

# **Afghanistan**

## **Crumbling prison system desperately in need of repair**

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# **Afghanistan: Crumbling prison system desperately in need of repair**

## **1. Introduction**

Following over 23 years of armed conflict, the criminal justice system in Afghanistan is not able to protect the rights of the people. Prisons, an essential component of this system, are crumbling after years of neglect and lack trained and qualified staff. While donor attention is focused elsewhere, prison staff are struggling to accommodate thousands of people held for long periods in poor conditions, violating basic international human rights standards relating to the treatment of detainees.

Amnesty International recognizes that the task of rebuilding prisons across the country is enormous and challenging. Unlike other key aspects of the criminal justice system, until March 2003 the prison system had no international donor taking the lead on its reconstruction.<sup>1</sup> The current administration does not have resources and expertise to reconstruct a prison system that conforms to international minimum standards. Prisoners are being held for months in overcrowded cells, some of them shackled, with inadequate bedding and food. Staff have received no training and have not been paid for months. Prisoners and detainees are not being held in safety, some are suffering ill-treatment or even torture. The lack of funding allocated to prisons affects the rights of those working in the system as well as those being detained. It is a failure of the international community that has made a commitment to the reconstruction of Afghanistan that scant attention has been paid to the prison system and its reconstruction in line with international human rights law and standards. In order for the Afghan Transitional Administration (ATA) to reconstruct the prison system in a way that protects human rights, the international community must provide the essential financial and technical support and expertise necessary for this vital task.

In March 2003 the administration of prisons was transferred from the Ministry of Interior to the Ministry of Justice. This transfer provides an important opportunity for a new system to be built that upholds international human rights standards. International donors must support the Ministry of Justice to rebuild the prison system at all levels in a way that respects human rights.

Amnesty International is urging that the reconstruction of the prison system in line with international human rights law and standards is made a priority by the ATA with the support of the international community. A functioning criminal justice system that adheres to international law and standards involves the effective operation of all interlinking sectors,

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<sup>1</sup>In March 2003, with the transfer of the administration of prisons from the Ministry of the Interior to the Ministry of Justice, Italy, the lead donor for the justice sector, became the lead donor for prisons.

including policing, prisons and courts. Unless all aspects are addressed and the appropriate reform initiated and carried out, the system will never be successful.

This report documents the problems facing those working in the prison system that prevent them from being able to uphold the rights of all detainees and prisoners. It looks at resource and training issues before focusing on prison conditions. It goes on to document patterns of ill-treatment and arbitrary detention, before making recommendations to the ATA and the international donor community.

### **1.1 Amnesty International in Afghanistan**

This report is the second of four reports by Amnesty International produced during a year-long project focusing on the reconstruction of the criminal justice system in Afghanistan. Amnesty International established a field presence in Afghanistan in June 2002 to provide input on human rights protection and promotion at all levels as the system is being rebuilt.<sup>2</sup> An expert on prisons joined the field presence from September to November 2002 and further research was completed in April and May 2003. During this time, the Amnesty International delegation carried out research across Afghanistan, visiting districts in the provinces of Balkh, Bamiyan, Herat, Hilmand, Kabul, Kandahar, and Nangarhar.

Amnesty International is grateful for the high level of cooperation extended to its staff by prison and police commanders and officials, in particular the access provided to prisons and detention centres across the country. The freedom given to visit facilities and interview detainees was highly appreciated and Amnesty International thanks all those interviewed in detention across Afghanistan who were willing to share their stories. The organization is also grateful for the opportunity to meet with officials from the ATA, the United Nations (UN), donor governments, international and national non-governmental organizations, and prison officials. Throughout this report, names have been changed to protect the identity and safety of individuals. This report highlights the problems and makes recommendations in the hope that these will make a positive contribution to the present and future protection of human rights in Afghanistan.

## **2. Background**

### **2.1 Transitional process<sup>3</sup>**

In November 2001, US-led military action resulted in the departure of the Taliban government, which had been responsible for many grave abuses of human rights, including the rights of women. In December 2001, UN-brokered talks held in Germany resulted in the

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<sup>2</sup>The first report was Amnesty International *Afghanistan: police reconstruction essential for the protection of human rights* (AI Index: ASA 11/003/2003). Further detailed reports on the administration of justice and access to justice for women will be published shortly.

<sup>3</sup> See reports *ibid* note 2 for details of the political background in Afghanistan.

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, to prepare for an Emergency *Loya Jirga* (General Assembly) followed by a Constitutional *Loya Jirga* within 18 months.

The Emergency *Loya Jirga* was held in June 2002 and resulted in the establishment of the ATA, headed by President Hamid Karzai. The Constitutional *Loya Jirga* is due to be held in October 2003 to discuss draft constitutions submitted by the Constitutional Drafting Sub-Commission following various processes of consultation. Under the terms of the Bonn Agreement, a general election is scheduled to be held not later than June 2004.

The international community's intervention in Afghanistan in 2001 was accompanied by a commitment to reconstruction. In January 2002, over US\$4.5 billion was pledged at a donor conference in Tokyo, due to be delivered over a five year period. Further funds have been pledged, including at a donor conference in Oslo in December 2002, but there are concerns that this money is taking too long to arrive. The central government has also raised concerns that this money is being channelled into emergency assistance rather than long-term reconstruction.

## **2.2 International legal responsibilities**

Afghanistan has ratified all the major human rights treaties, including:

- the International Covenant on Civil and Political Rights (ICCPR)
- the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (the Convention against Torture)
- the Convention on the Elimination of All Forms of Discrimination against Women
- the Convention on the Rights of the Child.

These treaties are legally binding. Afghanistan is obliged as a matter of international law to ensure the rights of persons in detention, whether they are detainees awaiting trial, or convicted prisoners, particularly the right not to be arbitrarily detained, and the right not to suffer torture or other forms of ill-treatment or punishment. Women and children in prisons are entitled to particular safeguards.

There are many international standards that relate to detention, including 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, and the Rules for the Protection of Juveniles Deprived of their Liberty. These standards have been agreed by the international community through various United Nations bodies and all states should implement them in full.

Amnesty International recognizes that the judicial system in Afghanistan has been completely disrupted over the last 25 years. It may not be possible to implement all international

standards regarding the prison system immediately but it is important that the framework is laid for the highest standards to be upheld in the future.

## **2.3 Social and economic conditions**

Afghanistan is one of the poorest and least developed countries in the world. While much of the country is coming out of a devastating five year drought, water scarcity is a major problem and many communities are still impacted by the loss of crops and livestock over the last few years. Girls from poor families are reportedly being married off at younger ages and many attribute this to economic deprivation. Many communities are inaccessible, with travel to the nearest urban area taking days to weeks during the summer months and being completely impossible during the winter. Health care is extremely difficult to access for many rural communities and even in urban areas the quality of health care available is extremely low. Diarrhoea, preventable and curable diseases including tuberculosis, malaria, and cholera are all major causes of death. The average life expectancy for both men and women is among the lowest in the world.<sup>4</sup> Rates of maternal mortality and infant mortality are some of the highest in the world, with infant mortality at 144.76 deaths per 1,000 births. Illiteracy is overwhelming, particularly among women. 51% of men and 21% of women are literate.<sup>5</sup> Afghanistan remains one of the most heavily land mined countries in the world, killing an estimated 200 people every month.

## **2.4 The legacy of prisons**

Prisons in Afghanistan have a long and disturbing history of serious abuses. Amnesty International has repeatedly raised its concerns over conditions of detention in Afghanistan including reports of torture and cruel, inhuman and degrading treatment and punishment.<sup>6</sup> During the last two and a half decades, prisoners have been held in overcrowded detention centres, deprived of adequate food, sleeping space and toilet facilities. Imprisonment has been used as a political tool for the repression of political opponents.

Amnesty International did not have access to prisons in Afghanistan until recently, but has received reports of poor conditions and ill-treatment over the last 20 years. During the governance of President Daoud, hundreds of political prisoners were reported to have been held without trial. Thousands of prisoners were reported to have been killed in 1978 and 1979. When Amnesty International visited Kabul in 1980, reports of the killing of thousands in detention, and the systematic use of torture were widespread. The conditions of detention imposed extreme hardship, deliberately created in some cases, but also brought on because of acute overcrowding and other inadequacies in longer term prison conditions.

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<sup>4</sup> 46.97 years old for men and 45.47 for women. CIA The World Factbook 2002.

<sup>5</sup> Ibid.

<sup>6</sup> See inter alia Amnesty International *Afghanistan: Torture of Political Prisoners*, (AI Index: ASA 11/04/86), also Amnesty International *Afghanistan: Cruel, inhuman or degrading treatment or punishment*, (AI Index: ASA 11/15/99).

Torture and other forms of ill-treatment were commonplace, particularly in the notorious Pul-e Charkhi prison just outside Kabul, where Amnesty International recently heard that up to 30,000 men were held in a space built for approximately 3,000 during some periods. This prison was feared during the Communist period as a location for summary executions, torture, and cruel, inhuman and degrading treatment. Detainees were held incommunicado for years. Sanitary conditions were appalling and the majority of prisoners received no change of clothes. Conditions of detention in other prisons such as in Ghazni, Kandahar, Jalalabad and Mazar-e Sharif were similarly harsh. Most prisoners had no mattresses or pillows. Cells were intolerably hot in summer and cold, with no heating in winter. Damp cells and poor hygiene were the prime causes of infectious diseases.

Between 1992 and 1995 when various regional commanders controlled different parts of Afghanistan, Amnesty International received reports of appalling conditions in almost all of the prisons run by these groups. With the arrival of the Taleban in much of the country, reports of torture and ill-treatment continued and prison conditions did not improve. Amnesty International interviewed former prisoners that had received regular and harsh beatings while in detention under the Taleban.

The Taleban arrested many political prisoners from 1996 to 2001, apparently on account of their peaceful opposition to the Taleban's control of the majority of the country. Political prisoners or military combatants were reportedly held in Kandahar, a prison allegedly holding several thousand prisoners. Prisoners were reportedly forced to labour on the building of a new storey to the prison. Some prisoners reportedly died of exhaustion or from beatings by prison guards. Food was reportedly inadequate and prisoners faced starvation if they could not afford to buy additional food. The majority of these detainees were reportedly severely tortured. Amnesty International also documented numerous killings in detention. Similar reports were received about conditions of detention in other prisons around the country, including Kabul, Shibarghan, Mazar-e Sharif, Qala-e Zaini, and Maimana. While the Taleban were in control of most of the country, there were also reports about the excessively harsh conditions of detention in prisons run by armed groups within the anti-Taleban alliance.

### **3. Administration of prisons today**

Afghanistan has 32 provinces, sub-divided into smaller administrative districts. According to the Law of Prisons and Jails in Afghanistan, currently applicable national law, each provincial centre should have a prison and a detention centre. Each district centre should have a detention centre. Detention centres are under the jurisdiction of the police, working in the Ministry of Interior. Prisons are under the jurisdiction of the Ministry of Justice. In many provinces, prisons are in no condition to hold any person.

