstruction; support including the provision of police vans and scene of crime equipment; and coordinating the activities of other donor governments for police. To date, the German policing project has prioritised the restructuring of police administration within the Ministry of the Interior, and the reconstruction of the Police Academy, including the design of the curriculum for officer training.

The Police Academy in Kabul is the only institution providing professional police training in Afghanistan. It reopened in August 2002 with the capacity for 1500 students, all new recruits and is currently full. The Police Academy offers a one-year course for non-commissioned police, and a three-year course for commissioned officers, all of whom can be posted to provinces outside Kabul.

¹⁸ Principle 20 of the UN Basic Principles.

The curriculum had just started to be developed at the time of research, so Amnesty International has not made a full assessment of the training at the Police Academy. However, shortly after its reopening, an Amnesty International delegate witnessed military style activities, including the parading of lines of police. The curriculum developers at the Police Academy have made a commitment to incorporate international human rights standards including AI's 10 Basic Standards. The Norwegian government is involved in developing human rights training at the Police Academy, and are providing a team to give human rights training to the police trainers. The German police project is responsible for evaluating the curriculum and revising it accordingly but this had not been started during the period of Amnesty International's visit.

The Police Academy is likely to yield results in the long-term but does not address the complete lack of training for serving officers at all levels.

Training in investigative skills

It is widely recognized that training in investigative skills is one way to prevent the use of coercion during interrogation.¹⁹ Outside the Police Academy in Kabul, no consistent training is being provided in investigative skills, and in their absence, some police officers are using torture and ill-treatment during interrogation in order to extract confessions.

Training for serving police

"One who is unaware of the teachings of his profession could become a danger to public order at any moment... The Interior Ministry should make sound plans for the professionalism of the provincial police and training courses should be launched in all provinces." President Karzai speaking on Radio Afghanistan, 21 November 2002.

The need for training is recognized by the government, exemplified by President Karzai in the above quotation. In a meeting with Amnesty International, General Hellal, Deputy Minister of the Interior for Internal Security, emphasized that training is the key, particularly outside Kabul. However, the central government lacks the resources to make this a reality.

In the majority of police stations visited, no training was being given on any level to any of the police. In a small number of areas, attempts have been made by district and provincial police commanders to provide training, with no support or resources from either the provincial or central government, but these efforts are *ad hoc* and not guided by national policy or international standards. Amnesty International did not meet anybody outside the Police Academy in Kabul who had received any training as a police trainer, and who was providing systematic training to police in their district. In Kandahar province, police commander Brigadier General Mohammad Akram, frustrated at the lack of training provided by the central government for the provinces, has begun a training program in which, every day, groups of 20 lower level officers receive one-and-a-half hours of training. This training is given by members of his police force that have at some point in the past received some police

¹⁹ UN Special Rapporteur on Torture, UN Document A/56/156, 3 July 2001 revised recommendations

training and are perceived as “professionals”. The training is very general in content, for instance Brigadier Akram told Amnesty International that training involves “teaching that those arrested must be treated as humans”. In Kandahar’s District Three an officer, a graduate from the former Kabul Police Academy, provides some training for other staff members. This training involves giving general rules to all police. In Herat, the provincial police commander told Amnesty International that he recognizes the importance of providing human rights training but that it is not included in any training given.

The German policing project has undertaken several vital tasks for the reconstruction of the Afghan police force but the reach of the project is limited, leaving important areas untouched and additional donor assistance is essential. Training for in-service police is one of these uncovered areas of need, particularly in the provinces.

Donor governments have recognized the gap in training for provincial police. In December 2002, the German policing project organized a training seminar for provincial police commanders, the third of its kind, which included human rights training. In addition to providing essential training to police commanders, this established a link with the central government, which currently has little contact with regional police.

The US State Department’s Bureau for International Narcotics and Law Enforcement has plans to provide training for 7,000 rank and file police in Kabul. The project is also seeking to address training needs for rank and file police outside Kabul by identifying potential trainers from the provinces to train in Kabul who will then be able to provide training in the provinces. There are plans to expand the mandate of the project beyond Kabul as soon as security conditions permit. However, until they can provide training to police officers in the provinces, all provincial police will continue to operate with no professional training.

It is essential that all donor governments involved in police training work together to create a consistent training program. Without the development and implementation of a nationwide curriculum in all police training that incorporates practical teaching on professional skills and how to protect and respect human rights, new practices will not be instituted across the country and violations will continue. This training must be monitored and evaluated, and changes should be incorporated into the training as a result of assessments made.

Recommendations

The ATA with the support of the international community should:

◆ *provide training nationwide to all police. International human rights and humanitarian law and standards and their implementation must be incorporated as an integral and permanent component of training. This should include training on how to uphold those international treaties that Afghanistan has ratified and how to follow the other international instruments that are particularly relevant to policing.*

Representation – an unrepresentative police force

*“like all agencies of the criminal justice system, every law enforcement agency should be representative of and responsive to the community as a whole.”*²⁰

“Down with the ethnic discriminators” slogan used during anti-police protest in west Kabul on 1 March 2003.

It is widely acknowledged in studies of the police that they cannot be effective unless they have the consent of the people being policed. This is achieved when society believes that policing is impartial and carried out on behalf of all the community, rather than certain factions within it. A civilian police force will be most effective, and will gain the confidence, trust and respect of the public, when it is representative of the community. Furthermore, police that are unable to command respect will feel compelled to rely more heavily on coercion, in turn provoking increased opposition.²¹

Recruitment of serving police officers

The central government has formal responsibility for appointing all provincial police commanders who then appoint their own forces. It is not known whether any guidelines exist for the recruitment of police in the provinces, but it is clear that the central government does not have control over many of the provincial recruitments. Situations of *de facto* control by regional commanders and considerations of political allegiances have clearly played a role in the selection of current provincial police commanders, outweighing criteria of competence and suitability, which are required under international standards. The central government has little power to supervise or remove these officers, particularly outside Kabul. Rank and file police have been recruited from both former police (who had some international training more than 10 years ago) and ex-Mujahideen with little or no training.

Recruitment of new police officers

In any society, the police must be representative of the community they serve. In Afghanistan, it is essential that the police force reflects the diverse ethnic make-up of society. The UN has welcomed “the efforts of the Afghan Transitional Authority to establish fully representative, professional and multi-ethnic army and police forces”.²² The minimum requirement for attendance on the three year course at the Police Academy is to be literate and to have had at least 12 years of education. The one year course requires completion of six years of education. Recruits are given a physical and mental examination and required to have no involvement in criminal acts, although Amnesty International does not know how this is verified. Only those aged 18 to 22 are accepted. These requirements are general and are not discriminatory in favour of any ethnic group. The German policing project told Amnesty

²⁰ UN General Assembly Resolution 34/169 of 17 December 1979.

²¹ Human Rights on Duty, Principles for better policing – International lessons for Northern Ireland, 1997.

²² United Nations Security Council Resolution 1444, adopted by the Security Council on 27 November 2002.

International that they had attempted a fair recruitment process which had been as representative of society as could be possible in the circumstances. However Amnesty International has been told by several sources that up to 90% of the students at the Police Academy are from two predominantly Tajik provinces north of Kabul. If this is the case, such ethnically biased recruitment is likely to create problems for the future.

Recruitment of women

There are very few women working as police in Afghanistan. Some police commanders told Amnesty International that there were women in their forces and expressed willingness for women to be recruited. Others were less open to the idea of female police officers, for instance in Balkh district, the police commander said that they lacked the correct facilities for women to serve in the police force, and cited the poor security situation as a reason that the job was unsuitable for women.

Amnesty International only once met women police officers. This was in Kandahar, southern Afghanistan. Their role appeared to be limited, mostly to carrying out body searches of women suspects or searching buildings containing women, and did not involve regular operational police duties. There are three women working for the police in Kandahar. One is a graduate of the Police Academy from the period prior to Taleban rule. Her duties include transporting women from jail for the purposes of investigation and interrogation, carrying out searches of women and report-writing.

In December 2002, 40 women were recruited to the Kabul Police Academy. Twenty eight are attending the one year course, and 12 are attending the three year course. In recognition of the prohibition of education for women during Taleban rule, women are being given remedial education in an attempt to ensure that women recruits meet the same standards as men. In February 2003 a recruitment drive began, initiated by the Police Academy with assistance from the German policing project, targeting women from every province in Afghanistan, a move that is welcomed by Amnesty International.

There can be considerable difficulties for women in joining the police because of pressures to conform to religious, social and behavioural codes. One woman officer has received death threats because of her work and her family has also been threatened. There are also practical difficulties. Attending the Police Academy is not an easy option for women outside Kabul whose family responsibilities may prevent them from living away from home or who would not be allowed to travel to or live alone in Kabul. The German policing project is hoping to provide accommodation for women at the Police Academy, but this will not be achieved in the short term.

Women are seen by men as an essential component of the police force in Afghanistan only in order to carry out searches and arrests of women. However, their role must be expanded. Women should be recruited to perform regular policing duties, as well as dealing with the arrest and detention of women suspects. Male officers are not allowed to search or arrest women. Some of the alternatives employed by police in areas with no women police officers lead to human rights violations. In Herat province, a male relative is arrested alongside any woman taken into custody, which violates the rights not to be detained arbitrarily. In Spin

Boldak district, Kandahar province, where there are no women police officers, a woman is arrested with the assistance of a male relative and then immediately transferred to the town of Kandahar where there are women officers. In Dihdadi district, Balkh province, which also has no women in the police force, problems involving women are addressed at village level. If a woman is detained, she is held at the village head's house until being transferred to the prison in Mazar-e Sharif. In Bamiyan, central Afghanistan, on arrest a woman is held in detention with her brother or father for two or three nights. She is then released, with someone acting as guarantor. This occurs often in order to protect the woman, who may be at risk of harassment and abuse if detained alone, and will continue until proper detention facilities are provided for women. However, it is problematic as innocent relatives are held in arbitrary detention. According to Article Nine of the ICCPR, "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

Recommendations

The ATA with the support of the international community should:

◆ *develop recruitment policies and practices which ensure that the police force is as representative as possible of the diversity in Afghan society. Targets for the recruitment of women should be set and maintained. Targets for the recruitment from all ethnic backgrounds and all geographical areas should be set and maintained. A working environment should be promoted in which such groups are not discriminated against in any way.*

Resources for policing

"A poem with no beginning and no end, just the same verses over and over."

General Eesa Eftekhari, police commander in Balkh province summing up his colleagues descriptions of funding problems they are facing, November 2002.

