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## **HUMAN RIGHTS IN AFGHANISTAN THROUGH THE TRANSITION OF SECURITY RESPONSIBILITY AND BEYOND: A BRIEFING FOR DELEGATES AT THE 2012 NATO SUMMIT**

At the 25th Summit of the North Atlantic Treaty Organization (NATO) in Chicago, USA, on 20-21 May 2012, the Alliance is expected to consolidate plans for its future engagement in Afghanistan. This includes the complete transition of security responsibility by 2014 from the International Security Assistance Force (ISAF) to Afghan National Security Forces (ANSF), as well as the provision of NATO training, advice and assistance to the Government of Afghanistan beyond 2014.

This Amnesty International briefing highlights priority human rights issues, relevant to the NATO Alliance's immediate and future role in Afghanistan. Amnesty International urges all NATO Allies, ISAF partners, the Government of Afghanistan, and other states and inter-governmental organizations at the Summit, to ensure that both existing and new agreements reached, do not undermine, but strengthen human rights and the rule of law in Afghanistan.

### **1. Adopt common rules of engagement and comply with international humanitarian law**

ISAF personnel from 50 states, contributed both by NATO and non-NATO members, are mandated to operate in Afghanistan. Additional military personnel are operating in the country as part of the counter-terrorism mandate of the US-led Operation Enduring Freedom, and there are numerous members of civilian intelligence agencies as well as private contractors and local militias conducting military operations.

Amnesty International welcomed the move in March 2010 by the former Commander of US forces and the NATO/ISAF, to bring most US Special Operations forces under the same chain of command as regular US and NATO forces for the first time. However, those forces that remain outside the regular chain of command, such as the US Army's Delta Force and the Navy Seals, civilian contractors, intelligence agencies as well as special operations units from other countries, must also be governed by the rule of law and held accountable for their actions.

- All international forces operating in Afghanistan must adopt common rules of engagement that ensure full compliance with international humanitarian law and improve coordination with Afghan national forces, to ensure compliance with these rules.

### **2. Improve accountability of international security forces**

International forces are obliged under international law to ensure accountability for their actions, whether they are operating in the regular military, in intelligence agencies, or as civilian contractors, and to provide remedy for civilian casualties of military action. Amnesty International has welcomed the creation of ISAF's Civilian Casualties Tracking Cell (CCTC), however the unit is under-resourced. International security forces operating in Afghanistan are urged to:

- Fully resource and expand the mandate of the Civilian Casualties Tracking Cell to cover “other government agencies”, i.e., the various intelligence agencies, and private contractors.
- Create a unified, or at least coherent and consistent system of assisting civilians injured during actions by international forces. Currently, the USA runs its own “solatia” program, whereas several ISAF troop contributing countries still refuse to offer any assistance to civilians injured by their actions.
- Respond to incidents of injury to civilians with serious, credible, and impartial investigations, rather than the current practice of initial denial, then faulty investigation, and ultimately little to no accountability for their actions. ISAF states should ensure that their own national laws allow any such victims to seek redress through civil actions.

In June 2010 the North Atlantic Council adopted non-binding guidelines on civilian compensation for all troop-contributing nations in Afghanistan. Amnesty International welcomes these guidelines and urges:

- The Commander of ISAF (COMISAF) to ensure these changes are fully implemented, by issuing a tactical directive describing the importance of fully addressing civilian harm when it occurs, and providing detailed procedures for recording casualties, receiving claims, conducting investigations and offering amends in the form of compensation, apologies and other dignifying gestures.

### **3. Improve accountability of Afghan National Security Forces**

Before the complete transfer of security responsibility to Afghan National Security Forces (ANSF), the Afghan government, NATO/ISAF states and other international partners must ensure that all ANSF personnel will be held fully accountable for violations of international human rights and humanitarian law. States are urged to:

- Support the work of an effective vetting mechanism to root out ANSF candidates and current personnel, including high-ranking officials, against whom there have been credible allegations of involvement in human rights abuses.
- Invest in international human rights and humanitarian law training, and gender-sensitivity training, for all relevant ANSF personnel.
- Oversee the creation of a mechanism to monitor and investigate civilian casualties and injuries, or destruction to civilian objects, attributed to the ANSF, and to ensure timely and effective remedy. The ANSF should have in place detailed procedures for recording casualties, receiving claims, conducting investigations and ensuring reparation, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Assist in the establishment of an effective, adequately resourced and independent Police Ombudsperson. This institution must have the expertise and authority to investigate complaints against the police, including complaints of human rights violations perpetrated by the police and of police failure to investigate other human rights-related offences.

### **4. No more arbitrary detention or transfers to torture**

Amnesty International has consistently called on NATO/ISAF forces to halt transfers of people they capture to the Afghan authorities, particularly to facilities run by the National Directorate of Security (NDS), Afghanistan's intelligence service. The NDS has demonstrated a pattern of human rights violations, including torture and other ill-treatment, perpetrated with impunity. NATO's decision in September 2011 to suspend transferring detainees to eight Afghan government-run detention centres across the country was a welcome step towards the rule of law and increased human rights protection.