The police are responsible for arrested detainees for the first 72 hours of arrest, after which they should be brought before a judge and then become the responsibility of the prison system. Under international law, detained suspects should be brought promptly before a judge to

assess the legality of detention.<sup>7</sup> Currently people are being held for months without any access to a court before trial, which may result in the police having responsibility for detainees for long periods of time without judicial supervision. This is particularly the case in rural areas.

### **3.1 Transfer of the prison department to the Ministry of Justice**

*“We do not want to be responsible for prisons and run them in the way they were”*, Minister of Justice, May 2003 in a meeting with international donors, Amnesty International, and UNAMA.

When Ali Ahmad Jalali became Minister of Interior in January 2003, he began to organize a restructuring of the Ministry of Interior. Part of this restructuring involved the removal of responsibility for prisons from the tasks undertaken by police. On recommendation from international donors, a decision was taken to move prisons completely from the Ministry of Interior to the Ministry of Justice.

A joint commission was established, including officials from the Ministries of Interior and Justice, and three international prisons experts; the United Nations Assistance Mission in Afghanistan (UNAMA) corrections advisor, a United Nations Office for Drugs and Crime (UNODC) penal reform expert, and an expert hired by the Italian government. On 31 March 2003, a Presidential decree provided the legal basis for the transfer of the prison department to the Ministry of Justice on the recommendation of this commission.<sup>8</sup>

In April 2003, following the issuing of the decree, plans were made to establish a second joint commission between the two ministries to work on the practical implementation of the transfer. However, in May 2003, this commission had not yet been established and the practicalities of the transfer had not been addressed. A UN official told Amnesty International that in terms of the prison system “It is back to square one.” There are concerns that the Ministry of Interior is disengaging from the prison system too quickly while the Ministry of Justice does not have a work plan for prison reconstruction and lacks personnel with the skills and qualifications to reconstruct an efficient prison system that conforms to international human rights standards.

No coherent strategy exists for this transfer or for the long-term prison administration. Several pressing resource issues that must be taken into account include staff training, salaries, physical infrastructure reconstruction, and provision of equipment. The full practical implications of this transfer remain unknown and it is not clear who is taking responsibility for its implementation across the country. Outside Kabul, there is little if any knowledge of

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<sup>7</sup> Article 9(3) International Covenant on Civil and Political Rights (ICCPR).

<sup>8</sup> Presidential decree dated 31/3/2003. “Article 1. The central and provincial prisons and detention administrations in their present structure, budget and staff shall be separated from Ministry of Interior and shall be incorporated in the Ministry of Justice.”



the transfer. For example, in early May 2003, the prison commander of one prison in central Afghanistan did not know about the move and said that they had received no message informing them that their reporting lines had changed. In a recent training seminar organised by the international non-governmental organization (NGO) Penal Reform International (PRI), Amnesty International witnessed a lack of understanding regarding the significance of the transfer amongst prison officials who have not received any training or information regarding this transfer. They do not realise that they will no longer be police officers, and that this transfer is an attempt to remove prisons from police control, separating the functions of the police and prison services. This shift allows for the separation of those investigating crimes and those undertaking custodial work, lessening the risks of torture as a way of extracting confessions in custody.

Amnesty International welcomes the Presidential decree as a step in the right direction which must be followed up with careful planning and consideration of what the transfer practically entails. Amnesty International urges that sufficient thought, time and sharing of expertise from around the world is given to the preparation of the transfer. It has been suggested that this transfer provides the opportunity for the ATA to build a new prison system in line with international human rights standards and separate it from the negative practices of the past. However if this is to succeed the international community must make a long-term commitment to assist in this reform.

## **Recommendations**

The ATA with the assistance of the international community should:

- *develop a plan for prison reform. This plan must cover needs for the whole country and not just focus on Kabul.*
- *establish the Joint Commission to work on the practical implementation of the transfer, and to develop a comprehensive human rights based prison policy. The Afghan Independent Human Rights Commission should be part of this commission, as well as the ministry of interior, ministry of justice, and independent experts.*
- *establish a deadline by which the transfer of responsibility for prisons needs to have fully taken place. Monitoring should take place to ensure that the deadline is being adhered to.*
- *donors with expertise in maintaining facilities which conform with human rights law and standards should contribute to this plan.*

## **3.2 Centre versus provinces**

The central government has little power outside Kabul where regional power holders, some of whom, although officially integrated within the government, have effective autonomy and work to their own agendas. On 13 May 2003, Ismail Khan, governor of Herat province, western Afghanistan, released at least 60 prisoners suspected of being Taleban members,

without the authorization of the central government. Decisions relating to detention should not be made on an arbitrary basis. There should be a swift and systematic review by judges as a priority of all cases in which individuals have been held beyond the legal time limit without coming before a judge or having a decision issued in their case. Anyone who is being held without evidence of having committed a crime should be immediately released.

The focus of resources on Kabul undermines the potential for development and reconstruction outside the capital, which provincial prison commanders are crying out for. The reconstruction of Pul-e Charkhi prison, Kabul's infamous main prison about 20 kilometres outside the city, further jeopardizes provincial prison reconstruction. Pul-e Charkhi was looted and damaged when the Taleban left Kabul in December 2001. Currently, prisoners are being held in Kabul Welayat (the Kabul Provincial Administration), which has a detention centre not a prison. Plans have been made to reconstruct two wings of the prison housing 800 male and female prisoners. The Ministry of Interior undertook initial construction work that was left unfinished at the time of the transfer. In May 2003, the Minister of Justice called a meeting of donors to discuss plans for the transfer of prisoners from Kabul Welayat detention centre to Pul-e Charkhi. It was an attempt to galvanize the international community into action on the prisons system. At the time, the prison had no water or electricity, no kitchen, and no provisions for any prisoner rehabilitation programs. Amnesty International is concerned that no prisoners should be transferred from Kabul Welayat until the two wings of Pul-e Charkhi are reconstructed to conform with minimum human rights standards to provide shelter, hygiene and sustenance.



**Pul –e Charki prison, just outside Kabul © AI**

Many prison officials have stated their intention to transfer long-term prisoners serving over five years' imprisonment from the provinces to Pul-e Charkhi, a move that deeply concerns Amnesty International. This may deprive prisoners of family visits, a right of prisoners under international standards, and key in the rehabilitation and reintegration of the prisoner on release.<sup>9</sup> Many prisoners and detainees also rely on their families for food, clothing and blankets, and information about their case. Furthermore with such a move, the urgent reconstruction work needed in the provinces will not be provided. The focus on Pul-e Charkhi must not curtail the possibility of upgrading the prisons for the majority of prisoners in the provinces who are sentenced to less than five years' imprisonment or the many detained for months before trial. When Amnesty International asked prisoners in the provinces how they would feel about being transferred to Pul-e Charkhi, none of them were prepared to make that move, realising it would then be almost impossible for their relatives to visit them.

## Recommendations

The ATA with the assistance of the international community should:

- *ensure that no prisoner is transferred to Pul-e Charkhi until conditions conform with international minimum standards.*
- *ensure that a program is developed for prisoner rehabilitation at Pul-e Charkhi prison.*
- *rebuild the kitchen to provide adequate food for prisoners and for prison staff.*
- *ensure that there is access to water and that adequate lighting is provided in all areas of the prison being used to hold prisoners.*
- *pay particular attention to the needs of prisons outside Kabul. Funds must be given to prisons in the provinces as a priority.*

## 4. Prisoner profile

### 4.1 Men in detention

Men are being held in detention for a variety of crimes, including murder, theft and adultery. In addition, some prisons have a separate section for "political prisoners" accused of being a member of the Taliban and *al-Qa'ida*. In Shibarghan prison, Jowzjan province, northern Afghanistan over 1,000 suspected members of the Taliban and *al-Qa'ida* are being held. In February 2002, Physicians for Human Rights reported severe over-crowding, widespread

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<sup>9</sup> Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment (Body of Principles) Principle 19.

illness and a lack of food and water in this prison.<sup>10</sup> ICRC have been visiting these prisoners, providing blankets and other necessities.

#### **4.1.2 Drug Addicts**

*“We are addicted and want to go to hospital for treatment”* heroin addict in Kabul detention centre, 23 November 2002.

Amnesty International visited several prisons where drug addicts were being held, often having been admitted by a family member to force them to overcome their drug addiction. Those addicts that are admitted by their families are not charged with a crime, but are kept in detention until the authorities consider them to be cured. Drug addicts should be taken to drug rehabilitation centres, where they exist, to prevent them from being held in arbitrary detention.

In Hilmand prison, southern Afghanistan, 11 men were being held for drug addiction at the time of Amnesty International’s visit. Prison staff have no medical expertise nor the necessary training and are not employed to aid the recovery of drug addicts. In one prison that Amnesty International visited, the prison commander was trying to cure a heroin addict of his addiction. He told Amnesty International that “if I found it I will pour cold water on him for 20 days” referring to a possible discovery of heroin. This constitutes cruel, inhuman and degrading punishment and must never be inflicted on a detainee.

#### **4.2 Women in detention**

*“It appears that these women have no access to lawyers, have no information on their rights, if any, and are generally left in jail until their respective relatives intervene. The most astonishing aspect of my findings was the profound uncertainty surrounding the legality of their detention. Even the female lawyers attached to the Ministry of Women’s affairs were unsure about the rights of women.”*<sup>11</sup>

Hundreds of women and girls are being held in prisons across the country, the majority for violating social, behavioural and religious codes.<sup>12</sup> Girls from 13 years of age are being held in prison with adults alongside elderly women of approximately 70 years of age. The majority of women prisoners are from 18 to 25 years of age. Like men and children, they are being held for months in prisons across the country before having the legality of their detention determined by a judge. Women are being held often within a compound in the main prison area rather than in a separate compound.

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<sup>10</sup> Physicians for Human Rights: *A Report on Conditions at Shebarghan Prison, Northern Afghanistan*, January 28, 2002.

<sup>11</sup> International Council of Jurists *Afghanistan’s Legal System and its Compatibility with International Human Rights Standards*, November 2002.

<sup>12</sup> Amnesty International will shortly be publishing reports looking at access to justice for women and the administration of justice, which will provide further information on this topic.

President Karzai issued the first of several Presidential decrees providing for the release of women in November 2002. According to the decree, 20 women were ordered to be released as part of religious celebrations. However, this raised concern amongst members of the international community. Many of these women were imprisoned for running away from home and could not return to their home on release. As a result of the release, one woman was killed by a family member and another had nowhere to go to. One woman identified to be released as part of President Karzai's decree in November 2002 was somehow overlooked and remained in detention. This underlines the need for safe shelter for women.

### **4.3 Children in detention**

Children are accorded special rights according to international standards such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). In Afghanistan there is a basic understanding of this special protection and an accompanying attempt to hold children separately from adults, although their treatment is the same. In Hilmand province, children are held in a separate section but many other prisons lacking a separate facility hold children in a separate room within the main compound. Work in Kabul is underway looking specifically at children's needs but in the rest of the country, children are held in the same conditions as adults, in the same prisons. Attention must be paid to the rights of children across the country.

International standards set out that accused children shall be separated from adults and their cases brought as speedily as possible to the court for adjudication.<sup>13</sup> However, the majority of children interviewed by Amnesty International had not been sentenced, and some had been held for many months. In Herat prison, at the time of Amnesty International's first visit, there were 18 children between 10 and 15 years of age. They had been in prison for three months to one year, and only one of them had received a sentence. The children's section was in the worst condition in Herat prison.