The lack of authority of the central government in the provinces is compounded by the non-delivery of funds for salaries and equipment from Kabul. The Amnesty International delegation saw police officers with no boots, no pens and paper, no uniforms, no transport and no communication equipment. There are no incentives for the police to carry out their jobs correctly, and without pay there is no way of creating loyalty to the central government or ensuring adherence to any standards of conduct issued on a national level. As well as encouraging corruption, the lack of provision of funds and equipment from the central government to the provinces and districts allows human rights violators with money or other forms of influence to act with impunity.

Unpaid salaries

"How can I ask for 100% performance when I am not in a position to provide money for salaries, facilities, or equipment?" Deputy Minister of the Interior

for Internal Security to Amnesty International delegation, 12 September 2002.

According to international human rights standards, “all law enforcement officials shall be adequately remunerated and shall be provided with appropriate working conditions”.²³ However, in provincial areas that Amnesty International visited between September and the end of November 2002, police had not been paid for four months by the central government.

In the absence of a salary from the central government, a few of the police commanders that Amnesty International interviewed had attempted to pay their officers with personal funds or borrowed money. In some districts, rank and file police were not paid, but instead given a monthly distribution of food. In Spin Boldak district, Kandahar province, high ranking officers receive a salary and food allowance while lower level police receive food, including rice and flour. In Bamiyan province, the governor told Amnesty International that he borrowed money from tradesmen in order to pay the rank and file police, with the understanding that they would be repaid when the central government sent payment for the men. Amnesty International was unable to return to Bamiyan to determine whether money had actually been repaid to the trades people. In Mazar-e Sharif, police officers borrow from families and shopkeepers while waiting to be paid, which the commander of one district admitted, “raises the problem of corruption”. In Herat, police were receiving salaries, which could be afforded because of customs and revenue from border trade with Iran. No provincial police had received any funds from the central government.

When the police commander of Dihdadi district, Balkh province, was asked how the situation could improve he replied, “you mean besides being able to pay my men?”

Even where salaries are paid, Amnesty International was told that the amount due is not sufficient to support an average family. According to General Salangi, Kabul police commander, high ranking police officers are due to receive 20 lakh Afghani (US \$40), and lower level police are due to be paid 8 lakh Afghani (US \$16) monthly although figures differed depending on who was asked, illustrative of the lack of standardized nationwide pay.²⁴ This problem is compounded for those supporting their extended families following so many years of fighting that inflicted heavy losses on many families.

The results of this are being seen already with corruption becoming increasingly widespread. Many detainees interviewed around the country have been offered their release in return for money. “Abdul Jan” was beaten during interrogation and received electric shocks. He was also asked for US \$10,000. After five months of detention, this figure was decreased to \$4,000, and he was told that he will be released if he can pay this amount. Similar stories have been related to Amnesty International across the country.

²³ Guidelines for Implementation of the UN Code of Conduct for Law Enforcement Officials, 1989

²⁴ In February 2003, US \$1 was approximately equal to between 45 to 50 new Afghani, or 45 to 50,000 old Afghanis. Larger sums are counted in lakhs, with one lakh meaning one hundred thousand old Afghanis.

In Balkh province, northern Afghanistan, police are visibly extorting “donations” at checkpoints along the road. Stacks of goods are piled alongside the checkpoints. The Balkh province police commander acknowledged the existence of many problems, but in the absence of pay said he did not know how to solve the problems of corruption and extortion.

Unless all police receive an adequate amount of regular pay, corruption will continue to be rife amongst police around the country, who need to support themselves and their extended families.

The Law and Order Trust Fund (LOTFA), administered by the United Nations Development Program, was established in June 2002 to provide medium-term financing for the following areas of policing: salaries; procurement of non-lethal equipment; recovery and rehabilitation of systems and facilities; training; and institutional development. Donors are expected to contribute to this fund, which is then allocated according to the above priorities. A new Consultative Group system is currently being implemented, whereby a single government-led coordination mechanism will ensure that the ATA will be able to set priorities for future spending, although there is an allowance for 25% of the funds in LOTFA to be earmarked by donor countries for specific use by the Ministry of Interior.

LOTFA currently contains sufficient funds to cover the first priority, salaries, until mid-2003 but it is unclear whether this includes salaries for provincial police. According to UNDP, LOTFA had only been used to cover the salaries for 7,000 police in Kabul by the end of 2002. The lack of effective monitoring systems for salary payments were cited by a UNDP staff member as the reason for the lack of nationwide pay.

Only US \$11.2 million has been pledged or fully paid of a target amount of US \$65 million over the next two years. This leaves a large shortfall, which must be met if policing is to receive sufficient funds in order to carry out the massive reforms and restructuring that are needed. Unless more money is deposited in the trust fund by the international community, salaries will not be fully covered, and none of the additional four priorities will be addressed.

There are concerns amongst some donors that the trust fund does not ensure accountability for funds given. Therefore, systems that ensure financial accountability need to be established as a priority. The US government has established a project to provide secure identification cards for all members of the police force that can be used as part of a payroll system. This will only be instituted for 7,000 police in Kabul initially, with plans to extend to the provinces in 2004. Plans to establish effective payment monitoring systems must be prioritised.

Recommendations:

The ATA with the support of the international community should:

- ◆ *pay particular attention to the needs of the police outside Kabul. Funds must be allocated to the provinces as a priority.*
- ◆ *establish clear lines of financial accountability at an institutional level.*

The international community should:

◆ *provide funds to the LOTFA to ensure the payment of salaries of all members of the police force. The amount of pay needs to be sufficient to sustain a family.*

Buildings – no safeguards for detainees

Police stations were destroyed during the years of armed conflict. Those that did survive are often badly damaged, and where there are none the police are occupying private buildings, although they are unable to pay the rent due to a lack of funds from the centre. With such dilapidated premises, and a lack of funds with which to restore them, conditions are poor, reflecting living conditions around the country.

Many district police forces that Amnesty International visited are using dilapidated police stations. Others are not working from official police buildings because their premises have been destroyed. In one district in Kabul province, the police commander told Amnesty International that the landlord came every week to ask them to leave, but that they have no official premises to which they can move. Conditions of detention in police cells are often inadequate. The pressure faced by officers in coping with poorly equipped and insecure facilities has led to the use of other forms of control, including the use of leg irons to prevent detainees escaping through crumbling walls. Principle 33 of the Standard Minimum Rules for the Detention of Prisoners prohibits this. Unless materials for the reconstruction of detention centres are provided, the use of leg irons will continue. Moreover, in buildings that have been largely destroyed, hygiene and sanitation does not accord with minimum standards. Without appropriate detention facilities the police are unable in many district police stations to ensure the separation of men, women and children in detention.²⁵

Equipment

“When people lack equipment they often tend to do their work in ways which are not so good.” A district police commander in Balkh province interviewed by Amnesty International in November 2002

The police in Afghanistan do not have the appropriate equipment to carry out their work and thus contravene international standards in order to control detainees. The Standard Minimum Rules for the Detention of Prisoners stipulate that, “Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints”.

In Afghanistan, the use of restraining equipment is commonplace, where such equipment exists. In many police detention centres, contrary to international standards, leg irons are

²⁵Convention on the Rights of the Child Article 37(c) states “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances. Principle 8 of the Standard Minimum Rules for the treatment of prisoners provides for the separation of different categories of prisoners.

being used for extended periods of time as restraints. Two different types of leg iron are commonly used. One set of leg irons consists of iron rings locked around the ankles of prisoners. An iron bar is riveted to each of these iron shackles making an inverted "V". These two vertical bars are about 50 cm long and are linked at mid-thigh level by an iron ring which again is connected to a rope or chain around the waist. Another set of leg irons consists of the same iron rings locked around the ankles, with just one iron bar attaching these to each other. The rods are of one standard size. Men who are not of average height may suffer when bars are too long or too short for them; this may add to the normal discomfort experienced in wearing bar fetters. The iron bars are about 1.2 cm in diameter and weigh, together with the ankle shackles, around four kg. Leg irons can cause severe wounds if left on for an extended period of time. This amounts to cruel, inhuman and degrading treatment.

Police commanders pointed to the lack of appropriate equipment, including handcuffs, as an impediment to making arrests. One district police commander with whom Amnesty International spoke had two sets of leg shackles, but no other restraining equipment.

International standards encourage the development of non-lethal incapacitating weapons, in order to decrease the risk of death or injury. However, the standards also state that these should be "carefully evaluated" and that "the use of such weapons should be carefully controlled".²⁶ It is essential that the appropriate equipment is provided to all police to enable them to carry out their duties and that this is accompanied by training and by the establishment of effective oversight mechanisms. Without the proper means to enforce the law, human rights violations will be committed as police struggle to work with little to no appropriate equipment.

Across Afghanistan police are using the same firearms that they used during the armed conflict. In the absence of any other equipment or training, an over-reliance on firearms exists. Consideration should be given to providing the police force with a greater range of equipment often referred to as "less-than-lethal". Amnesty International has concerns about certain types of equipment that could be used to inflict cruel, inhuman or degrading treatment, but understands that in some situations the use of some less-than-lethal weapons may be necessary to preserve order.²⁷

²⁶ Principles 2 and 3 of the UN Basic Principles.

²⁷ Amnesty International unreservedly opposes the use of electro-shock stun belts and calls for the suspension of the manufacture, use, and promotion and transfer of all other electro-shock weapons, such as stun guns, stun shields and tasers, pending the outcome of a rigorous, independent and impartial inquiry into the use and effect of such equipment. The organization also has concerns about the potential health risks of other equipment, including OC spray, which inflames the mucous membranes, causing closing of the eyes, coughing, gagging, shortness of breath and acute burning sensations. This is promoted as a safer and more effective alternative to Chemical Mace or impact weapons. However, there are mounting concerns about its health risks, for example some studies have found that it is harmful to people with respiratory problems. It has also been applied in some situations in the world in a deliberately cruel manner to suspects who are already restrained. Amnesty International believes that an independent review of the use of OC spray is required and that police

Storage and moving firearms

According to international standards, the control, storage and issuing of firearms must be regulated, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them.²⁸

In Afghanistan there are no procedures regarding the storage and issuing of firearms. Many police officers use their own firearms or those of the police commander. These firearms are military weapons used by former Mujahideen for armed conflict and are not monitored by the police. Even if there was a commitment towards this regulation, police stations are not equipped with facilities necessary to implement safe storage of firearms, nor systems for recording the issuing of firearms or ammunition. Amnesty International recognizes the impossibility of conforming to the international standard at the current time as even basic equipment such as pens and paper is lacking. However, it is important that the highest standards are drawn up now, when the opportunity exists. If in the future, firearms and ammunition are distributed to arm the police force, it is essential that these safeguards are implemented to prevent the indiscriminate use of firearms.