With the transition of security responsibility to Afghan forces, international security forces must clarify how they intend to process detainees captured. In view of the serious deficiencies in Afghanistan's detention system, we urge all relevant states to ensure that:

- Transfers of detainees to the *sole control* of the Afghan authorities are stopped, until effective safeguards against torture and other ill-treatment are introduced in Afghanistan's detention system. No state should rely on "diplomatic assurances" or Memorandums of Understanding (MoUs) for concluding that a person may be transferred to the Afghan authorities without risk of torture or other ill-treatment.
- Afghan authorities repeal legislation allowing the NDS to arrest and detain suspects. Detainees apprehended as part of counter-insurgency operations should be transferred to detention centres under the auspices of the Ministry of Justice.
- Independent monitors, including the International Committee of the Red Cross (ICRC), the Afghan Independent Human Rights Commission, and UN Assistance Mission in Afghanistan (UNAMA), have unhindered access to all places of detention in Afghanistan and unsupervised access to all detainees, including high-security detention centres. Monitoring should be frequently conducted and without prior notification.
- All allegations of torture or other ill-treatment, whether in Afghan or US/ISAF custody, are promptly, impartially, independently and thoroughly investigated in accordance with international law. Those suspected of involvement should be prosecuted in fair trials, without recourse to the death penalty.
- Legal and institutional reform in Afghanistan continues to receive substantial, long-term international political and financial support, particularly to ensure that human rights standards are applied in the treatment of all detainees in Afghanistan. All personnel involved in detentions should receive human rights training.

## 5. Prevent and ameliorate displacement arising from security operations

The number of displaced persons within Afghanistan has reached a record half-million. Conflict-induced displacement increased rapidly in the first half of 2011. The UN High Commissioner for Refugees (UNHCR) estimates that nearly 100,000 people were displaced between January and June last year.

Many displaced persons condemned to subsist in urban slums.<sup>1</sup> The majority experience multiple human rights problems including forced evictions, lack of shelter, food and water, healthcare, education and economic opportunities, which could further erode the country's hard-won advances and lead to greater instability in the otherwise relatively stable urban areas.

NATO/ISAF and ANSF should plan to prevent and mitigate displacement arising from security operations, even when casualty rates are low.

- Predict, monitor and assess the impact of military operations on displacement, and take all measures to minimise displacement in areas affected by operations.
- Supplement existing tactical directives, operating procedures, and guidance to troops, on humanitarian responses with explicit guidance on the prevention and mitigation of forced displacement.
- Share information on humanitarian needs and displacement with humanitarian actors.
- Review practices to ensure compliance with current tactical directives and other operational guidance, particularly on air-strikes and night raids. Promptly and transparently conduct thorough investigations into the circumstances of civilian casualties that do occur.

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<sup>1</sup> Amnesty International report, *Fleeing War, Finding Misery: The plight of Afghanistan's internally displaced*, February 2012, <http://www.amnesty.org/en/library/info/ASA11/001/2012/en>

## 6. Fully implement UN Security Council resolutions on Women, Peace & Security

All states including NATO/ISAF states and the Government of Afghanistan are required to implement UN Security Council resolutions relevant to the security of women in Afghanistan and their role in conflict resolution. These include resolutions 1325 (2000) and 1960 (2010) on Women, Peace and Security, and resolutions 2011 (2011) and 2041 (2012) on the mandates of ISAF and UNAMA respectively. Moreover, NATO and its partners have expressly committed to implement such resolutions through the 2007 NATO/Euro-Atlantic Partnership Council (EAPC) policy on resolution 1325 (2000) and which has since been updated.<sup>2</sup>

Afghan civil society groups, in particular women's groups, have repeatedly sounded the alarm about the prospect of a worsening human rights situation in Afghanistan, and being sidelined in key decision-making processes, as the government assumes security responsibility in the country and seeks a political settlement with Taliban elements.

The 70-member High Peace Council set up to negotiate with the Taliban includes former *mujahideen* and warlords allegedly responsible for multiple human rights abuses. Some are accused of massacring civilians during the civil war of the 1990s; some are notorious for their persecution for women. Only nine women have been appointed to the High Peace Council, despite Afghan women's calls for gender parity, and at the very least 25% of seats, in line with the Afghan constitutional guarantee for women's representation in parliament.

Today in areas under their control, as when in government, the Taliban have severely curtailed the rights of girls and women, including their freedom of movement and political participation. The Taliban have made little effort to distinguish between civilian and military targets, and deliberately targeted civilians, including in suicide bombings and roadside attacks. Thousands of civilians, including women and girls, have been killed or injured. Increasingly Afghan women's human rights defenders also face intimidation and attacks. Some have fled the country while others have been killed.

In March 2012, President Karzai defended a statement by the *Ulema* Council (council of religious scholars) which calls for restrictions on women's freedoms, including in the workplace and schools and while travelling.

Amnesty International urges the Government of Afghanistan, and its international partners, including NATO/ISAF states, through their respective mandates, to:

- Ensure that human rights including women's rights to security, political participation and justice, are not traded away or compromised with the transition of security responsibility to the ANSF, and through reconciliation talks with Taliban elements.
- Establish a joint-protection taskforce for women human rights defenders, within the Afghan Ministry of Women's Affairs, to monitor intimidation and attacks against them, and to coordinate effective responses among all government agencies.
- Continue to increase the proportion of women playing an active role in the ANSF, in particular the Afghan National Police force, ensuring their safety and dignity in their own workplace.

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<sup>2</sup> Women, peace and security: NATO's implementation of UNSCR 1325, NATO website, [http://www.nato.int/cps/en/natolive/topics\\_56984.htm](http://www.nato.int/cps/en/natolive/topics_56984.htm) Accessed 17 May, 2012