In Kabul, UNICEF has been working with the Ministry of Justice to create a facility to enable children in detention to be held separately from adults. In April 2003, a day centre for children convicted of less serious crimes was opened in Kabul. This centre was created as a non-residential centre for minor offenders to lead to their rehabilitation and eventual reintegration into society. At the time of Amnesty International's visit in June 2003, 37 boys and four girls were being held at the centre. This is a welcome move, but Amnesty International understands that some initial problems need to be resolved. The Ministry of Justice transferred all children from Kabul Welayat to the day centre. This includes children convicted of more serious crimes, which the centre does not have resources to adequately deal with. The majority of children are also sleeping at the centre. Some of them are not welcome to return to their families in the evenings because they committed a crime at home. Others have nowhere to go, or do not come from Kabul and cannot be transported home every night. UNICEF is also concerned that many of the children being held have not been tried, but have been held for months without charge or trial.

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<sup>13</sup> Articles 37(c), 37(d) and 40, Convention on the Rights of the Child.

### **4.3.1 Children detained with their parent**

In Afghanistan, children are being detained with their relative but there are no systems in place in prison to care for these children. In May 2003 in Herat approximately 30 children were living in prison with their mothers. In some cases, children are also being held with their fathers. In Kandahar prison, a young boy of seven or eight years of age was being held with his father.

The best interests of the child must be made the priority in these instances, according to Article 3 of the Convention on the Rights of the Child. There must be some reasonable assessment of what is best for the child, and whether there are other options for the child's care, other than being held in prison, with the child's wishes being taken into account in the cases of older children.

## **Recommendations**

The ATA with the support of the international community should:

- *provide resources for the creation of separate detention facilities for women and for children across the country.*
- *create rehabilitation centres for drug addicts, with trained staff that can provide recovering addicts the necessary care.*
- *assess the options for every child in prison with a relative, making sure that the best interests of the child are the priority.*

## **5. Obstacles to a human rights based prison system**

*"After the fall of the Taleban, we had great hope for a better and more just future. The current development shows little change."* Provincial Attorney General talking to Amnesty International delegation on 8 October 2002.

The Ministry of Justice has inherited a prison system that cannot protect the rights of those in detention. Even those with the best intentions struggle to work with no training, in poor conditions with minimal resources. Amnesty International recognizes that the system cannot change overnight, but urges the international community to come forward to support the ATA in the important task of reconstructing the prison system across the country.

### **5.1 Resources**

*"We have numerous problems with prisons"* Minister of Justice in a meeting with Amnesty International, UNAMA and international donors, May 2003.

While other aspects of the criminal justice system have received international donor support since the start of 2002, minimal resources have been provided to prisons, either by the transitional government or by international donors. Although there are some improvements

that are relatively cost-free, the Ministry of Justice is desperate for funds in order to begin basic reconstruction work.

The Italian government has become the lead international donor for prisons, following the transfer of the prison department to the Ministry of Justice in March 2003. Prior to this, no donor took the lead on prisons, leaving them without any support or funding for over a year. The Minister of Justice has expressed disappointment that after one year little progress has been made in the field of penal reform.

The Judicial Reform Commission (JRC), set up in November 2002 to “rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions” recently finished a survey of the country’s judicial institutions, including prisons and detention facilities.<sup>14</sup> The Italian government is waiting for the results of this survey before embarking on reconstruction of the physical infrastructure of the judicial system and it is understood that the same applies to the prison system. According to the JRC draft work plan, the survey “will become the basis of subcommittees’ recommendations for restructuring and rehabilitating the police and corrections system.”

Meanwhile, in May 2003 the United Nations Office for Drugs and Crime (UNODC) signed a project proposal “Reform of the penitentiary system” with the Ministry of Justice focusing on the reconstruction of the penal system. This project has six key components;

- (a) revising national legislation concerning rules and regulations of prisons;
- (b) establishing the Prison Administration of the Ministry of Justice as focal point for all matters pertaining to penitentiaries, including a national policy for detained women;
- (c) rehabilitating prison capacity in Kabul;
- (d) improving conditions in the detention centre of Kabul;
- (e) setting-up a special detention centre for women, with due attention to the needs of women with small children.

However, funds for this project, due to run for two years from July 2003, stand at only US\$2.1 million.<sup>15</sup> UNODC acknowledges that the project only covers Kabul, leaving the rest of the country untouched.

Britain has provided funding for the NGO PRI to give a training seminar on prisons policy in mid-July 2003. PRI held a two day training seminar for senior prison officials in June 2003 in preparation for their larger seminar. Working groups will be established to provide practical recommendations based on July’s seminar. This seminar is a welcome first step but increased and coordinated support from the international community will be needed to ensure that practical recommendations arising can be implemented in the longer term.

UNAMA has only one full time member of staff working as corrections adviser to the Special Representative of the Secretary General, Lakhdar Brahimi. This role is not a management

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<sup>14</sup> The Bonn Agreement provided for the establishment of this Commission.

<sup>15</sup> Italy, Austria, Canada and the United Kingdom are donors.

position and is purely advisory, but this is not clearly understood by all those involved in the prison system in Afghanistan. UNAMA must clarify their role to avoid unrealistic expectations being created that cannot be met by UNAMA.

Outside Kabul, no central government assistance has been provided to prisons. The International Committee of the Red Cross (ICRC) and the Italian NGO Emergency have provided limited assistance to some prisons across the country with a specific focus on political prisoners. Mazar-e Sharif prison and Herat prison have been rebuilt to varying degrees but only because of local funds received through customs and other regional revenues. An NGO contact in Herat told Amnesty International that national coherence is paramount and that funds gathered locally only serve to strengthen regionalism, undermining the central government's ability to extend its sphere of influence to the provinces.

## **Recommendations**

The ATA with the support of the international community should:

- *provide resources to ensure that prisons can be rebuilt to conform to conditions set in international law and standards, paying particular attention to prisons outside Kabul.*
- *take prompt and effective action according to the findings of the JRC survey ensuring that any donor input conforms to international human rights standards and is coordinated with any other donor initiatives.*

## **5.2 Staff**

The employment of professional, well-trained and qualified staff trained in international human rights law and standards and their practical implementation is essential for a penal system that upholds and protects the human rights of detainees. The Standard Minimum Rules for the Treatment of Prisoners (Standard Minimum Rules) give clear guidelines on the recruitment and training of prison staff.<sup>16</sup> The review of the performance of prison staff is also set out in international standards.<sup>17</sup> In Afghanistan, the lack of professional skills, which is apparent in many fields, is particularly acute in the area of prisons. While some prison staff had worked in prisons before the time of the Taliban, none had received training incorporating human rights.

According to international standards, there must be clarity about the respective roles of prison staff and police. Prison staff are responsible for maintaining order and safety within detention facilities. Police are responsible for law enforcement in the community and the investigation of crime. In Afghanistan, until the transfer of prisons to the Ministry of Justice, all prison staff were members of the police force rather than having civil service status.<sup>18</sup> They suffered a lack of training and resources as highlighted in Amnesty International's report *Afghanistan:*

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<sup>16</sup> Rules 46 to 51 Standard Minimum Rules.

<sup>17</sup> Principle 18, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

<sup>18</sup> Rule 46(3) Standard Minimum Rules.



*police reconstruction essential for the protection of human rights*, and many were former Mujahideen with no previous training or expertise.<sup>19</sup>

Under the terms of the transfer all staff will be transferred to the Ministry of Justice and will automatically become civil servants. It is not clear how this will take place in practice. The current head of prisons, General Abdul Salam Bakhshy now reports to the Minister of Justice while his offices are physically located within the Ministry of Interior. A UN official told Amnesty International that the high level officers will be asked whether they want to move, while lower level officers will be transferred automatically. It is not known how many people currently work in the prison system in Afghanistan. Therefore, the transfer of former police undertaking custodial work to the Ministry of Justice may be extremely difficult. The lack of distinction between many police that had carried out custodial work, and regular police, will hinder the transfer of staff. There are potential hazards if member of the police currently working in the prison system are unwilling to relinquish their policing roles and their weapons to take on a civil service role. Furthermore, police chiefs may be unwilling to lose such a large number of police.

### **5.2.1 Female staff**

All prisons and detention centres holding women must be staffed by women, according to international standards.<sup>20</sup> Having sufficient numbers of professional, well-trained and qualified female prison staff is essential for the protection of the rights of women in detention. While there is a general lack of trained prison staff, the shortage of female staff is particularly acute in many of the facilities visited by Amnesty International. Prison staff in Afghanistan recognize that women must be guarded by female prison staff, and in all the prisons that Amnesty International visited, women staff were present, but in small numbers. Many of the female prison staff Amnesty International interviewed lack any sort of relevant training. In Mazar-e Sharif women's prison there are two female wardens, one of whom is a police officer with no formal training, and the other is an elderly lady with no training or experience in this area. When asked how they got their job, one of the wardens replied, "they needed a female warden and I needed a job." In Kandahar central prison, the two female wardens for the women's section of the prison are retired midwives with no penal expertise nor training. A decision must be made at the highest levels to recruit and train women to work in the prison system.

### **5.2.2 Pay**

All law enforcement officials must be remunerated for their work.<sup>21</sup> However, when prisons were administered as a part of the police, prison staff across the country had been unpaid for

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<sup>19</sup> "Soldiers of Islam", used to refer to forces that fought successive Soviet-backed regimes.

<sup>20</sup> Rule 53(1), 53(2) and 53(3) of the Standard Minimum Rules.

<sup>21</sup> Guidelines for the Implementation of the UN Code of Conduct for Law Enforcement Officials, 1989.

several months.<sup>22</sup> In Mazar-e Sharif, some of the low level prison staff had stopped working as they had not been paid for months. The situation has not improved with the transfer of responsibility for prisons to the Ministry of Justice. In several interviews in May 2003, Amnesty International heard that staff had received no pay for two months, from the date of the transfer. According to the United Nations Development Program (UNDP) staff should be paid by the Ministry of Justice, not by the Law and Order Trust Fund, responsible for paying police. However, at the time of research this had not happened in Kabul or the rest of the country.

Without pay there is no incentive to do a good job, and alternative funds will be sought, through extortion of the prison population or otherwise. Mohammad, a 27 year old man, had been held for four months with no court hearing. He told Amnesty International that, "If you can pay you can be released". Another detainee agreed, stating that "I've got no money so I'm in here". Amnesty International was repeatedly told that anyone with money can buy their way out of prison. Afghanistan is not a wealthy country, and poor sections of society may commit crimes such as stealing in order to provide for themselves and their families. However, anybody with money who is arrested on suspicion of committing a crime is unlikely to be held in detention. One detainee told Amnesty International "It is like being at one of [a corrupt local commander]'s check posts, if you pay you get through, if you can't pay you will be arrested."

Amnesty International was repeatedly told that money is reportedly extorted by police during interrogation, by the Attorney General's office and its criminal investigation department. Until resources are provided to pay prison staff, training is given in international human rights standards and their practical implementation, and independent monitoring mechanisms are established, extortion will continue to occur at all levels.