Logistical equipment

Police do not even have the basic logistical equipment necessary to carry out their work. All provincial police districts that Amnesty International visited, as well as many in Kabul, suffered to varying extents from a lack of essential equipment, including uniforms, pens, paper, and other equipment. In Bamiyan, the deputy criminal investigator had no office, and no pens or paper. This prevents the keeping of any kind of logs, including an incidents register, or any record of arrests and detention, a key safeguard against torture and a way of establishing accountability.

Records

The UN Special Rapporteur on torture recommends that information regarding the time and place of arrest as well as the identity of the law enforcement officials having carried out the arrest should be scrupulously recorded.²⁹ The keeping of records provides a basic and practical safeguard against torture and other human rights violations and helps to create accountability, providing the possibility to check cases where allegations are made. Accurate arrest and custody records contribute to the protection of detainees from human rights violations, and also protect the police against false allegations of arbitrary detention or other violations.

Records should contain

- a) the reasons for the arrest

services which authorize its use should introduce strict guidelines and limitations on its use, with clear monitoring procedures.

²⁸ Principle 11 (c) of the UN Basic Principles.

²⁹ UN Special Rapporteur on torture, UN Document A/56/156, 3 July 2001, revised recommendations.

- b) the time of the arrest and the taking of the arrested person to a place of custody as well as that of his first appearance before a judicial or other authority
- c) the identity of the law enforcement officials involved
- d) precise information concerning the place of custody³⁰

Records of arrests and incidents, or other logs, are not being kept in any of the police stations that Amnesty International visited in Afghanistan.

Communications and transport

There is a widespread lack of communications and transport equipment, preventing the police from being able to effectively tackle crime and disorder. Many police districts have only the use of the police commander's private car. Relying on the use of one vehicle, which is privately owned, leaves the police force unable to react to more than one incident which is further than walking distance from the police station. In one district in Mazar-e Sharif, additional police stations have been set up in order to reduce the size of areas covered by one unit. The US State Department is involved in setting up radio communications between the Ministry of Interior and all provincial police commanders. If this system is set up and adequately maintained, this will greatly improve communication between Kabul and the provinces.

Many of the provincial police commanders interviewed relied on the use of their personal property to work. In Mazar-e Sharif's District Seven, all equipment used by the police is the private property of the district police commander, including vehicles, radios, and firearms. This encourages a lack of accountability as the district commander provides his own equipment, and is answerable only to himself. The German policing project have provided a small number of vehicles but these do not cover the needs across the country.

Police identity

The police in Afghanistan do not have a standardized uniform, preventing them from being publicly recognizable as police officers. Many wear military uniforms, as does a large percentage of the male population, making them indistinguishable from others. According to international humanitarian law, law enforcement officials must be recognizable by their uniform, and they must also have some kind of individual identification. This helps to establish accountability, and would also give them a professional united identity, recognizable to the general public.

Recommendations

The ATA with the support of the international community should:

- ◆ *provide resources to ensure that there are appropriate building facilities for police offices and humane police detention facilities, including separate female detention facilities, initially at provincial level, eventually in all districts.*

³⁰ Principle 12 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Body of Principles).

◆ *provide non-lethal equipment, including handcuffs, and self-defensive equipment with correct training in the use of this equipment and alongside the development of adequate monitoring systems.*

◆ *ensure that any equipment, where its use in practice has revealed a substantial risk of abuse or unwarranted injury, is not transferred to Afghanistan until an independent and rigorous review of the use of equipment is conducted. This should include equipment such as pepper gas weapons.*

◆ *develop procedures for regulating the control, storage and issuing of firearms that can be implemented in the future and train police in the new procedures*

◆ *provide equipment to facilitate consistent and sustainable record keeping procedures. Training in these procedures must be provided nationwide, resulting in the keeping of accurate records including arrest and incident registers.*

Accountability and oversight

Without effective oversight mechanisms to ensure that police powers are not abused, police can commit human rights violations with impunity. Accountability is a vital part of the right to a remedy, which is provided for in Article 2 of the ICCPR.³¹ Accountability structures also improve public confidence in the police, giving people a mechanism by which complaints can be lodged.

There is no one single mechanism that can ensure accountability, but central to all must be the structures to ensure that the police generally, as well as individual officers, are accountable to society. The legal framework should be informed by relevant international human rights standards which define good practice and require the state to conduct investigations where there are allegations of wrongdoing.³²

Despite the importance of establishing accountability, to Amnesty International's knowledge neither the ATA nor the international community have made any attempts to institute nationwide accountability structures. The lack of planning and priority given to the establishment of effective accountability systems for the police is a failing of those involved in reconstruction of the police.

Internal oversight mechanisms

³¹ Article 2.3(c) of ICCPR states that "Each State Party to the present Covenant undertakes: To ensure that the competent authorities shall enforce such remedies when granted."

³² For example the UN Principles on the Effective Prevention and Investigation of Extra-Legal Arbitrary and Summary Executions require that killings resulting from excessive or illegal use of force by public officials should be made punishable as a criminal offence and, when they occur, governments are required to institute thorough, prompt, and impartial investigations.

“effective mechanisms shall be established to ensure the internal discipline and external control as well as the supervision of law enforcement officials.”³³

In Afghan national law, the Constitution recognizes basic rights including the right to life, the right to personal freedom, security and integrity and the right to be free from torture, making the state responsible to protect these rights and guarantee the rule of law.

In national law, the only reference to accountability of police officers is in the Law of Employment, Promotion and Retirement of Police and Gendarmes 1973. Article 98 states that, “In misdemeanor and felony crimes stemming from duty, the personnel of police, gendarmes and Hamradifan [specialist officers] shall be prosecuted by the special police courts determined by the State. The authority to issue order for the trial of police and gendarme personnel rests with the office having the power to approve their promotion.” This is completely inadequate and in effect puts police personnel outside the regular court system, and therefore in one sense above the law.

There is no consistent, nationwide mechanism in place for monitoring and evaluating the actions of the police or for independent investigation of reports of wrong-doing or human rights violations by officers in Afghanistan. Although in some provinces there are attempts by local governors and commanders to implement public complaints procedures, these are largely ineffective, if well-intentioned, gestures that fail to address key problems. In some cases there are concerns that any systems in place do not function effectively, and may only be instituted as an attempt to exert control over the public rather than take any effective action. In numerous cases of human rights violations by police documented by Amnesty International, not one had been investigated. Some police commanders told Amnesty International that they had disciplined their officers, but would not disclose the reason, nor whether any investigation had taken place following an alleged incident. Disciplinary procedures mentioned included suspension, or several days’ imprisonment. It was not clear who took the decision to discipline a police officer, or on what grounds, reflecting the potential for personal enmities or conflicting allegiances to inform any disciplinary action taken.

In Herat, western Afghanistan, Governor Ismail Khan has placed 12 complaint boxes around the city in which members of the public can lodge complaints against officials. In Kabul, General Jurat, Head of Security and Public Control also mentioned the existence of complaints boxes. Complaints made are apparently received by the ‘Analysis Department’ in the Ministry of the Interior but to Amnesty International’s knowledge, no complaints have been investigated. In Kandahar, the police commander also told Amnesty International of a complaints box he checked weekly. In Balkh province, the governor holds fortnightly open sessions in Mazar-e Sharif, publicized on the radio, for the public to raise complaints. According to the governor, up to 100 people attend these meetings. These meetings focus on general problems of the community, including property issues. The Governor of Balkh

³³ 1989 UN Guidelines for the implementation of the UN Code of Conduct for Law Enforcement Officials. Principle B (4).

province, when asked about complaints procedures for human rights violations committed by police, responded that they only have the best people in the police. None of these complaints procedures adequately address any reports of police wrong doing, and it is unclear to what extent the public feel able to make such complaints, or are aware of their right to do so.

Recommendations

The ATA with the support of the international community should:

◆ *draw up police rules of procedure, consistent with international standards as a priority and distribute these to police officers throughout the country, with appropriate training sessions in their application.*

◆ *establish internal monitoring and investigation procedures to ensure that allegations of human rights violations committed by police are immediately and impartially dealt with.*

◆ *institute internal accountability mechanisms to ensure that complaints can be registered.*

Independent oversight mechanism

“Complaints by members of the public. Particular provisions shall be made...for the receipt and processing of complaints against law enforcement officials made by members of the public, and the existence of these provisions shall be made known to the public”³⁴.

No civilian oversight bodies that can independently and impartially review the performance and conduct of police, and investigate any complaints made against the police exist in Afghanistan. This leaves the public with no recourse to justice if they are victim of human rights violations at the hands of the police.

The AIHRC has the authority to investigate human rights violations committed by the police, providing the framework for it to act as an independent oversight body. If they are willing and able, the AIHRC could undertake this role, establishing a department that acts solely as a police oversight body. However, AIHRC’s mandate is enormous, and Amnesty International believes that in the future a separate independent Ombudsperson should be established that acts solely as a police oversight body. This body could be established under the umbrella of the AIHRC. Following student demonstrations in November 2002, President Karzai established three commissions to look into different aspects of the incident. These commissions were comprised of Ministers, and therefore were not independent or expert bodies. As a result of the investigation, four officials from the Ministry of Higher Education and one National Security Directorate officer were reportedly arrested on charges of corruption, while five police officers were arrested on charges of using excessive force against the demonstrators.”³⁵ This was a good initiative, but does not fulfil the need for a permanent police Ombudsperson with the ability to undertake independent and expert

³⁴ 1989 UN Guidelines for the implementation of the UN Code of Conduct for Law Enforcement Officials.

³⁵ Special Representative of the Secretary General’s report to an Open Meeting of the UN Security Council dated 31 January 2003.

investigations. It is essential that all members of the police force are aware of their duties and responsibilities and know that they will be held accountable for their actions.

There has been no accountability for the serious human rights abuses committed in Afghanistan since 1978. To move towards a situation in which the Afghan criminal justice system can ensure an end to impunity, the state must start by ensuring accountability for its own police and other security forces, themselves responsible for protecting the people and ensuring their rights.

Recommendations

The ATA with the support of the international community should:

◆ *ensure that any reports of human rights violations by the police must be promptly, thoroughly, independently and impartially investigated. Perpetrators should be brought to justice and victims receive redress. In the case of serious human rights violations, these must be treated as criminal offences and the relevant criminal procedure followed accordingly. Sufficiently strong penalties, including removal from office or criminal prosecution, should be available to serve as a deterrent against the commission of violations.*

◆ *establish an effective, adequately resourced and independent police Ombudsperson as a priority. This body must be empowered 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. This body must be publicly accountable. This body could be established under the umbrella of the AIHRC if they are willing and able to undertake this role.*

Role of non-state actors

Illegal detention and torture is carried out in Afghanistan by armed groups that operate independently, upon the orders of a number of highly placed officials in provincial administrations, or under the protection of high ranking officials in the ATA. This is a continuation of their accustomed role over the last two decades, when armed groups carried out policing and military functions.

The continuation of this practice jeopardizes the attempts to establish effective formal law enforcement apparatus and undermines the national and provincial government system as a whole. Several police officers told Amnesty International that armed groups are interfering in regular police work, carrying out arrests and detentions of criminal suspects and of political opponents. These armed groups are far better organized, equipped and armed than the police, leaving the police unable to ensure security in the regions in which these groups operate. Police lack the resources or power to confront these armed groups.

There are strong indications that private jails are being run by highly placed officials within the ATA as well as high ranking commanders and regional power holders. There is a widespread unwillingness to talk about these private jails, and Amnesty International could not visit any of these facilities. However, the organization managed to talk to a small number of people who confirmed the existence of several private detention centres in Kandahar,

southern Afghanistan as well as other areas. In the cases known to Amnesty International, the detentions were either prompted by personal or political vendettas, or were carried out for extortion purposes. Reports indicate that people detained in these 'private jails' are often tortured, although due to the secrecy surrounding their operations, Amnesty International was unable to gain further information on conditions and treatment inside these detention centres.

One case that Amnesty International was able to document was that of "Gulbahar Mohammad".³⁶ Gulbahar was arrested at the end of September 2002 by the governor's men, accused of supporting the Taliban. He was a tradesperson, and had been arrested previously for unknown reasons and released after paying money to his captors. People from Gulbahar's village had been allowed to visit him. They reported that he was being held in a container.³⁷ There were signs of torture and ill-treatment. He had been whipped on his back while being restrained with leg irons. In mid-October, villagers went to visit Gulbahar for a second time but he was not there. Amnesty International raised concerns over this case with local authorities.

In October 2002, Amnesty International held a meeting with the Special Advisor to the Minister of the Interior, General Naseri, in which he admitted the existence of detention facilities other than those of the police, and stated that the government has plans to close any of these facilities and to transfer prisoners from such places to formal detention centres. At the time of writing, Amnesty International was aware of the continuing practice of arbitrary detention by such armed groups.

Recommendations

The ATA with the support of the international community should:

- ◆ *ensure that parallel structures of arrest and detention are closed as a matter of priority.*
- ◆ *ensure that any reports of human rights abuses must be thoroughly, immediately, independently and impartially investigated. Perpetrators should be brought to justice and victims receive redress.*

Proliferation of small arms

"Youth have been used to identifying problems with their gun sights and then using their trigger fingers to solve them. This is not their problem. It is the fault of the conditions". A senior official of the Ministry of Interior talking to Amnesty International in October 2002.

There is easy access to small arms in Afghanistan, after two decades of armed conflict fuelled by national and international forces. A large proportion of the population has access to small

³⁶ Name has been changed to protect the individual's safety.

³⁷ Metal shipping containers are widely used in Afghanistan. Traders use them as shops, opening the front of the container and displaying goods inside. However, these containers have also been used as a means of detention. Concerns have been raised about this practice following the finding of mass graves in northern Afghanistan of hundreds of Taliban soldiers who reportedly suffocated to death in such containers during transportation.

arms, and the constant threat of their use poses a real challenge to the establishment of a civilian police force in Afghanistan. While the light weapons that flooded into Afghanistan in that period are in circulation, armed groups will maintain their political dominance and their ability to destabilize the country. Armed groups are better equipped than the police in much of the country. The availability of arms is apparent when looking at crime figures, which reveal that a high proportion of crimes involve the use or threat of arms. Of 24 juvenile prisoners interviewed by Amnesty International in Kabul Central Jail, eight were being held on charges of murder with the use of firearms.

Recommendations

The ATA with the support of the international community should:

◆ *establish effective programs to collect surplus weapons and ammunition and illegal weapons. Weapons or ammunition in excess of national needs should be destroyed.*

Human rights violations by the police

“I was taken to the police headquarters where I was beaten with the gun barrel and cable. I could not move for one month.”, “Ghulam”.

Police in Afghanistan are committing human rights violations. In the absence of standard operating procedures, they are not aware of what is expected of them, preventing accountability. Inadequate domestic laws, that do not conform to international standards, lead to the committing of human rights violations even if police were upholding laws to the letter.

Torture and ill-treatment

“A police officer loyal to his profession never tortures or abuses people. Instead, he eliminates all the factors of torture and abuse in society.”
President Karzai speaking on Afghan radio on 21 November 2002

“that night they ... beat us with a cable until morning. It was winter, and they laid us on the ground. They put tyre and stone on our back from afternoon until midnight. When I became unconscious they poured water on us.” “Salim” a child in his mid-teens, arrested in northern Afghanistan at the end of 2001 describing his treatment at the hands of the police.³⁸

Torture is absolutely unacceptable and can never be excused. No circumstances, however exceptional, can be invoked as justification for torture. Article Five of the Universal Declaration of Human rights states that, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”³⁹ Afghanistan has ratified the Convention

³⁸ Name has been changed to protect the individual.

³⁹ Torture is defined in international human rights standards as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public

Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and is therefore bound to uphold its provisions. Torture is regarded as so serious that it amounts to an offence against the whole of humanity and therefore all states have a responsibility to bring the perpetrators to justice.⁴⁰

However, Amnesty International has talked to many men and children who alleged ill-treatment and torture by the police, predominantly during interrogation, reflecting the lack of basic investigative skills and resources available to police and a general tolerance of violence in society. Common methods of torture include beating with an electric cable or a metal bar, electric shocks, and hanging detainees from the ceiling by their arms, sometimes for several days. The following are just a few of the many cases that came to Amnesty International's attention. All names have been changed to protect the safety of the individuals interviewed.

Abdullah, who is in his late teens, spent four days in police detention in late 2002. He told Amnesty International that the police "beat me for four days and nights. They hung me from the ceiling with one arm and opposite leg." Abdullah also told Amnesty International that he was given electric shocks. He was so badly beaten that he had to be carried to prison, and was refused entry due to his injuries. He was then taken to hospital, but does not know how long for as he was unconscious when he arrived.

Noor Jehan is about 40 years old. He was arrested by the police in Mazar-e Sharif in northern Afghanistan in July 2002. Police beat him with a cable, and also with many sticks. His legs and back received many injuries during this beating. He was also hit in the mouth causing one of his teeth to fall out. After receiving this beating at the hands of the police, he was thrown onto the ground. While lying injured on the ground, several soldiers jumped on him. He could not walk when he was brought to prison. Noor Jehan was held in prison for two months before he was taken to a hospital to receive treatment. Throughout this period he could not walk.

Aziz was arrested by the police in Mazar-e Sharif, in northern Afghanistan, at the end of October 2002. He told Amnesty International that during interrogation, the criminal investigator beat him so much that he lost consciousness. He was held in the basement of the police detention centre and was not given any food or water. Aziz was kept in the basement at all times, other than being let out for a short period once in the morning and once at night. The room he was being held in was next to the room used by the police as a toilet. He said that the smell was unbearable.

Mohammad was held in the bathroom of a district police station in northern Afghanistan in October 2002. He was accused of theft. When the police were interrogating him they insisted that he was guilty and that he must confess. The police repeatedly hit Mohammad with a stick. He was then transferred to the police headquarters where he was held for three days.

official on a person for such purposes as obtaining from him or a third person, information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons."

⁴⁰ Amnesty International, *End Impunity – justice for the victims of torture* (AI Index: ACT 40/024/2001) November 2001, chapters 5 and 6.

After three days Mohammad was interrogated for a second time. He was beaten again. After being tortured by the police, he was returned to the basement where he was being held. At 1 a.m. he was again taken from the basement and was again beaten by the police, who repeatedly told him, "you should confess".

No mechanisms exist through which these people can receive redress or suspected perpetrators be brought to justice.

Torture of children

Children in detention are entitled to specific protection according to international human rights standards.⁴¹ Particular attention should be paid to children to ensure that they are treated with appropriate care, to protect their sense of dignity and worth and promote their rehabilitation and reintegration into society. Unfortunately in Afghanistan no attention is paid to their special needs by the police, whose treatment reflects the wider problems experienced by adults held by the police.

Indeed, at least half of the children that Amnesty International interviewed told the delegation about torture and cruel, inhuman and degrading treatment that they received at the hands of the police.

Ahmad is 16 years old. He was arrested in northern Afghanistan in October 2002, accused of stealing a camera and tape recorder. He was held in the police detention centre for one day before being taken to the central prison in the province. When he was interrogated, police took off Ahmad's trousers. They filled a bucket of water and hung this from his penis for about 10 minutes. The police proceeded to kick him all over his body during the interrogation. The kicks to his stomach were particularly painful. He was then blindfolded, and his hands were tied with a piece of material.

Mohammad Jan, in his mid-teens, was held in the basement of a criminal investigation department in September 2002 for two days and nights during which time, "they did not let me sleep and during the day hit me." He was beaten with a stick and also received electric shocks.

Police officers are not aware of any of their special responsibilities towards children in detention and do not know that they are contravening international standards in this regard.

Excessive use of force

On the night of 11 November 2002, approximately one thousand students of Kabul university protested after their complaints over poor dormitory conditions were ignored by university authorities. In response to verbal abuse by the police, some students threw stones. Police then fired shots in the air before firing into the crowd of students. According to official reports two students were killed but protestors stated that four to six students were killed by police fire. At

⁴¹ Convention on the Rights of the Child

least 15 were injured. Amnesty International was told by one of the students involved that despite their injuries, police beat students with electric bars.

The following morning, a second demonstration took place to protest against the police brutality of the previous night. Police used water hoses in an attempt to disperse the protestors, which was met with further stone throwing by the students. According to one of the students present, police again fired into the air before firing at students. The demonstrators attempted to flee by climbing over a wall which collapsed leaving several injured. Despite this, police beat the injured students. Many of the protestors were taken by police at this point to places of detention. According to reports from the AIHRC, injured students who were taken to hospital were beaten by police in hospital after talking to a Commissioner about the demonstrations.