### 5.2.3 Training

*"Corrections is that component of the criminal justice system, which has the greatest impact on the freedoms, liberties and rights of individuals. Therefore those who are involved in corrections must respect fundamental human rights in every aspect of their work".<sup>23</sup>*

International standards highlight the importance of training for prisons staff, with human rights integrated throughout, both in initial pre-service training as well as in-service training throughout employment.<sup>24</sup> They also point to the need for specific training with regard to the rehabilitation of prisoners.<sup>25</sup> None of the staff working in prisons in Afghanistan have had any formal training in civilian custodial work. The only training some prison staff members have

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<sup>22</sup> See Amnesty International *Afghanistan: Police reconstruction essential for the protection of human rights* (AI Index: ASA 11/003/2003).

<sup>23</sup> *Towards improved corrections: a strategic framework*, International Centre for Criminal Law Reform and Criminal Justice Policy, July 2001.

<sup>24</sup> Rule 47, Standard Minimum Rules.

<sup>25</sup> Rules 15, 16 United Nations Standard Minimum Rules for Non-Custodial Measures.

received is in policing. Otherwise, basic orders are given with no accompanying education or training. There is a total absence of human rights training.

Training, with human rights as an integral part, for those working in prison institutions is essential. There are detailed standards that prison staff must understand and special skills they must develop to carry out their duties. Police training is not adequate for a person working in a penal institution. Prison staff must know what is expected of them in order to achieve these standards.

Many of those working in the prison system are former Mujahideen, with military experience that is not applicable to a civilian custodial role. In Herat central prison, half the staff members are former Mujahideen with no training while the other half are “professional” police officers.<sup>26</sup> In Kandahar central prison, southern Afghanistan, nine reportedly professional police officers are in charge of the prison premises and are assisted in running the prison by 41 former Mujahideen who have had no relevant training. In Bamiyan prison, of the 15 wardens who take turns looking after the prisoners, three are police officers. Many of these men are trying their best but lack any training and have little understanding of the rights accorded to all people in detention.

Instructions for prison staff, if provided at all, are being given in an *ad hoc* manner. There are efforts at district level to provide basic training to staff working in detention centres. In Ghoryan district, Herat province, western Afghanistan, the wardens do not receive any special training but are told not to beat the prisoners. In Injil district, Herat province, the low level ranks of police have undergone a few days of training before working as wardens but Amnesty International was not provided with information about the content of this training. In Herat city, Amnesty International heard that all prison staff undergo six months of training. This training reportedly focuses on security, transport of prisoners, treatment of prisoners, rules and safety but it is not known how far information on human rights is incorporated.

It is essential that prison staff have special training to enable them to deal sensitively with prisoners, particularly women and children in detention, that have been the victims of crime, including sexual abuse. Amnesty International met two children held in prison for many months accused of murdering their abuser. One boy, Jan Mohammad, is 14 years old. He was taken at an army checkpoint outside a major city in central Afghanistan. He was held for over one month and was repeatedly raped by one man at this checkpoint. One day, Jan Mohammad picked up one of the guns lying around at the checkpoint and shot his captor dead. When Amnesty International met Jan Mohammad he was extremely withdrawn and obviously traumatised by what had happened to him.

The transfer of responsibility for prisons to the Ministry of Justice must be accompanied by the thorough practical and human rights-based training of all prison staff. Recruitment standards for prison officials and staff must be established to clarify both training and skills requirements as well as any factors that would disqualify an individual from working in a corrections facility.

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<sup>26</sup> The use of the “professional” in this context in Afghanistan indicates that the person has received some form of police training either from the Police Academy in Kabul or from outside the country.

It is essential that staff members working in penal facilities are quickly provided with the necessary training, with particular attention to human rights standards. A national curriculum, conforming to international law and standards, should be developed and delivered to staff working in corrections facilities across the country to ensure that all staff members understand the international human rights standards that they must uphold. At the time of writing, UNODC were developing a training curriculum for corrections staff. Amnesty International encourages UNODC to ensure that human rights are incorporated into the curriculum and that it is used nationwide.

#### **5.2.4 Untreated psychological trauma of staff**

Many of those working in prisons may well have spent time in detention themselves due to Afghanistan's turbulent history, and have been ill-treated and tortured in detention. The head of one district police station, in charge of the district detention centre, had been released from custody just months before he was interviewed by Amnesty International in October 2002. He was deeply traumatised by his experiences in detention. This situation is repeated around the country, where traumatised people are expected to work professionally to restore the rule of law. One provincial governor told Amnesty International that with every change of rule abusers became victims, and victims became abusers, creating a cycle of violence. These cycles of abuse make it even more vital that staff are retrained in civilian custodial work and that oversight mechanisms are put in place to make sure human rights standards are upheld.

### **Recommendations**

The ATA with the support of the international community should:

- *provide funds to ensure the payment of salaries of all members of the prison staff. At a minimum, the amount of pay needs to be sufficient to sustain an average family.*
- *create a reliable and effective mechanism to disburse payment to all prison staff across the country should be speedily created.*
- *provide training nationwide to prison staff. 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 the international treaties that Afghanistan has ratified and how to follow the other international instruments that are particularly relevant to the prison system.*
- *encourage trainers who have been trained in these standards to stay in their posts through career development, to ensure that the prison system retains expertise.*
- *ensure that women are appointed and given access to training. Proactive recruitment programs will need to be established and specially designed trainings undertaken to encourage more women to join the penal system.*

- *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 become victims of crime.*
- *provide special training on dealing sensitively with issues of violence against women, as well as how to deal with all women 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.*
- *ensure that the Afghan Independent Human Rights Commission, if it is willing and able, is involved at all stages, from planning a training program for prison staff, to the creation of accountability mechanisms.*

### 5.3 Weapons in prison

While security needs to be maintained in prisons across the country, it is not necessary for all those ensuring security to be armed. According to the Standard Minimum Rules, "Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use."<sup>27</sup>

Security plans for prisons are dependent on the individual circumstance in each province, under the terms of the transfer agreement. The police under the Ministry of Interior may be used to ensure external security in some cases. Amnesty International is concerned that under no circumstances should prison wardens working with prisoners be armed without the accompanying training. The organization has not seen any prison staff with weapons when with prisoners but is concerned that the head of prisons, General Bakhshy, intends to arm prison staff in Pul-e Charkhi prison. In a meeting regarding the transfer of prisoners to Pul-e Charkhi prison, he requested 50 guns to be used by 270 "prisons police" under his rule. If these men are indeed under the rule of the head of prisons, they are civilian custodial staff and should not be armed, except in exceptional circumstances and with appropriate training.

### Recommendations

The ATA with the support of the international community should:

- *clarify the role of any 'prisons police' and establish clear lines of reporting.*
- *ensure that civilian prison staff are not armed*

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<sup>27</sup> Rule 54(3), Standard Minimum Rules.

- *ensure that all weapons currently in use by custodial staff in prisons are surrendered as part of any disarmament, demobilisation and reintegration programs that take place.*

## **5.4 Physical infrastructure**

Across Afghanistan, prisons are in poor condition after over 23 years of armed conflict resulting in the widespread destruction of buildings in many cities and towns. Many prisons were completely destroyed and as a result prisoners are now housed in inadequate rented buildings or are held in detention centre with pre-trial detainees. In the majority of prisons visited by Amnesty International, conditions fall below international minimum standards. The lack of attention of the international community to the reconstruction of prisons that reach minimum standards is a major oversight that must be remedied urgently.

There are many ways that conditions in prisons across Afghanistan do not uphold international law and standards. Thousands of detainees and prisoners continue to be held in detention centres and prisons around the country in poor conditions. Prison officials in many of the places visited by Amnesty International know that conditions are poor for prisoners, and have asked for assistance in certain areas. A commitment by these officials to uphold the rights of all detainees and prisoners must be accompanied by assistance from the international community to ensure the maintenance of minimum standards.



**Men's compound, Hilmand prison, southern Afghanistan © AI**

#### **5.4.1 Dilapidated buildings and unsuitable alternative accommodation**

In several provinces, prisons have been destroyed during fighting or through years of neglect. In such situations, old dilapidated prisons are being used, or alternative buildings rented. There must be formal prison buildings that can adequately hold prisoners in line with international standards regarding conditions and treatment. Relevant national law states that there should be one prison and one detention centre in each provincial centre, and one detention centre in all other administrative centres.<sup>28</sup> General Bakhshy, head of prisons, believes that at least seven out of 32 provincial prisons have been completely destroyed. This is the case in Bamiyan, central Afghanistan, where a house is being rented as a prison and detention centre. The only source of light is a hole in the ceiling.

In Balkh district, northern Afghanistan, the old detention centre is not being used, and people are being detained in an office room adjacent to the police offices. These offices are being housed in a bank. The room for detaining people is less than three by two and a half metres. According to the police official, up to 10 people have been held here at one time.

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<sup>28</sup> Article 2 Law of Prisons and Jails in Afghanistan, 1313.

In Kabul, the detention centre is being used as a prison, whilst the official prison is being reconstructed. The detention centre is in the compound of Kabul Welayat.

In some cases, prison buildings have themselves been taken over. In Spin Boldak district, Kandahar province, the original site of the detention centre has been taken over by a school. The current site being used was formerly a medical depot and the hospital wants to take this building back. The use of buildings that were not the original provincial prison is problematic. The Ministry of Interior do not want to transfer control to the Ministry of Justice of buildings that were not originally prisons. This means that in some provinces new buildings will have to be identified, or built, and currently the Ministry of Justice has no resources with which to create new facilities.

#### **5.4.2 Detention facilities for women**

Afghan national law provides that “separate jails and prisons shall be provided for women”.<sup>29</sup> However, in the majority of provincial prisons, women are being held in a compound within the main prison complex. In Bamiyan province, central Afghanistan, there are no facilities at all for the detention of women suspects. As Amnesty International highlighted in *Afghanistan: police reconstruction essential for the protection of human rights*, when a woman is arrested a male relative is sometimes arrested with her to act as a protector during detention. Women are also sometimes detained in private houses under house arrest. In Dand and Panjwayi districts, Kandahar province, southern Afghanistan, there is no detention centre for women. If any woman is arrested in this district, she will be immediately sent to Kandahar central prison. This pattern is repeated across the country in districts where there is no space for women detainees.

In Mazar-e Sharif prison, northern Afghanistan, at the time of Amnesty International’s first visit there was no separate compound for women. Until mid-October 2002, all the women were staying in an area with no roof, but due to the oncoming winter, they were transferred to an office space with no outside area for the women to use. A women’s section, consisting of one room, has been built but one wall has fallen down. It has been replaced with wooden logs and plastic sheeting acting as a makeshift wall. This room is cold and does not have any light once it gets dark outside. The women use an adjacent courtyard to wash in, which was extremely muddy at the time of Amnesty International’s visit in May 2003.

### **Recommendations**

The ATA with the support of the international community should:

- *provide resources to ensure that prisons can be rebuilt and new prison buildings obtained.*
- *provide resources for the creation of separate female prison facilities across the country.*

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<sup>29</sup> *ibid.*



- ensure that women are held in separate detention facilities that male prisoners cannot see into and do not have access to.