Such use of excessive force by police is completely unacceptable and contrary to international standards. According to eyewitness accounts, both police from Kabul's third district, and police under the control of General Jurat were involved in this incident. General Salangi, the head of Kabul police, had pointed to district three as the worst equipped police station in Kabul, which was reiterated in an interview with the district police commander. However, General Jurat has a highly- equipped police force in Afghanistan. Photos showed General Jurat's officers armed with rocket launchers, totally inappropriate for such a situation. All of the police involved lacked any professional training.

In the absence of effective training in crowd control techniques and lack of access to appropriate non-lethal alternatives, firearms were used against protestors. Without the necessary restraining and access to appropriate self-defence equipment, police in Afghanistan will not have the means to deal with civil disturbances in a way that respects human rights but will instead fall back on what is familiar, namely the use of firearms.

The UN Basic Principles require that in circumstances where firearms are used, law enforcement officials should identify themselves and give a clear warning of their intent to use firearms, ensuring sufficient time is given for the warning to be observed. The only exceptions permitted are where delay would put the life of the law enforcement official or member of the public at risk or where a warning would be clearly inappropriate or pointless in the circumstances.

Article 21 of the Afghan Police Law states, "in using firearms or explosive materials, police shall observe the following additional conditions except in the act of self-defence", and goes on to list limitations on the use of firearms.⁴² International human rights standards provide

⁴² Giving notice of the decision to use firearms or explosive materials against persons or goods police cannot use firearms or explosive materials against persons or goods in such a way as to inflict damage to others. police cannot use firearms or explosive matters against children. The use of firearms or explosive materials against a crowd is permissible when: a) the crowd resorts to offensive actions or actions disturbing security and when the use of other means of enforcement by police against persons do not provide to be individually effective, b) notice of use of firearms or explosive materials has to be made at least by three oral warnings and three warning shots.

that the use of force is exceptional and may be used by police only when strictly necessary and to the extent required for the performance of their duties.⁴³ In no circumstances can firearms be used for crowd control. The resort to force must be a last resort and only using lethal force when there is a direct threat to life.

In Amnesty International's many meetings with police commanders around the country there was no discussion about differentiation or proportionality of force; commanders are unaware of international standards regarding the use of force and firearms, and act according to their own judgement, in the absence of any procedures or guidance from the centre.

Many police commanders interviewed stated that they ask their officers to fire shots in the air as a warning. The UN Basic Principles state that firearms can only be used where there is a direct threat to life. If this is the case, law enforcement officials should identify themselves and give a clear warning of their intent to use firearms, ensuring for sufficient time for the warning to be observed. The only exceptions permitted are where delay would place the life of the law enforcement official or member of the public at risk or where a warning would be clearly inappropriate or pointless in the circumstances.⁴⁴ In Afghanistan, firearms are used in the absence of appropriate equipment and not when there is a direct threat to life. Amnesty International strongly recommends that warning shots are discontinued because of the risk of random injury when warning shots are fired.

Arbitrary and unlawful detention

“A good and professional police officer never resorts to beating and harsh treatment or imprisonment without a warrant from a court and judicial authorities” President Karzai speaking on Radio Afghanistan, 21 November 2002.

*“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.”*⁴⁵

According to Article 28 of the Criminal Procedure Law (1965) which is currently in operation, police can detain suspects without charge for up to 24 hours while carrying out an investigation, which can be extended to 72 hours upon application to the Attorney General's office. Police must apply to the Attorney General's Office or to the courts to extend this period up to one week. After this time, suspects must either be charged or released. No time

⁴³ Principle 9 of the UN Basic Principles states that “Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

⁴⁴ Principle 10, UN Basic Principles.

⁴⁵ Article 9, (3) ICCPR.

limits on detention are given in international standards, but the UN Human Rights Committee has questioned whether detention for 48 hours without being brought before a judge is not unreasonably long.⁴⁶

International standards set out that all detainees must have prompt access to their family, adequate medical care, and to a lawyer.⁴⁷ In many of the police detention centres that Amnesty International visited, despite the 72 hour limit, people were being detained for weeks or months without being brought before a judge. During this period, the detainees had no access to lawyers, as throughout Afghanistan no defence lawyers are working. Due to the lack of investigation skills, police investigations are lengthy and can take much longer than 72 hours to complete. The lack of police vehicles also prolongs periods of detention. Many provincial police stations only have the use of one car, and when this is being used, there is no way to transport detainees. Poor communications and the remoteness of some district police stations add to the difficulties in bringing somebody before a judge. However, all these problems are hugely exacerbated because of the lack of a functioning judicial system.⁴⁸

Amnesty International's discussions with police officers revealed that they understood the law as allowing them to hold people for 72 hours or a week, but after that period they had to be transferred to one of the central prisons. Very few police officers appeared aware of the legal requirement for detainees to appear before a judge or be released after this period of time.

Although it is unreasonable to expect that detention periods are minimised when the system is in collapse, if 72 hours is codified in law there is no aim to work towards the implementation of the highest standards. However, a large number of those detained are held in police detention centres for extended periods of time, and it is in these centres that the majority of human rights violations occur. While there is a high level of awareness of the time limit stipulated in the Criminal Procedure Code, many police commanders admitted to Amnesty International that detainees are held longer than allowed in police detention.

Police powers to arrest and detain according to law are easily abused. Across Afghanistan, people are being arrested and held in police detention beyond the legal requirement without being charged. This continues on transfer to prison from police detention, where people are detained for many months without appearing before court. Many of those whom Amnesty International interviewed in prison had been held for over half a year without appearing before court.

Amnesty International recognises that the judicial system itself is weak and is in the process of reform, but this does not excuse lengthy periods in detention without appearing before a judge. There must be a commitment to ensure that all parts of the criminal justice system are developed rapidly in conformity with international standards.

⁴⁶ Report of the Human Rights Committee, Vol I, (A/45/40), 1990, para 333, Federal Republic of Germany.

⁴⁷ Standard Minimum Rules for the Treatment of Prisoners.

⁴⁸ Amnesty International is currently researching the judicial system, and will be providing the detailed findings and recommendations in a future report.

Creating human rights based policing in Afghanistan

“It is a pleasure that a friendly country, the Republic of Germany, provides considerable aid to the Ministry of the Interior to equip and train our boys for the police. We are hopeful about further such assistance and we are hopeful that our boys in the police forces will become professional soon.”
President Karzai speaking on Radio Afghanistan, 21 November 2002.

The international community’s intervention in Afghanistan was accompanied by a commitment to provide long-term support in nation-building, avoiding the duplication of mistakes made in the past. This long-term commitment and support of the international community is essential if changes that were brought about with their assistance are to become entrenched.

Amnesty International believes that human rights based policing must be established in Afghanistan. The police are one of the national institutions whose role is to protect the human rights of all people.

Amnesty International welcomes the attention of the international donor community to the reconstruction of the criminal justice system and urges that it makes a long-term commitment to provide the technical and financial support necessary for the reconstruction of an independent and impartial criminal justice system in Afghanistan. Without the long-term assistance and support of the international community, the ATA will not even be able to attempt to ensure that effective human rights-based policing, a key element of a functioning criminal justice system, is established as a priority along with other institutions necessary to enforce the rule of law. The ATA needs urgent support if the principles of the Bonn Agreement are to be upheld.

Law enforcement officials do not currently have the resources, skills and institutional systems to ensure that policing conforms to international standards. The international community must provide support for the long-term strengthening and capacity building of local actors to ensure that this is remedied urgently.

Donors must ensure that the international community coordinates its financial and technical support programs and training and that commitments are made to provide long-term assistance for professional policing based on international standards. Donors should consult broadly amongst Afghan civil society in determining the needs of the Afghan population at all levels and in all parts of the country, not just Kabul.

Donors with experience in the area of upholding international policing standards should make funding and technical expertise available as a priority. They should ensure that their approach is focused on practical steps to reconstruct and strengthen the capacity of police to provide protection to ordinary Afghans and to implement the rule of law in accordance with international human rights standards.

Recommendations

1. STRUCTURE OF POLICE

The ATA with the support of the international community should:

- ◆ ensure that one person holds the role of head of police and that they practically and theoretically carry out this function.
- ◆ ensure that the National Security Directorate does not carry out arrest and detention outside its jurisdiction and that it works in conformity with the law and in consultation with the police
- ◆ provide an explicit guarantee in law that nobody except the police holds the powers to arrest and detain.
- ◆ close parallel structures of arrest and detention as a matter of priority.

The international community should:

- ◆ support the new Minister of the Interior in his attempts to clarify the lines of command and accountability within the Ministry of the Interior.

2. LEGAL REFORM

The ATA with the support of the international community should:

- ◆ ensure that international human rights instruments are formally and systematically incorporated into Afghan law.
- ◆ incorporate provisions of the 1964 Constitution and other existing laws that promote and protect the human rights of all into the new Constitution and other legal provisions. Gaps in legislation should be addressed in the drafting of future legislation. In particular:
 - the human rights provisions and safeguards in the 1964 Constitution should be carried forward into the new Constitution, including provisions protecting freedom from arbitrary arrest and detention, the ban on torture, the provision guaranteeing equality before the law and the procedural rights contained in Articles 26⁴⁹ and 28⁵⁰;

⁴⁹No one may be punished except by the order of a competent court rendered after an open trial held in the presence of the accused. No one may be punished except under the provisions of a law that has come into effect before the commission of the offense with which the accused is charged. No one may be pursued or arrested except in accordance with the provisions of the law. No one may be detained except on order of a competent court, in accordance with the provisions of the law... Torturing a human being is not permissible. No one can torture or issue orders to torture a person even for the sake of discovering facts, even if the person involved is under pursuit, arrest or detention or is condemned to a sentence...A statement obtained from an accused or any other person by compulsion is not valid.

- the existing constitutional safeguards should be strengthened in the new Constitution by balancing the government's duties to maintain security and order with the inclusion of its obligation to guarantee, protect and promote human rights, and by expanding the equality provisions to include equal protection of the law;
 - the new Constitution should contain an explicit statement guaranteeing the rule of law. Limits should be placed on when states of emergency can be declared and the restrictions that can be put in place during states of emergency.
 - Availability of habeas corpus or another legal mechanism to challenge detention that cannot be suspended should be guaranteed.
- ◆ The Law of Police and Gendarmes should be amended to:
- explicitly incorporate the UN Code of Conduct for Law Enforcement Officials and to place all the relevant human rights provisions in a single statute, including the prohibition of torture, bribery and corruption. This would facilitate training to international standards and make clear the responsibilities of the police;
 - create explicit bans on extrajudicial executions and "disappearances";
 - provide more detailed provisions relating to powers of arrest, including the use of force and bans on arbitrary arrest;
 - place clear restrictions on use of firearms, limiting their use to only those situations where use of force is required in order to protect life. The grounds for the use of force in effecting arrests needs to be clear and the grounds for allowing the use of firearms against escaped prisoners need to be narrowed;
 - place an explicit ban on the use of warning shots
 - require that unlawful actions and violations of the UN Code of Conduct for Law Enforcement Officials be reported to superiors or other review authorities;
 - guarantee equal protection of the law for all, without discrimination.

The international community should:

- ◆ ensure that the Judicial and Constitutional Commissions receive the necessary financial and technical support to be able to institute these recommended legislative changes.

Confession of a crime means the admission made by an accused willingly and in full possession of his sense before a competent court with regard to the commission of a crime legally attributed to him.

⁵⁰Article 28 includes, "A person's residence is inviolable. No one, including the state can enter or search a residence without the permission of the resident or the orders of a competent court and in accordance with the conditions and procedure specified by the law. In cases of witnessed crimes the responsible officer can enter or search the residence of a person without the permission of the resident or the prior write of the court on his personal responsibility. The officer is bound to get the order of the court within the time limit set by the law after his entry into the house or its search."

3. PRACTICAL IMPLEMENTATION OF THE LAW

The ATA with the support of the international community should:

- ◆ widely distribute the UN Code of Conduct and other important standards including the UN Basic Principles and AI's 10 Basic Standards. All police should be trained in the contents of the code and provided with a pictorial or simple Dari or Pashto guide.

4. TRAINING

The ATA with the support of the international community should:

- ◆ provide training nationwide to all police. International human rights and humanitarian law standards and their implementation must be incorporated as an integral and permanent component of training. This should include training on how to uphold those international treaties that Afghanistan has ratified and how to follow the other international instruments that are particularly relevant to policing.

- ◆ develop a program for training all serving police, both lower level police and officers outside Kabul on an urgent basis. A consistent nationwide curriculum must be instituted to ensure recognized professional standards and consistency. This would help maintain common standards across the country and help maintain the authority of the central government. Police trainers who have been trained in these standards should be encouraged through professional career development to stay in their posts to ensure that the police force retains expertise.

- ◆ ensure that training in international human rights standards is practical and reflects the reality of policing in the field. Scenario based training should be developed, with emphasis placed on the practical implementation of human rights standards for policing, including;

- the observance of proper procedures for arrest and detention. Police should carry out arrests using the minimum force necessary in a manner that is consistent with the prohibition against torture and ill-treatment. Training should be based on international and regional human rights standards relating to the use of force and to the treatment of detainees or prisoners;
- the application of non-violent means of carrying out police duties, and the differentiated use of force when it is strictly necessary or firearms only as a last resort;
- the interrogation of criminal suspects. Training on the gathering, analysis and preservation of evidence and other aspects of the investigation of alleged crimes, including techniques of interviewing and taking statements from suspects and witnesses, should be designed to develop the capacity of the police to build a case in an efficient manner that avoids reliance on coercion
- the importance of acting independently of political considerations and regardless of ethnic identity;

- ◆ provide special training on dealing sensitively with issues of violence against women, as well as how to deal with all women victims of crime.
- ◆ provide training on the specific rights and needs of children. Training should involve how to deal sensitively with issues of violence against children, as well as how to deal with children that have been victims of crime.
- ◆ create systems to monitor and evaluate training programs effectively. The criteria for evaluating the success of training programs, including the evaluation of trainees' understanding of and commitment to human rights standards should be established at the start of the training to ensure that lessons are learnt from previous training and that those lessons are incorporated into future training initiatives.
- ◆ ensure that all training initiatives are linked to the creation of effective accountability mechanisms.
- ◆ continue to hold training seminars for provincial police commanders in Kabul on a regular basis until effective training, incorporating human rights at all stages, is provided in the provinces.

5. REPRESENTATION

The ATA with the assistance of the international community should:

- ◆ develop recruitment policies and practices which ensure that the police force is as representative as possible of the diversity in Afghan society. Targets for the recruitment of women should be set and maintained. Targets for the recruitment from all ethnic backgrounds and all geographical areas should be set and maintained. A working environment should be promoted in which such groups are not discriminated against in any way.
- ◆ ensure that more women are appointed and given access to training as part of a strategy to increase police protection of women's rights. This decision to recruit and train more women officers should be taken at the highest policy levels of the police and implemented across the whole country. Proactive recruitment programs will need to be established and specially designed trainings undertaken to encourage more women to join the police.
- ◆ work towards a situation in which all police are professionally trained as new recruits or at the start of their professional careers, as well as receiving regular specialist in-service training. Those who are not professionalized through training should eventually be phased out of the police force through Disarmament Demobilisation and Rehabilitation programs.

6. RESOURCES AND EQUIPMENT

The ATA with the support of the international community should:

- ◆ pay particular attention to the needs of the police outside Kabul. Funds must be allocated to the provinces as a priority.
- ◆ establish clear lines of financial accountability at an institutional level.
- ◆ provide resources to ensure that there are appropriate building facilities for police offices and humane police detention facilities, including separate female detention facilities, initially at provincial level, eventually in all districts.
- ◆ provide non-lethal equipment, including handcuffs, and self-defensive equipment with correct training in the use of this equipment and alongside the development of adequate monitoring systems.
- ◆ ensure that any equipment, where its use in practice has revealed a substantial risk of abuse or unwarranted injury, should not be transferred to Afghanistan until an independent and rigorous review of the use of equipment is conducted. This should include equipment such as pepper gas weapons.
- ◆ develop procedures for regulating the control, storage and issuing of firearms that can be implemented in the future and train police in the new procedures
- ◆ provide equipment to facilitate consistent and sustainable record keeping procedures. Training in these procedures must be provided nationwide, resulting in the keeping of accurate records including arrest and incident registers.
- ◆ establish effective programs to collect surplus weapons and ammunition and illegal weapons. Weapons or ammunition in excess of national needs should be destroyed.

The international community should:

- ◆ provide funds to the LOTFA to ensure the payment of salaries of all members of the police force. The amount of pay needs to be sufficient to sustain a family.

7. ACCOUNTABILITY AND OVERSIGHT

Internal oversight mechanisms

The ATA with the support of the international community should:

- ◆ draw up police rules of procedure, consistent with international standards as a priority and distribute these to police officers throughout the country, with appropriate training sessions in their application.
- ◆ establish internal monitoring and investigation procedures to ensure that allegations of human rights violations committed by police are immediately and impartially dealt with.
- ◆ institute internal accountability mechanisms to ensure that complaints can be registered.

Independent oversight mechanisms

- ◆ ensure that any reports of human rights violations by the police are promptly, thoroughly, independently and impartially investigated. Perpetrators should be brought to justice and victims receive redress. In the case of serious human rights violations, these must be treated as criminal offences and the relevant criminal procedure followed accordingly. Sufficiently strong penalties, including removal from office or criminal prosecution, should be available to serve as a deterrent against the commission of violations.

- ◆ establish an effective, adequately resourced and independent police Ombudsperson as a priority. This body must be empowered 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. This body must be publicly accountable. This body could be established under the umbrella of the AIHRC if they are willing and able to undertake this role.

The independent oversight body should:

- ◆ be fully accessible to any member of the public who wishes to bring a complaint about police action or inaction, in writing or verbally. It should be able to initiate its own inquiries or investigations even if no specific complaint has been received, and act upon its findings and take steps to intervene when problems are identified. Mechanisms should be established to ensure that its recommendations are enforced.

- ◆ have a positive role in following up any investigations that they undertake. Effective coordination and communication should be ensured between the network of local and central offices. Responsibility for following up on cases must be clearly allocated and periodic evaluations should ensure that follow-up is taking place.

- ◆ be stationed in appropriate places. Within offices, there should be facilities such as private meeting rooms where complainants can discuss their complaints with the AIHRC staff in confidence.

- ◆ take steps to ensure effective communications between itself and potential complainants. Due to the high levels of illiteracy, there should be common use of oral communication techniques, such as radio, and staff should take care to explain their procedures verbally, rather than relying on explanatory leaflets.

UNAMA should:

- ◆ ensure that such a body is created and give all support possible to assist their work in this area. Until such an Ombudsperson is fully functioning, UNAMA staff across the country with terms of reference to cover human rights issues should be instructed and given the necessary support so that they can do the following:

- monitor policing practices in the area in which they work;
- provide those who have been victims of violations by the police or other groups carrying out policing functions with the opportunity to lodge a complaint with UNAMA;

- investigate any complaints lodged with them that implicate the police or other groups carrying out policing functions;
- provide adequate protection to those who have lodged complaints or who may be at risk because they are witnesses;
- make recommendations to Afghan authorities for remedial action for both larger patterns of violation and individual cases.

The international community should:

- ◆ provide adequate funding and resources for the Ombudsperson to be able to fully carry out, without restrictions and limitations, the aims and functions set out in its mandate, and particularly, to address the demands of the caseloads that have been brought to its attention. The Ombudsperson should have all necessary human and material resources to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material concerning specific allegations of violations reported to it.
- ◆ provide resources to create and support the ongoing work of an independent monitoring mechanism to appraise the performance of police officers and to receive and investigate complaints promptly, effectively, independently and impartially.
- ◆ provide funding with a long term perspective to enable the Ombudsperson to plan and develop its activities with confidence about being able to fulfil them.

8. AWARENESS-RAISING

The ATA with the support of the international community should:

- ◆ develop public awareness and education campaigns nationwide to ensure people know what good policing is, what their rights are, and why they should help the police in certain ways.
- ◆ ensure that public awareness campaigns accompany the establishment of independent oversight mechanisms, so that people know what their rights are and where they can go to register complaints. This could be incorporated into the AIHRC's national human rights education curriculum.
- ◆ undertake to provide outreach to all ethnic groups on the importance of policing, and of the importance of participation from all sectors of society.

The international community should:

- ◆ provide resources for the development of such human rights education and awareness-raising programs.

Appendix: Amnesty International's 10 Basic Standards for Law Enforcement Officials

All governments are required to adopt the necessary measures to instruct law enforcement officials, during basic training and all subsequent training and refresher courses, in the provisions of national legislation in accordance with the UN Code of Conduct for Law Enforcement Officials as well as other basic international human rights standards applicable to law enforcement officials.

These standards should be made available as widely as possible to the general public and fully respected under all circumstances. They should be reflected in national legislation and practice, and regular public reports issued on their implementation. Exceptional circumstances such as a state of emergency or any other public emergency do not justify any departure from these standards.

All governments should adopt an active and visible policy of integrating a gender perspective into the development and implementation of training and policies for law enforcement officials.