## 5.5 Prison conditions

The Standard Minimum Rules state that accommodation for prisoners must “meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.”<sup>30</sup> Prison officials around the country are trying to do the best they can with their lack of resources. Crumbling buildings, and a lack of funds with which to rebuild them, contribute to an environment that does not hold prisoners in safety.

Amnesty International has spoken to many detainees that have spent almost one year in detention without having the legality of their detention determined by a judge, or being tried.<sup>31</sup> In a situation like this, poor prison conditions have to be endured for months on end, adding to the stress and misery suffered by those in detention. Amnesty International is recommending that the criminal justice system as a whole is reconstructed in line with international law and standards to prevent human rights violations committed at all stages of the judicial process.<sup>32</sup>

Amnesty International was pleased to see that most prisons had large outdoor courtyards and prisoners were allowed out for much of the day, providing them with at least a minimum amount of exercise. However, this is not always the case, particularly in district detention centres. In Dand district, Kandahar province, the men held in detention are rarely allowed out. In Mazar-e Sharif detention centre, although the police commander told Amnesty International that “prisoners are not kept here. They get transferred to the main jail within 24 hours.” The detainee being held at the time of the visit had been held for eight days. It took the staff 30 minutes to find the key to this detention centre, calling into doubt the assertion of the police commander that detainees are allowed out. Some prison officials expressed their concerns to Amnesty International that without sufficient staff to supervise detainees, and without secure buildings, they did not feel comfortable allowing detainees outside regularly.

In Kabul prison, as well as many large rooms, there are six individual cells measuring approximately two metres by 1.3 metres, holding one to three people in a space insufficient for them to lie down. One has a small window giving sufficient daylight, with a glass pane. Other cells share one window between two cells. This provides inadequate light and does not have glass in it to protect prisoners from extreme temperatures.

In Injil district, Herat province, the detention centre is part of the police station. One of the rooms had sufficient ventilation and light, but there were three more rooms which had no

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<sup>30</sup> Rule 9(1) Standard Minimum Rules.

<sup>31</sup> Article 9(3) of the ICCPR.

<sup>32</sup> Amnesty International is producing a report on the administration of justice, which focuses on this issue closely. It is due to be released in mid-July 2003.

windows. None of the rooms had heating facilities, essential during the harsh winters. In Mazar-e Sharif prison, children are being held in a tiny room with inadequate ventilation.

At the time of Amnesty International's visit to Dand district, Kandahar province, four people were being kept in a space with no window. They were sleeping on a piece of plastic that one of the wardens had given them. In Afghanistan it is usual for people to sleep on mattresses on the floor. Equivalent bedding should be provided to all people in detention. The ICRC have provided bedding to political prisoners in some prisons, but others lacked blankets, leaving them exposed to extreme cold over the winter.

### **5.5.1 Sanitation**

Sanitary installations must be "adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner".<sup>33</sup> All parts of a prison institution are also required by international standards to be properly maintained and kept scrupulously clean at all times but in Afghanistan Amnesty International found prisons with dirty overflowing toilets and no adequate washing facilities. Poor sanitation in prisons, particularly during hot weather, is a cause of disease.

The detention centre of the provincial police commander in Mazar-e Sharif is a basement. This is apparently a way of dealing with extreme temperatures but ventilation is inadequate, and the smell is unbearable, former detainees referring to it as "torture". Detainees told Amnesty International that they are forced to use an adjacent room to the cell as a toilet, as staff do not always comply with their request to use the toilet. In Hilmand prison, southern Afghanistan, women have no bathroom or toilet in their compound. Instead they used some flat ground behind a ruined wall.

Male prisoners and detainees in Kabul all complained to Amnesty International about the lack of access to the toilet at night. There are only five toilets in use for over 500 prisoners. Some prisoners told Amnesty International that if they ask to be let out they get hit by one of the wardens. In order to control their need to use the toilet during the night, many of them have stopped eating an evening meal, and as a result are losing weight and getting weaker.

In the women's section of Mazar-e Sharif prison, there is no bathroom, only an extremely muddy courtyard leading to a hole in the ground with surrounding mud walls. There are no showers but women have a bucket they can fill with water for bathing.

International standards also give rights to prisoners regarding their personal hygiene. Prison authorities must provide prisoners with the means to keep clean free of charge. Facilities should also be provided for the proper care of the hair and beard in order that prisoners may maintain a good appearance compatible with their self-respect.<sup>34</sup> However, in Kabul Welayat, men have to pay for haircuts with their own money, of which they have very little.

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<sup>33</sup> Rule 12, Standard Minimum Rules.

<sup>34</sup> Rule 15 and 16, Standard Minimum Rules.

Water is also essential for all those in detention. The NGO Emergency provided a water pump to supply water to the male and female compounds in Kabul Welayat. In Hilmand prison, women and children have no direct access to water within their compound. They are being let out when needed, for instance to wash before praying. In Dand district detention centre, Kandahar province, there is an outside water tap but no access to water within the compound. In Herat prison, water is brought in on trucks, apparently from the local fire brigade. Only two water pumps work in the prison compound which is not adequate for the large prison population.

Prison commanders are apologetic about the poor conditions, and want to undertake reconstruction work, but explain that they have no resources with which to repair buildings. This lack of resources must be addressed but there are ways to improve conditions that do not need reconstruction, for instance keeping a facility clean, ensuring that toilets are emptied, and that fresh water supplies are not stored next to refuse dumps.

### **5.5.2 Food**

Prisoners must be provided with food by the state in accordance with international law and standards.<sup>35</sup> However, when Amnesty International first visited prisons around the country in September to November 2002, detainees and prisoners were reliant on food from their families. Those in detention with no visitors were dependent on the good will of fellow prisoners to share their provisions. During this period, a directive from central government was issued to feed all in detention with military rations. The food provided is for both prison staff and for prisoners. In most prisons visited, breakfast consists of bread, tea and sugar, lunch is rice, and dinner is rice and vegetables. In many facilities, meat is provided once or twice a week. Prison staff have requested that more nutritious food be provided for prisoners, and for themselves, recognizing that current food is not adequate and that prisoners may suffer from malnutrition. Fears have been expressed by prison officials that further funds have not been provided for food supplies. This must be addressed as a priority by the ATA with the help of the international community. According to the Kandahar central prison doctor, there was a marked improvement in general health when food was provided for all prisoners but general health amongst prisoners remains poor. In Kabul Welayat, prisoners and detainees have to pay for hot water for tea, and for bread, eggs and other necessities, contravening international standards.

### **5.5.3 Medicine**

All detainees must receive prompt and adequate medical care in accordance with international law and standards.<sup>36</sup> Medical rooms have been built in many prisons, but there are no medical supplies, including even basic equipment and medicines. Amnesty International met several prison doctors who are desperate for supplies to enable them to treat the prisoners adequately. The will is there, but the resources are not. International donor governments and NGOs must

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<sup>35</sup> Rule 20 Standard Minimum Rules.

<sup>36</sup> Rules 22-26 Standard Minimum Rules.

coordinate their work in this area to ensure that adequate medical supplies reach prisons and detention centres across the country.

The most common medical complaints amongst the prison population are typhoid, malaria, bronchitis, kidney problems, skin diseases, fever, headache, typhoid and tuberculosis (TB) as well as diarrhoea and influenza. These require specific medical treatment and if left untreated may spread to the whole prison population. This has happened in Kunduz prison where, according to a member of the JRC who visited the prison, all those in detention have an infectious skin disease that cannot be treated because they have no medicine.

Kandahar central prison has completely new medical facilities. Funding for the reconstruction was provided by the provincial prison commander. However, this medical facility is lacking medicines. Three doctors and two nurses are part of the medical staff at the prison but because they have no medicine they have little to do. In Kabul Welayat, the NGO Emergency has helped to reconstruct the medical room, but again, there are no medicines. In all prisons Amnesty International visited there was insufficient medication. Although international NGOs including ICRC and Emergency have provided assistance with the reconstruction of medical facilities, Amnesty International was told that they cannot provide assistance in terms of medical equipment to prisons because prisons were under the jurisdiction of the police. Now that responsibility for prisons has been transferred to the Ministry of Justice, Amnesty International urges that all donors and aid agencies with the capacity and the expertise should provide essential medical equipment to prisons and detention facilities.

## **Recommendations**

The ATA with the support of the international community should:

- *provide resources to ensure that prison conditions conform to international standards. Particular attention should be paid to space, lighting, ventilation and heating.*
- *provide resources to ensure that food of adequate nutrition is provided by the state to all prisoners and detainees and to prison staff.*
- *provide all prisoners with prompt and adequate medical care and, if necessary, admittance to hospital. To this end, resources should be provided to ensure that prison medical units have the facilities to provide adequate medical care.*
- *ensure that prison facilities are kept clean and that rubbish is not kept next to water sources.*
- *ensure that each prison has sufficient water to cater for the needs of all prisoners being held.*

## **5.6 Overcrowding**

Overcrowding is becoming a serious problem in many prisons and detention centres around the country as the number of arrests increases while so many of those in prison have not yet

been tried nor do they have the possibility of release on bail. Presidential decrees and decisions by regional commanders to free detainees have eased the situation in some places but is no substitute for the effective functioning of the criminal justice system, where all those charged with an offence are tried according to due process rather than released arbitrarily.

At the time of Amnesty International's visits in November 2002 511 detainees were being held in Kabul Welayat detention centre, which has a maximum capacity of 200 people. In Mazar-e Sharif prison, northern Afghanistan, in May 2003, 20 prisoners were being held in rooms built to hold six people. In Herat prison, western Afghanistan, although Amnesty International was told that the prison had capacity for 2,000 it seemed overcrowded with a population of less than 700.

## Recommendations

The ATA should:

- *ensure that all detainees are brought promptly before a judge, and that anyone who is being held without evidence of having committed a crime is immediately released.*

## 5.7 Family visits

According to international standards families must be informed of their relative's detention, and all prisoners must be allowed regular communication, including visits, by members of their family in particular.<sup>37</sup> There are no consistent nationwide rules, but family visits are regularly allowed in the majority of prisons visited by Amnesty International. Nor is there a consistent method by which families are informed of their relative's detention due to the lack of infrastructure in the country. In Afghanistan family visits are particularly important as they provide the prisoner with information concerning their case, as well as practical necessities such as food and blankets.

Amnesty International is concerned that in Bamiyan, those that have not confessed are not entitled to family visits. All detainees and prisoners must be allowed to receive regular visits from their family members regardless of the crime they are suspected of having committed, or have been found guilty of committing. Amnesty International also received reports that in Kunduz prison disciplinary measures involve the banning of family visits. This punishment punishes the family as well as the prisoner, violating international standards regarding the right to regular family visits.

## Recommendations

The ATA should:

- *ensure that prisoners are allowed regular family visits as well as regular communication with their families.*

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<sup>37</sup> Principle 19, Body of Principles.