Introduction

These '10 Basic Human Rights Standards for Law Enforcement Officials' were prepared by Amnesty International in association with police officials and experts from different countries. They are based on United Nations law enforcement, criminal justice and human rights standards. They are intended as a quick reference, and not as a full explanation of or commentary on the applicability of international human rights standards relevant to law enforcement.

This document is intended to raise awareness amongst government officials, parliamentarians, journalists and non-governmental organizations of some fundamental standards which should be part of any police training and police practice.

It is hoped that police authorities will be able to use these 10 basic standards as a starting point to develop detailed guidance for the training and monitoring of the conduct of police agents. Certainly, it is the duty of all officers to ensure that their colleagues uphold the ethical standards of their profession - the standards outlined here are essential for exercising that responsibility.

Background

Everyone shares responsibility to uphold the Universal Declaration of Human Rights (UDHR) in its entirety. Nevertheless the UDHR contains a number of articles which are particularly relevant for law enforcement work:

Everyone has the right to life, liberty and security of person (Article 3, UDHR)

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5, UDHR)

All are equal before the law and are entitled without any discrimination to equal protection of the law (Article 7, UDHR)

No one shall be subjected to arbitrary arrest and detention (Article 9, UDHR).

Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which they have had all the guarantees necessary for their defence (Article 11(1), UDHR)

Everyone has the right to freedom of opinion and expression (Article 19, UDHR)

Everyone has the right to freedom of peaceful assembly and association, and no one may be compelled to belong to an association (Article 20, UDHR)

Other documents directly relevant to policing work are the following United Nations law enforcement, criminal justice and human rights instruments:

UN Code of Conduct for Law Enforcement Officials

UN Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials

UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

UN Declaration on the Protection of All Persons from Enforced Disappearances

UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

UN International Covenant on Civil and Political Rights

UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

UN Standard Minimum Rules for the Treatment of Prisoners (hereafter referred to as Standard Minimum Rules)

UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (hereafter referred to as Body of Principles)

UN Convention on the Rights of the Child

UN Rules for the Protection of Juveniles Deprived of their Liberty

UN Declaration on the Elimination of Violence against Women

UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The UN Code of Conduct for Law Enforcement Officials, the UN Standard Minimum Rules and the UN Body of Principles set out several important principles and prerequisites for the humane performance of law enforcement functions, including that:

Every law enforcement agency should be representative of, and responsive and accountable to, the community as a whole

The effective maintenance of ethical standards among law enforcement officials depends on the existence of a well-conceived, popularly accepted and humane system of laws

Every law enforcement official is a part of the criminal justice system, the aim of which is to prevent and control crime, and the conduct of every official has an impact on the entire system

Every law enforcement agency should discipline itself to uphold international human rights standards and the actions of law enforcement officials should be open to public scrutiny. Standards for humane conduct of law enforcement officials lack practical value unless their content and meaning become part of the creed of every law enforcement official, through education and training and through monitoring.

The term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest and detention. This should be given the widest possible interpretation, and includes military and other security personnel as well as immigration officials where they exercise such powers.

Copies of UN law enforcement, criminal justice and human rights standards can be obtained from the Office of the High Commissioner for Human Rights, CH-1211 Geneva 10, Switzerland (http://www.un.org/cgi-bin/treaty_2.pl or E-mail to: treaty@un.org)

Basic Standard 1:

Everyone is entitled to equal protection of the law, without discrimination on any grounds, and especially against violence or threat. Be especially vigilant to protect potentially vulnerable groups such as children, the elderly, women, refugees, displaced persons and members of minority groups.

For the implementation of Basic Standard 1 it is of great importance that police officers at all times fulfil the duty imposed on them by law, by serving the community and protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. They must promote and protect human dignity and maintain and uphold the human rights of all persons, among which are the following:

Everyone has the right to liberty and security of the person

No one should be subjected to arbitrary arrest, detention or exile

All persons deprived of their liberty have the right not to suffer torture or cruel, inhuman or degrading treatment

Everyone is entitled without any discrimination to equal protection of the law

Everyone has the right to a fair trial

Everyone has the right to freedom of movement

Everyone has the right to peaceful assembly

Everyone has the right to freedom of expression

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may they invoke superior orders or exceptional circumstances such as a state of war or threat of war, or political instability or other public emergency as a justification for such acts. Special attention should be given to the protection of human rights of members of potentially vulnerable groups, such as children, the elderly, women, refugees, displaced persons and members of minority groups.

Sources include: UN Code of Conduct for Law Enforcement Officials (Articles 1,2,5), Beijing Declaration and Platform for Action (paragraph 2.2.4)

Basic Standard 2:

Treat all victims of crime with compassion and respect,
and in particular protect their safety and privacy

Victims are people who have suffered harm, including mental and physical injury, emotional suffering, economic loss or substantial impairment of their fundamental rights through acts or omissions that are in violation of criminal law.

For the implementation of Basic Standard 2, police officers must:

Ensure that, if needed, measures are taken to ensure the protection and safety of victims from intimidation and retaliation

Inform victims without delay of the availability of health and social services and other relevant assistance

Provide without delay specialist care for women who have suffered violence

Develop investigative techniques that do not further degrade women who have been victims of violence.

Give particular attention to victims who have special needs because of the nature of the harm inflicted on them or because of factors such as race, colour, gender, sexual orientation, age, language, religion, nationality, political or other opinion, disability, ethnic or social origin, etc.

Sources include: UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Principles 4, 14, 15, 16 and 17), CEDAW - General Recommendation No 19 (11th Session, 1992)

Basic Standard 3:

Do not use force except when strictly necessary
and to the minimum extent required under the circumstances

The implementation of Basic Standard 3 involves, among other things, that Police officers, in carrying out their duty, should apply non-violent means as far as possible before resorting to the use of force. They may use force only if other means remain ineffective or without any promise of achieving the necessary result. Basic Standard 3 must be implemented in accordance with Basic Standard 4 and 5.

Whenever the lawful use of force is unavoidable, police officers must:

Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved

Minimize damage and injury, and respect and preserve human life

Ensure that all possible assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment

Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment

Where injury or death is caused by the use of force by police officers, they shall report the incident promptly to their superiors, who should ensure that proper investigations of all such incidents are carried out.

Sources include: UN Code of Conduct for Law Enforcement Officials (Article 3), UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 4, 5, 6 and 9)

Basic Standard 4:

Avoid using force when policing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary.

Everyone is allowed to participate in peaceful assemblies, whether political or non-political, subject only to very limited restrictions imposed in conformity with the law and which are necessary in a democratic society to protect such interests as public order and public health. The police must not interfere with lawful and peaceful assemblies, otherwise than for the protection of persons participating in such an assembly or others.

The implementation of Basic Standard 4 involves, among other things:

In the policing of assemblies that are unlawful but non-violent, police officers must avoid the use of force. If force is indispensable, for example to secure the safety of others, they must restrict such force to the minimum extent necessary and in compliance with the other provisions in Basic Standard 3

Firearms shall not be used in the policing of non-violent assemblies. The use of firearms is strictly limited to the objectives mentioned in Basic Standard 5

In the dispersal of violent assemblies police officers may use force only if other means remain ineffective or without any promise of achieving the intended result. When using force police officers must comply with the provisions in Basic Standard 3

In the dispersal of violent assemblies police officers may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary to achieve one of the objectives mentioned in Basic Standard 5 and in accordance with the provisions in Basic Standard 3 and Basic Standard 5.

Sources include: UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Principles 9, 12, 13, and 14)

Basic Standard 5:

Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others

The use of firearms is an extreme measure which must be strictly regulated, because of the risk of death or serious injury involved. The implementation of Basic Standard 5 requires, among other things, that police officers must not use firearms except for the following objectives and only when less extreme means are insufficient to achieve these objectives: In self-defence or in defence of others against the imminent threat of death or serious injury

To prevent the perpetration of a particularly serious crime involving grave threat to life
To arrest a person presenting such a danger and resisting the police officer's authority, or to prevent his or her escape
In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

Police officers must identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the officers at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

Rules and regulations on the use of firearms by police officers must include guidelines that:
Specify the circumstances under which police officers are authorized to carry firearms and prescribe the types of firearms and ammunition permitted

Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm

Prohibit the use of any firearms or ammunition that cause unnecessary injury or present an unnecessary risk

Regulate the control, storage and issuing of firearms and ammunition, including procedures for ensuring that police officers are accountable for firearms and ammunition issued to them

Provide for warnings to be given, if appropriate, when firearms are to be discharged

Provide for a system of reporting and investigation whenever police officers use firearms in the performance of their duty.

Sources include: UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles 9,10 and 11)

Basic Standard 6:

Arrest no person unless there are legal grounds to do so,
and the arrest is carried out in accordance with lawful arrest procedures

To make sure that an arrest is lawful and not arbitrary, it is important that the reasons for the arrest and the powers and identity of arresting officers are known. Therefore the implementation of Basic Standard 6 involves, among other things:

Arrest or detention shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose

Police or other authorities which arrest a person shall exercise only the powers granted to them under the law

Anyone arrested must be informed at the time of arrest of the reasons for the arrest

The time of the arrest, the reasons for the arrest, precise information identifying the place of custody, and the identity of the law enforcement officials concerned must be recorded; in addition, the records must be communicated to the detained person or to his or her lawyer

Officials carrying out an arrest should identify themselves to the person arrested and, on demand, to others witnessing the event

Police officers and other officials who make arrests should wear name tags or numbers so that they can be clearly identified. Other identifying markings such as the insignia of soldiers' battalions or detachments should also be visible

Police and military vehicles should be clearly identified as such. They should carry number plates at all times.

A person should not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other officer authorized by law to exercise judicial power, and be entitled to a trial within a reasonable time, or to release. It should not be the general rule that persons awaiting trial are detained in custody, but release may be subject to guarantees to appear for trial.

All detainees should only be kept in recognised places of detention. Such places of detention should be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention.

The detention of refugees and asylum seekers should normally be avoided. No asylum-seeker should be detained unless it has been established that detention is necessary, is lawful and complies with one of the grounds recognized as legitimate by international standards. In all cases, detention should not last longer than is strictly necessary. All asylum-seekers should be given adequate opportunity to have their detention reviewed by a judicial or similar authority. Reference regarding the detention of refugees and asylum seekers should be made to the competent authorities, as well as to the office of the United Nations High Commissioner for Refugees (UNHCR) and other refugee assistance organizations.