## **5.8 Rehabilitation and reintegration**

International law and standards require that prisoners and detainees should have access to education and work while in prison.<sup>38</sup> One of the underlying principles of any penal system is the rehabilitation of prisoners that will lead to their reintegration into society. Many prison commanders state this as their aim, and have made specific requests for assistance with the reconstruction of workshops and the creation of rehabilitation programs. In Herat prison there are four workshops for carpentry, carpet-making, steel-making, and sweet-making. According to the prison commander, prisoners are being remunerated for their work. The supervisor is paid 10 Afghanis a day, the workers 5 Afghani.<sup>39</sup> According to the prison commander, there is no specific rule as to who can work but whoever wants to can apply. Handicrafts are also made to be sold by prisoners' families, including prayer beads, pen covers, mirror holders, and little bags. Such workshops may also help to sustain the prison as well as provide prisoners with money they can use to help support their families.

In Kandahar central prison, the commander told Amnesty International that prisoners have the right to write, to blackboards, to a library service, sports and music training. However, they lack these resources and are unable to provide them to all those in detention. Despite this, some prisoners had taken the initiative to learn English, and teach others to read and write while others collect materials to make handicrafts.

A large proportion of the prison population is illiterate. Literacy classes are being provided in some prisons with minimal resources. In Mazar-e Sharif prison, literacy classes are being provided by a member of the Ministry of Education. In Herat prison a volunteer is providing literacy classes for the children. Such classes are not resource intensive and should be set up in prisons and detention centres across the country. In Kunduz prison, there had been an attempt to start literacy classes but this collapsed due to the lack of writing implements. Amnesty International is concerned that in Mazar-e Sharif prison, women are discriminated against, with no classes being provided for them.

An open facility set up for children in prison in Kabul has basic skills workshops. There is a carpentry workshop and classes in making clothes and leather goods. There are also literacy lessons. Literacy classes should be instituted in all prisons on a regular basis for all prisoners. General Bakhshy, the head of prisons, has said that he intends to provide literacy classes. His efforts must be supported by the ATA and the international community. The Ministry of Education could provide qualified teachers to instruct prisoners.

## **Recommendations**

The ATA with the support of the international community should;

- *provide vocational training and rehabilitation for prisoners.*

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<sup>38</sup> Rules 71-77 Standard Minimum Rules, Principle 28, Body of Principles.

<sup>39</sup> US \$1 = approximately 50 Afghanis.

- *provide qualified professional teachers and help to establish literacy classes for men, women and children in prisons across the country.*
- *provide books and other reading materials so that prisoners can keep in contact with the outside world.*



**Detainees attend a literacy class in Mazar-e Sharif prison, northern Afghanistan © AI**

### ***5.9 Separation of categories of prisoner***

Article 10 of the ICCPR states that, “Accused persons, shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment subject to their status as unconvicted persons.”

It is vital that tried and untried prisoners are held separately to help to enforce the fundamental concept of judicial systems that “unconvicted prisoners are presumed to be

innocent and shall be treated as such".<sup>40</sup> However, in every single prison in Afghanistan that Amnesty International visited, there was no separation of categories of prisoners.

In Kabul Welayat, Amnesty International interviewed a man sentenced to death who was being held in the same cell as a detainee that had not yet gone before a judge.<sup>41</sup> The two categories of prisoner are not only together outside during the day, but are held in cells together overnight. In Kabul Welayat, a new detention centre has been opened recently in an attempt to separate tried prisoners from untried detainees. However, many untried detainees continue to be held alongside prisoners that have been tried. Although there is a recognition within the prison system that different categories of prisoner should be separated, those categories are not always clear. For instance, one prison commander differentiated between illiterate, and literate prisoners.

The Kandahar provincial prison commander told Amnesty International that most of those in prison have been brought to trial, convicted and sentenced, the only untried detainees being the most dangerous people accused of robbery and murder.

The UNAMA corrections adviser on several occasions told Amnesty International that the resources do not exist for the separation of tried from untried prisoners. This is why it is so essential for the international community to help to provide resources, as this is one of the key standards that must be upheld as a priority. There may not be space to build completely separate facilities in each provincial centre, but separation through separate cells or other means should be possible to remedy this situation as a priority.

## **Recommendations**

The ATA with the assistance of the international community should:

- *provide resources to enable the reconstruction of buildings to enable tried and untried prisoners to be held separately.*
- *ensure that training provided to prison staff includes detailed information regarding the importance of separating different categories of prisoner.*

## **6. Accountability and oversight**

All people held in detention must have access to effective remedy for violations of their rights committed in the course of their detention. Accountability is an essential part of the right to remedy, and detainees and prisoners have the right to make a request or complaint regarding their treatment.<sup>42</sup> In Afghanistan there are no systems ensuring accountability in prisons across the country and no consistent nationwide mechanism by which those in detention can lodge complaints and receive redress. The way that Amnesty International was given access

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<sup>40</sup> Rule 84(2), Standard Minimum Rules for the Treatment of Prisoners.

<sup>41</sup> Amnesty International opposes the death penalty in all cases. This will be addressed in an upcoming report on the administration of justice.

<sup>42</sup> Principle 33, Body of Principles.



to prisons and detention centres across the country suggests that there is some recognition of the importance of transparency. It is important that this is followed up by the establishment of oversight mechanisms that can carry out regular visits to prisons and detention centres to monitor conditions and receive complaints from the prisoners.

## **6.1 Oversight mechanisms**

International standards set out that a detained person has the right to make a complaint regarding his or her treatment to the authorities responsible for the administration of the place of detention and to higher authorities, as well as to appropriate authorities vested with reviewing or remedial powers.<sup>43</sup> The Standard Minimum Rules specify that every prisoner shall have the opportunity each weekday of making requests or complaints to the prison warden or the officer authorised to represent him/her.<sup>44</sup> Afghan national law gives responsibility for limited prison oversight to local governors and chief magistrates to ensure that nobody has been illegally imprisoned or is held beyond their release date, but there is no mention of monitoring prison conditions or treatment of prisoners.<sup>45</sup>

In all prisons that Amnesty International visited, there are different ways of dealing with complaints from prisoners. The Attorney General for prisons has a mandate to inspect prisons and detention centres within his/her jurisdiction to present reports to the Governor and his/her superiors.<sup>46</sup> An Attorney General for prisons should be in place in each province. However, this is not consistently being carried out. In some areas visited by Amnesty International, the Attorney General is visiting prisons regularly, and does receive complaints although it is not clear how these are dealt with. Amnesty International did not hear of any cases that had been the subject of investigation. The role of the Attorney General for prisons needs to be clarified, with its exact functions laid out clearly and must be consistently implemented around the country. In Mazar-e Sharif, Amnesty International received several reports that the Attorney General was visiting prisons asking for money from male prisoners in return for their release, and sexually abusing the women prisoners. One detainee told Amnesty International, “he comes and he has never asked us about our problems”. Detainees allege that he only wants to talk to wealthy-looking people. This and any cases of alleged sexual abuse must be investigated promptly, effectively, independently and impartially. Amnesty International raised this particular case with the Head of the Attorney General’s office, who had already received similar allegations. The official in question was dismissed.

The Attorney General’s office is also suffering a lack of resources. In Kandahar and in Kabul province, the Attorney General for prisons does not have access to a vehicle. Therefore prisons and detention centres visited are in the city itself, or in the close vicinity. Outlying prisons and detention centres are left unmonitored.

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<sup>43</sup> *ibid.*

<sup>44</sup> Rule 36, Standard Minimum Rules.

<sup>45</sup> Article 11, Law of Prisons and Jails in Afghanistan (1313).

<sup>46</sup> Article 20, Law of Saranwali (1345).

There are other oversight mechanisms in place but these are not seen to be effective. In Herat central prison, the provincial governor, Ismail Khan pays a fortnightly visit to the prisons to ensure, according to the prison commander, that all those in detention are 'being treated as humans'. Complaints can either be forwarded to the 'supervisor' who is one of the detainees, a member of the prison staff, or to Ismail Khan directly. At the time of Amnesty International's visit to this prison, reportedly no prisoner had made a complaint. Kandahar prison commander told Amnesty International that prisoners are allowed to write a letter of complaint which is handed over to him. He then hands it over to the appropriate authorities. According to the prison commander, the most common complaints are dissatisfaction with their sentence and sickness rather than complaints regarding ill-treatment or prison conditions. Amnesty International is concerned that prisoners may not feel free to make complaints to the prison commander in many prisons for fear of cruel, inhuman and degrading treatment or punishment or other repercussions.

External oversight mechanisms must be created to enable prisoners to make complaints about their treatment, and to ensure accountability of prison staff. Particular importance in international law is attached to the right of children to make complaints. The United Nations Rules for the Protection of Juveniles Deprived of Their Liberty state that efforts should be made to establish an independent office (Ombudsperson) to receive and investigate complaints made by juveniles deprived of their liberty.<sup>47</sup>

## **6.2 Independent monitoring mechanisms**

An independent, impartial body should be set up to visit prisons. According to international standards "qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function."<sup>48</sup> Such a body should be made up of judges, doctors, lawyers, prosecutors and other experts. Women should be recruited to this body. International standards state that prisoners should be able to make requests or complaints to the inspector of prisons or any other inspecting officer without the prison warden or other members of the staff being present.

The Afghan Independent Human Rights Commission (AIHRC) has the authority to investigate human rights violations that would include those committed in prisons. If they are willing and able, the AIHRC could undertake this role. The AIHRC has recently established a Complaints department. According to one employee, as their regional offices are newly set-up, they do not yet have the capacity to receive complaints in the regional offices and follow these up. However, complaints are being received in Kabul, and are then sent to the relevant region to be followed up. This is an important step that should be supported and strengthened by the international community with the provision of funds, training and input from countries

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<sup>47</sup> Rule 77, United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.

<sup>48</sup> Principle 7, Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

with expertise in this area. The need for oral complaint possibilities is particularly important in prisons in Afghanistan where the literacy rate is particularly low.

An attempt to create such bodies was made by President Karzai after receiving information from Amnesty International regarding prison conditions, and lengths of time spent in detention without coming before a judge. In April 2003, eight commissions visited provinces to assess prison conditions and prisoners cases. The commissions did not visit detention centres. The AIHRC had a delegate on four of the eight missions. This was a good initiative, but these delegations were neither independent nor impartial. The mission that visited five northern provinces of Afghanistan consisted of a member of the High Court, a representative of the Ministry of the Interior, a representative of the Ministry of Justice, a representative of the Attorney General, and a member of the NSD, as well as a member of the AIHRC. If they visited a prison that held female prisoners, a member of the regional branch of the Ministry of Women's Affairs attended. Amnesty International is concerned that many of those officials involved in the mission were keen to ensure their reputation by releasing prisoners from detention in each province visited on their choosing rather than recommending due process and making recommendations for long-term changes based on human rights standards.