Sources include: UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 2, 8, 10, 11, 12, 20 and 29), UN Standard Minimum Rules for the Treatment of Prisoners (Rule 55), UN Convention relating to the Status of Refugees (Article 31), Conclusion 44 of the UNHCR Executive Committee

Basic Standard 7:

Ensure all detainees have access promptly after arrest to their family and legal representative and to any necessary medical assistance

Experience worldwide has shown that it is often in the first hours or days of detention that detainees are at greatest risk of being ill-treated, tortured, made to "disappear", or killed.

Unconvicted detainees must be presumed innocent and treated as such. The implementation of Basic Standard 7 requires, among other things, that:

Detainees should be promptly told of their rights, including the right to lodge complaints about their treatment.

A detainee who does not understand or speak the language used by the authorities responsible for his or her arrest is entitled to receive information and have the assistance, free of charge if necessary, of an interpreter in connection with the legal proceedings subsequent to his or her arrest.

A detainee who is a foreigner should be promptly informed of his or her right to communicate with the relevant consular post or diplomatic mission.

All detained refugees and asylum seekers should be allowed access to the local representative of the UNHCR and to refugee assistance organizations, regardless of why they are being detained. If a detainee identifies himself / herself as a refugee or an asylum seeker, or otherwise indicates their fear at being returned to their country, it is incumbent on the detaining officials to facilitate contact with these organizations.

Police officers or other competent authorities must ensure that all detainees are fully able in practice to avail themselves of the right to notify family members or others immediately of their whereabouts. All detainees should be informed of this right. If they do not have the financial or technical means to send word to their relatives, the officers must be ready to communicate the

Police officers or other competent authorities must ensure that accurate information on the arrest, place of detention, transfer and release of detainees is available promptly in a place where relatives and others concerned can obtain it. They must ensure that relatives are not obstructed from obtaining this information, and that they know or are able to find out where the information can be obtained. (See also the commentary to Basic Standard 8)

Relatives and others should be able to visit a detainee as soon as possible after he or she is taken into custody. Relatives and others should be able to correspond with the detainee and make further visits regularly to verify the detainee's continued well-being.

Every detainee must be informed promptly after arrest of his or her right to a legal counsel and be helped by the authorities to exercise this right. Moreover, every detainee must be able to communicate regularly and confidentially with their lawyer, including having meetings with their lawyer within sight but not within hearing of a guard or police officer, in order to help prepare the detainee's defence and to exercise his or her rights.

An independent doctor should promptly conduct a proper medical examination of the detainee after taken into custody in order to ascertain that the detainee is healthy and not suffering from torture or ill-treatment, including rape and sexual abuse. Thereafter, medical care and treatment shall be provided whenever necessary. Every detainee or his or her legal counsel has the right to request a second medical examination or opinion. Detainees, even with their consent, must never be subjected to medical or scientific experimentation which may be detrimental to their health.

Female detainees should be entitled to medical examination by a female doctor. They should be provided with all necessary pre-natal and post-natal care and treatment. Restraints should only be used on pregnant women as a last resort and should never put the safety of a woman or foetus at risk. Women should never be restrained during labour.

Sources include: UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 8, 11, 14, 15, 16, 17, 18, 19, 20, 22, 24, 25 and 29), Conclusion 44 of the UNHCR Executive Committee

Basic Standard 8:

All detainees must be treated humanely.

Do not inflict, instigate or tolerate any act of torture or ill-treatment, in any circumstances, and refuse to obey any order to do so

Detainees are inherently vulnerable because they are under the control of law enforcement

officials who therefore have a duty to protect detainees from any violation of their rights by strictly observing procedures designed to respect the inherent dignity of the human person. Accurate record-keeping is an essential element of the proper administration of places of detention. The existence of official records which are open for consultation helps to protect detainees from ill-treatment including torture. The implementation of Basic Standard 8 requires, among other things, that:

No person under any form of detention may be subjected to torture, or to cruel, inhuman or degrading treatment or punishment, and law enforcement officers have a right and a duty to disobey orders to carry out such acts. No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may they invoke superior orders or exceptional circumstances such as a state of war or threat of war, or political instability or other public emergency as a justification for such acts. Law enforcement officials should be instructed that rape of women in their custody constitutes an act of torture that will not be tolerated. Similarly, they should be instructed that any other forms of sexual abuse may constitute torture or cruel, inhuman or degrading treatment and that offenders will be brought to justice.

The term "cruel, inhuman or degrading treatment or punishment" should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental, including holding a detainee in conditions which deprive him or her, even temporarily, of the use of any of his or her natural senses, such as sight or hearing, of his or her awareness of place or passing of time. Compliance with the other basic standards for law enforcement are also essential safeguards against torture and ill-treatment.

A detainee may not be compelled to confess, to otherwise incriminate himself or herself or to testify against any other person. While being interrogated, no detainee may be subject to violent threats or methods which impair his or her capacity of decision or judgement. Female guards should be present during the interrogation of female detainees and should be solely responsible for carrying out any body searches of female detainees.

Children should be detained only as a last resort and for the shortest possible time. They should be given immediate access to relatives, legal counsel and medical assistance and relatives or guardians should be informed immediately of their whereabouts. Juvenile detainees should be kept separate from adults and detained in separate institutions. They should be protected from torture and ill-treatment, including rape and sexual abuse, whether by officials or other detainees.

Refugees and asylum seekers detained for non-criminal reasons should never be detained together with common law prisoners. Conditions and treatment should be humane, and appropriate to their status as refugees.

Detainees should be kept separate from imprisoned persons and, if requested, be kept reasonably near their usual place of residence. All detainees should if possible wear their own clothing if it is clean and suitable, sleep singly in separate rooms, be fed properly and be allowed to buy or receive books, newspapers, writing materials and other means of occupation as are compatible with the interests of justice.

Registers of detainees should be kept in all places of detention including police stations and military bases. The register should consist of a bound book with numbered pages which cannot be tampered with. Information to be entered in them should include:

The name and identity of each person detained
The reasons for his or her arrest or detention
The names and identities of officials who arrested the detainee or transported him
The date and time of the arrest and of the transportation to a place of detention
The time, place and duration of each interrogation and the name of the person or persons conducting it
The time of the detainee's first appearance before a judicial authority
Precise information concerning the place of custody
The date, time and circumstances of the detainee's release or transfer to another place of detention.

Other measures that can contribute to the proper treatment of detainees are:

Police officers and other competent authorities should allow representatives of the local or national bar and medical associations, as well as local or national members of parliament, appropriate international bodies and officials, to visit any police station and facilities, including detention centres, without restriction for the purpose of inspection.

These bodies and officials must be able to make unannounced visits

These bodies and officials must have access to all parts of each place of detention and all detainees and be able to interview them freely and without witnesses

These bodies and officials must be able to make return visits whenever they wish

These bodies and officials must be able to make recommendations to the authorities concerning the treatment of detainees

The treatment of detainees should conform as a minimum to the standards laid down in the UN Standard Minimum Rules and the Body of Principles.

Sources include: UN Code of Conduct for Law Enforcement Officials (Article 5); UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (Principles 1,2,6, 12, 21 and 23); UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 2); UN Standard Minimum Rules for the Treatment of Prisoners (Rules 55, 85, 86, 87, 88, 91, 92 and 93); UN International Covenant on Civil and Political Rights (Article 10); UN Convention on the Rights of the Child (Article 37), Conclusion 44 of the UNHCR Executive Committee

Basic Standard 9:

Do not carry out, order or cover up extrajudicial executions or "disappearances", and refuse to obey any order to do so

No one should be arbitrarily or indiscriminately deprived of life. An extrajudicial execution is an unlawful and deliberate killing carried out by, or on the order of, someone at some level of government, whether national, state or local, or with their acquiescence.

There are several important elements in the concept of an extrajudicial execution:

It is deliberate, not accidental

It violates national laws such as those which prohibit murder, and/or international standards forbidding the arbitrary deprivation of life.

Its unlawfulness distinguishes an extrajudicial execution from:

A justifiable killing in self-defence

A death resulting from the use of force by law enforcement officials which is nevertheless consistent with international standards

A killing in an armed conflict situation which is not prohibited by international humanitarian law

In an armed conflict, even if not an international armed conflict, armed officers and soldiers of the government, as well as combatants of armed political groups, are prohibited from carrying out arbitrary and summary executions. These acts would constitute breaches of Common Article 3 of the Geneva Conventions --(which also prohibits mutilation, torture or cruel, inhuman or degrading treatment, hostage taking and other gross abuses).

The "disappeared" are people who have been taken into custody by agents of the state, yet whose whereabouts and fate are concealed. It is a grave violation of human rights to carry out disappearances.

No order or instruction of any public authority, civilian, military or other, may be invoked to justify an extrajudicial execution or a "disappearance". Any person receiving such an order or instruction has a duty to disobey it.

All police officers and all other law enforcement personnel should be aware of their right and duty to disobey orders the implementation of which might result in serious human rights violations. Since those violations are unlawful, police officers and others must not participate in them. The need to disobey an unlawful order should be seen as a duty, taking precedence over the normal duty to obey orders. The duty to disobey an unlawful order entails the right to disobey it.

The right and duty to disobey an order to participate in "disappearances" and extrajudicial killings are incorporated in the UN Declaration on Disappearances (Article 6) and in the UN Principles on Extra-Legal, Arbitrary and Summary Executions (Principle 3). The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials protect the right to disobey by stating that no criminal or disciplinary sanction should be imposed on law enforcement officials who, in compliance with these Basic Principles and the UN Code of Conduct for Law Enforcement Officials, refuse to carry out an order to use force and firearms or who report such use by other officials.

To implement Basic Standard 9, it is important that the use of force and firearms by the police strictly complies with all the provisions in Basic Standard 3, Basic Standard 4 and Basic Standard 5.

Sources include: UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Principle 1 and 3); Common Article 3 of the Geneva Conventions; UN Declaration on the Protection of All Persons from Enforced Disappearances (Preamble and Article 6)

Basic Standard 10:

Report all breaches of these Basic Standards to your senior officer and to the office of the public prosecutor.

Do everything within your power to ensure steps are taken to investigate these breaches.

All violations of human rights by the police or other law enforcement personnel, including any breaches of these Basic Standards, should be investigated fully, promptly and independently, for instance by the office of the public prosecutor. The main objective of these investigations is to establish the facts and to bring to justice those responsible:

Has a violation of human rights or a breach of principles or of national law been perpetrated?

If so, by whom?

If a public official has committed a crime or breach of regulations, was he or she acting under orders or with the acquiescence of other officials?

Has the office of the prosecutor opened a criminal investigation and, if there is sufficient admissible evidence, sought to prosecute?

Sources include: UN Code of Conduct for Law Enforcement Officials (Preamble and Articles 1, 2, 8); UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Preamble)