## Recommendations

The ATA with the assistance of the international community should:

- *institute effective accountability mechanisms to ensure that complaints can be registered and dealt with effectively.*
- *ensure that any reports of human rights violations such as torture, including rape and other sexual abuse, by the prison staff are promptly, thoroughly, independently and impartially investigated. Perpetrators should be brought to justice and victims receive redress. In the case of 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 a dedicated, effective, transparent, independent, and adequately resourced prisons Ombudsperson, made up of judges, prosecutors, doctors, lawyers and other experts to carry out both routine and unannounced inspection visits of prisons and police detention centres. This body must be empowered to investigate complaints against prisons staff and be publicly accountable. This body could be established under the umbrella of the AIHRC if they are willing and able to undertake this role.*
- *ensure that women are duly represented on all monitoring and oversight bodies*
- *provide Afghan and international human rights and humanitarian organizations regular access to all prisons and other places of detention in Afghanistan.*

## **7. Torture and cruel, inhuman and degrading treatment**

Throughout Amnesty International's initial research from September to November 2002, the organization was told that torture was committed only at the time of interrogation by police officers, and that torture was not a feature of prison life. However, in May 2003, Amnesty International received a report that new detainees on arrival at Kabul Welayat had been beaten. The organization could not substantiate this with the prison population, but emphasises that the right to be free from torture is a right which applies in all circumstances without exception. Afghanistan has been the scene of protracted armed conflict for over 20 years, with much of its population accustomed to violence. In order to make a break from the abuses of the past, training must be provided to prison staff that states that torture is unacceptable and that there are no circumstances in which torture can be justified. 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." Afghanistan has ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and is therefore bound to uphold its provisions. Amnesty International was also told that guards in the women's prison in Kabul hit the prisoners and detainees. The victims of the violence themselves excused this, saying that they only beat them with their hands when they were fighting or swearing. This amounts to cruel, inhuman and degrading treatment and should not be allowed in any circumstances.

### **7.1 Use of restraints**

In many prisons that Amnesty International visited, prisoners are being held in leg shackles as a method of restraint, contravening international standards. Standard Minimum Rules state that, "Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as punishment. Furthermore, chains or irons shall not be used as restraints."<sup>49</sup>

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 50cm 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 standards 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 these bar fetters. The iron bars are about 1.2 cm in diameter and weigh, together with the ankle shackles, around four kilograms. Some prisoners wearing leg irons were able to strap material around their ankles to prevent the iron from cutting into their ankles, while others had their skin exposed which can cause severe wounds if shackles are left on for an extended period of time. The use of chains and irons in this manner amounts to cruel, inhuman and degrading treatment and must be stopped immediately.

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<sup>49</sup> Rule 33, Standard Minimum Rules.



**Prisoner in shackles, Mazar-e Sharif, northern Afghanistan © AI**

Appropriate restraining equipment must be provided to prisons so that prison authorities can treat all those detained in accordance with international human rights standards. All such equipment, if used inappropriately, can inflict torture or cruel, inhuman and degrading treatment so training must be provided in the use of all equipment provided to ensure that officers understand how to use this equipment without inflicting harm on the person detained.

Amnesty International did not see any women being held in shackles but many men are being held in leg shackles which are used as restraints for lengthy periods. At the time of Amnesty International's visit to the NSD prison in Mazar-e Sharif, three men in a cell of 14 people were constantly shackled. They said that over the previous six months their leg shackles had only been opened two or three times. International standards allow for instruments of restraint to be used under limited circumstances and for only the shortest time necessary, but chains or irons should never be used. Mohammad was held in leg shackles at the police detention centre for three months in Dehdadi district, where he was arrested. His brother Ismail, his co-accused, was also shackled. Now in Mazar-e Sharif central prison, they are both held in

shackles for 24 hours a day. Mirwais, aged 26, has been held in Mazar-e Sharif prison for over one month for stealing. He has not yet been sentenced. When Amnesty International talked to him, he had been in leg shackles for almost all of his period in detention. He complained that he was not receiving pay for prison reconstruction work that he was undertaking, and was shackled as a result of this complaint. He had been wearing the fixed leg shackles for 13 days, and had been wearing the double-jointed shackles for 17 days. According to the prison commander, prisoners that are considered to “challenge authority: will be restrained in ankle shackles.

## **7.2 Punishments that violate human rights**

Standard Minimum Rules 27 to 31 lay down how discipline is to be maintained in jail and how any breach may be punished. In particular, "Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life". No prisoner shall be punished for a disciplinary offence except in accordance with a law or regulation defining such offence, determining the punishment for it and identifying an authority competent to impose such punishment.

Each prison should have rules given orally and in writing to prisoners at the time of their admittance, along with information about possible disciplinary action. This must not include any torture or cruel, inhuman and degrading punishment. Amnesty International is concerned that prisoners may be subjected to cruel, inhuman and degrading punishments after having broken unwritten rules. In prisons around the country, there seem to be no rules, order is maintained arbitrarily according to the discretion or whim of individual officers.

In Kandahar prison, rules for the prisoners are: no arguments, no drug use, no gambling, no other crime, keep prison clean, keep yourselves clean. When one of these rules is broken the prisoner involved will receive a first warning. If they continue to break the rules, the person will be placed in an individual cell, and will not be allowed any visitors. They will possibly be hit with a broom, according to the prison commander. In Kabul Welayat, the rules to be observed are; do not disturb the order of the prison, do not use drugs, and do not fight with each other. When somebody breaks these rules, punishments used reportedly include being hit with a cable, and having cold water poured over them.

Amnesty International also has concerns that detainees are chosen to supervise their fellow prisoners and have the authority to punish others for perceived wrong-doing. In Herat, Mazar-e Sharif and Kabul central prisons, ‘supervisors’ are chosen from the detainees. They are in control when no warden is present. It is not known how these men are chosen. In Kabul Welayat Amnesty International saw one of these men carrying a stick to discipline other prisoners. As well as being an unacceptable violation of the right not to suffer torture and ill-treatment, international standards forbid the employment or use of prisoners to maintain discipline over others.<sup>50</sup>

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<sup>50</sup> Rule 28(1), Standard Minimum Rules.

### **7.3 Allegations of sexual abuse**

Amnesty International has serious concerns about access to women's prisons and detention centres. According to international standards, no male member of staff shall enter the women's area unless accompanied by a woman officer.<sup>51</sup> Amnesty International has received reports that male police officers in Kabul are able to enter the detention centre at any time. Allegations of sexual abuse have arisen in Kabul Welayat and Herat prison. This must be addressed as a priority to ensure the safety of all women held in detention. Women in prison in Afghanistan must be held in safety and in dignity. Safeguards must be implemented to ensure the protection of women and any allegations of rape and other sexual abuse must be promptly investigated and the perpetrators brought to justice.

In Mazar-e Sharif, as mentioned above, Amnesty International was told by women detainees in late 2002 that the Attorney General for prisons was sexually abusing them. In this instance, Amnesty International reported these allegations and action was taken by the authorities. However, without any monitoring being carried out by independent oversight bodies, such human rights violations will be able to continue unchecked. It is essential that regulations are put in place across the country to prevent unaccompanied male police and others from visiting the women during the day and night and that investigations are undertaken into all allegations of sexual abuse, and those responsible are brought to justice.

### **Recommendations**

The ATA with the support of the international community should:

- *ensure that training given to prison staff includes practical human rights training as an integral part with the emphasis that no-one should be tortured or ill-treated under any circumstance.*
- *stop the use of manacles and leg irons.*
- *provide non-lethal equipment, including handcuffs, to prison staff along 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.*
- *ensure that no male police officer or member of the prisons staff is allowed to visit the female prisoners unless accompanied by a female member of staff.*
- *investigate any allegations of human rights violations committed by prison staff promptly, thoroughly, independently and impartially.*

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<sup>51</sup> Rule 53, Standard Minimum Rules.

## 8. Arbitrary detention

One of the fundamental rights accorded to all people is the right to liberty. There are clear standards setting out the requirements to respect the human rights of people under arrest. International standards require that all persons deprived of liberty shall be held in an officially recognised place of detention and in conformity with national law, be brought before a judicial authority promptly after detention. According to Afghan national law, police can detain suspects without charge for up to 24 hours which can be extended to 72 hours on 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 be charged or released. No time limits on detention are given in the international standards which require that detainees are brought "promptly" before a judicial authority, but the UN Human Rights Committee has questioned whether detention for 48 hours without being brought before a judge is not unreasonably long.<sup>52</sup> However, in Afghanistan Amnesty International interviewed many people who had been held in prison for months without appearing before a judge.

In Mazar-e Sharif prison in October 2002, three quarters of the prison population were awaiting trial. In Kandahar central prison, four out of nine people accused of stealing have been held for approximately 10 months without being charged. In Kohsan district, Amnesty International was told that people are detained there for a maximum of four months before being transferred to Herat central prison, which is unreasonably long. Even this figure was rendered inaccurate by conversations with prisoners who had been held for much longer than this.

### 8.1 Prisoners held past their release date

The Standard Minimum Rules state that:

"In every place where persons are imprisoned, there shall be kept a bound registration book with numbered pages in which the following shall be entered in respect of each prisoner received:

- (i) Information concerning his/her identity
- (ii) The reasons for his/her commitment and the authority thereafter

No person shall be received in an institution without a valid commitment order of which the details have been previously entered in the register."<sup>53</sup>

Further rules apply to record-keeping on the detention of children, including on recording the time of their admission, details of the notification to parents and guardians on every admission, transfer or release, and details of known physical and mental health problems,

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<sup>52</sup> Report of the Human Rights Committee, Vol I (A/45/40), 1990, paragraph 33, Federal Republic of Germany.

<sup>53</sup> Rule 7, Standard Minimum Rules.



including drug and alcohol abuse.<sup>54</sup> Prison registers are kept in every prison that Amnesty International visited. However, the release of a prisoner may only be authorized by the Attorney General's office. Although the prison may have full details regarding the length of sentence, delays in release can occur due to the time spent waiting for orders from the Attorney General's office. In Kabul Welayat over 24 prisoners had been kept after completing their sentence. The prison commander told Amnesty International that their release had to be authorized by the Attorney General's department. One of the prisoners being held past his release date was showing signs of distress. He was being shackled to restrain him from hurting himself and others. Prisoners must be released once their sentence has been served. Accurate records of those held, the length of their sentence, and their release date must be kept. Communication and coordination between the Attorney General's office and the prison administration must be improved to facilitate the prompt release of prisoners.

## **8.2 Other state actors carrying out detention**

Amnesty International is concerned that agents of the state are detaining people without any clear legal basis or accountability, undermining attempts to reconstruct the official police and prison systems. Detention and interrogation should take place only at official centres and the maintenance of secret places of detention must be abolished.<sup>55</sup> The Special Rapporteur on torture has recommended that "It should be a punishable offence for any official to hold a person in secret and/or unofficial place of detention. Any evidence obtained from a detainee in an unofficial place of detention and not confirmed by the detainee during interrogation at official locations should not be admitted as evidence in court."<sup>56</sup>

According to international standards, "arrest, detention and imprisonment shall only be carried out strictly in accordance with the provisions of law and by competent officials or persons authorized for that purpose and any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial authority".<sup>57</sup> It appears that several state authorities are detaining people without any legal basis, and without detentions being scrutinized and controlled by a judge.

### **8.2.1 National Security Directorate**

The National Security Directorate (NSD), Afghanistan's intelligence service, which in theory reports directly to the Head of State, is carrying out arrests and detention across the country

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<sup>54</sup> Rule 21, United Nations Rules for the Protection of Juveniles Deprived of Their Liberty.

<sup>55</sup> Body of Principles Principle 11(2) and 20.

<sup>56</sup> United Nations Special Rapporteur on Torture, report to the General Assembly, UN Document: A/56/156, paragraph 39(d) 3, July 2001.

<sup>57</sup> Body of Principles Principle 2 and 4.

and it is unclear on what legal basis they are operating.<sup>58</sup> This intelligence system is a legacy of the Communist period.

In Kabul there are widely reported to be at least two NSD prisons, one holding prisoners suspected of being members of *al-Qa'ida* and Taleban, and another holding political opponents of certain powerful members of the ATA. Amnesty International was able to visit the former. All those in detention are foreign nationals. Amnesty International met prisoners from Uzbekistan, Pakistan, and other countries. Detainees being held there are allowed to walk in the corridors twice a day and have recently been allowed outside into a small yard twice a week. ICRC and Emergency have access to this facility. They have been held for up to one year without being brought before a judge. The conditions and treatment of prisoners in the second NSD prison are unknown. Amnesty International was also able to visit a NSD centre in Mazar-e Sharif, northern Afghanistan. A senior official admitted that torture was being used in this detention centre, which is absolutely prohibited under any circumstances in international law. Amnesty International was told that staff were committing torture to extract confessions because they had no access to modern investigation techniques, education, and training.

Agha Jan was taken by NSD in September 2002. He was detained for over one month, during which time he was tortured. His arms were tied behind his back and his legs and hands were tied at all times. A stick was placed between his tied arms and was used to hang him from the ceiling. He was beaten while hanging in this position. The circumstances indicate that Agha Jan was arrested on no legal basis but in order to extort money from him and his family. Amnesty International has been unable to determine whether the NSD powers to arrest and detain are authorised by law and urges that clarification is given of the legal basis for the ongoing detention of people by the NSD.

### **8.2.2 Ministry of Interior detention centre**

Amnesty International has concerns about the existence of a detention centre in the Ministry of Interior compound in Kabul. In a meeting with Amnesty International in November 2002, General Jurat, then head of national control and public security, admitted the existence of this facility, although it was subsequently denied by his officers. Amnesty International has heard this detention centre being referred to as a “dungeon” by former prisoners. Detainees held there are thought to include political prisoners, before they are taken to Kabul Welayat detention centre. It is not clear why certain prisoners are brought to this detention centre initially, but it is thought that detainees may be those arrested only by General Jurat and his 5,000 strong police force. However, when Amnesty International visited this detention centre in May 2003 a senior criminal investigation department official claimed that he was in charge of this centre. The facility consists of one room approximately three by seven metres along a corridor of the criminal investigation department. There are three sets of bunkbeds, with some basic bedding. When asked why people were brought here rather than to the official detention

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<sup>58</sup> For further information please see Amnesty International *Afghanistan: police reconstruction essential for the protection of human rights* (AI Index: ASA 11/003/2003).

centre in Kabul Welayat, the criminal investigation official responded “that is the official place, this is only temporary”. Two people held at the time of Amnesty International’s visit said that they had been held there for four days. Eleven others held in this small room were released on the day of Amnesty International’s visit. The legal status of this detention facility must be clarified and, if it is operating unofficially, it must be closed immediately.

### **8.2.3 Military detention**

Amnesty International has received reports that there are military detention centres across the country. It is again unclear under what legal basis these centres operate. In Bamiyan, central Afghanistan, in September 2002, Amnesty International found one man being detained at the military base as an alternative to the official prison which had been destroyed. In Kabul, two men interviewed in the Ministry of Interior detention centre told Amnesty International that they had been held for five days in a military prison in Microrayan, an area on the outskirts of Kabul. These men were held in a basement and were not allowed out once in five days. The men did not think that their families had been told where they were being held, and they were not allowed visitors. Such prisons and detention centres that are acting unofficially must be closed immediately.

## **8.3 Non-state actors carrying out detention**

Amnesty International received many reports indicating that “private prisons” exist across the country. The widespread existence of such unofficial systems jeopardizes the attempts of the ATA to establish the legitimacy of the formal law enforcement apparatus and the provincial government system as a whole. There is no accountability for conditions or treatment in these prisons, and no clarity about the numbers and identities of those held in detention. Human rights abuses carried out by these groups include arbitrary arrest and unlawful detention.

Amnesty International received evidence that individuals linked to the ATA are holding people arbitrarily in private detention centres that are not linked to the transitional government. Different informal agencies are carrying out arbitrary detention, informed by personal or political vendettas, or are linked to extortion. Many people that Amnesty International talked to in Kandahar asked that the central government be strengthened and supported by the international community so that the ‘parallel structure’ could be disestablished.

High ranking regional commanders are known to have private detention centres. In Kandahar city, Amnesty International learnt that reports of “disappearances” received by the police were all related to detention of people in private places of detention. Due to their unofficial status, Amnesty International was unable to visit private prisons but managed to talk to a small number of people who confirmed the existence of several private detention centres in Kandahar as well as other areas. Reports indicate that people detained in these ‘private prisons’ 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.

Amnesty International documented one case of Gulbahar Mohammad, arrested at the end of September 2002 by the governor's men in Kandahar and 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. His body showed 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.

The ATA must prevent detention in facilities outside the formal criminal justice system as a priority. In October 2002, an order was reportedly given by the central government to close any informal detention centres but to Amnesty International's knowledge, this has not taken place. Amnesty International continues to hear accounts of torture and ill-treatment. These private prisons are legal blackholes, and must be closed.

#### **8.4 Detention by US-led forces as part of the "war on terrorism"**

The US-led forces in Afghanistan continue to arrest and detain people suspected of participating in the "war on terror". Amnesty International has repeatedly raised its concerns about the conditions of detention in Bagram air base, approximately 40 kilometres north of Kabul.<sup>59</sup> ICRC has access to the detention facilities but to date Amnesty International has been denied access.

Amnesty International also has concerns about the way the US forces in southern Afghanistan are seen to support a provincial governor who commits human rights violations. As part of the "war on terrorism", US-led forces are continuing the search for the Taliban and *al-Qa'ida* in southern and eastern Afghanistan in particular. In Kandahar, Amnesty International has received reports that US forces detain people whom the governor alleges are terrorists. In Kandahar province, Amnesty International spoke to Abdullah, one of 34 men belonging to the Afghan army who was taken by US forces during the night of 17 March 2002. Up to 60 men with heavy weaponry burst into their compound. The men did not resist, believing that they were being requested by the governor to do a certain job. However, the men's hands were tied behind their back with plastic zip ties, and they were taken to the US base in Kandahar. There they were lined up and ordered to lie down on the gravel, where they lay for several hours. During this time, Abdullah was kicked in his ribs. All the men had hoods placed over their heads and were searched by dogs. The men were shaved of all their facial and body hair, and Abdullah was shaved by a woman. During interrogation, he was handcuffed, his feet were tied together, and a hood was placed over his head. It is unclear why these men were detained. The men were released after three days. Their treatment and the cultural breaches, including being fully shaved by a woman, severely traumatized the men, and only one of them was willing to return to work after their arrest. Amnesty International is deeply

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<sup>59</sup> Amnesty International will update its concerns relating to detentions in Bagram in a forthcoming report.

concerned about these allegations of ill-treatment. The organization believes that such treatment violate international human rights and humanitarian law and standards.

## Recommendations

The ATA should:

- *release prisoners that have served their sentence. This can be helped by the accurate keeping of prison registers. In all registers, clear distinction should be made between pre-trial detainees and sentenced prisoners.*
- *close all unofficial detention centres immediately and ensure that only officials empowered to do so by law are carrying out arrests.*
- *ensure that the NSD does not carry out arrests and detention outside its jurisdiction and that it works in conformity with the law and in consultation with the police.*
- *release all prisoners who have been detained for their peaceful exercise of fundamental human rights.*
- *ensure that no-one is arrested or detained arbitrarily on account of their non-violent expression of their conscientiously –held beliefs.*

The US government should:

- *Provide immediate information concerning the reasons for detention, place of detention and legal process to the family members of all those detained in US detention facilities.*

## 9. Lack of awareness of rights

There is a widespread lack of awareness of what rights are accorded to people in detention under national or international law. The majority of prisoners interviewed by Amnesty International were not aware of their rights. Family members provide as much information as possible to their relative in detention about their cases but they also do not have full information about the prisoners rights or what fair trial standards should be applied in their case.

UNAMA has translated copies of the Standard Minimum Rules to be distributed across the country, which help to inform prisoners of their rights as well as providing prison guards with guidelines within which to act. However, a far-reaching awareness raising campaign should attempt to provide all people with information about their rights. All prisoners should be given information about their rights.

## Recommendations

The ATA with the support of the international community should:

- *develop public awareness and education campaigns nationwide to ensure people know what their rights are regarding arrest and detention.*
- *provide resources for the development of human rights education and awareness-raising programs, including through oral communication channels such as the radio, due to the high rates of illiteracy.*

## **10. Amnesty International's recommendations for the creation of a human rights based prison system in Afghanistan**

The commitment of the international community must be given to the reconstruction of the prison system in Afghanistan. Amnesty international welcomes the attention of the international donor community to the reconstruction of the criminal justice system as a whole but is deeply concerned about the lack of resources being put towards the reconstruction of the prison system. Without the long-term assistance and support of the international community there is no way that the ATA will be able to ensure that prisons across the country uphold international human rights standards. Efforts must be made now to ensure that the prison system in Afghanistan has a human rights based approach at its foundation.

### **10.1 Recommendations**

#### **Legal Reform**

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

- ensure that international human rights instruments are formally and systematically incorporated into Afghan law during the process of judicial and constitutional reform

#### **Transfer of Administration**

The ATA with the assistance of the international community should:

- develop a plan for prison reform. This plan must cover needs for the whole country and not just focus on Kabul.
- establish a deadline by which the transfer of responsibility for prisons needs to have fully taken place. Monitoring should take place to ensure that the deadline is being adhered to.
- donors with expertise in maintaining facilities which conform with human rights law and standards should contribute to this plan.

#### **Prisoner profile**

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

- provide resources for the creation of separate detention facilities for women, and for children across the country.
- create rehabilitation centres for drug addicts, with trained staff that can provide recovering addicts the necessary care.

**Resources**

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

- provide resources to ensure that prisons can be rebuilt to conform to conditions set in international law and standards, paying particular attention to prisons outside Kabul.
- take prompt and effective action according to the findings of the JRC survey ensuring that any donor input conforms to international human rights standards and is coordinated with any other donor initiatives.

**Staff issues**

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

- provide funds to ensure the payment of salaries of all members of the prison staff. At a minimum, the amount of pay needs to be sufficient to sustain an average family.
- create a reliable and effective mechanism to disburse payment to all prison staff across the country should be speedily created.
- provide training nationwide to prison staff. 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 the international treaties that Afghanistan has ratified and how to follow the other international instruments that are particularly relevant to the prison system.
- encourage trainers who have been trained in these standards to stay in their posts through career development, to ensure that the prison system retains expertise.
- ensure that women are appointed and given access to training. Proactive recruitment programs will need to be established and specially designed trainings undertaken to encourage more women to join the penal system.
- provide training on the specific rights and needs of children.
- provide training on how to deal sensitively to victims of crime, including women and children that have been sexually abused.
- 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.

### **Weapons in prison**

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

- clarify the role of any 'prisons police' and establish clear lines of reporting.
- ensure that civilian prison staff are not armed
- ensure that all weapons currently in use by custodial staff in prisons are surrendered as part of any disarmament, demobilisation and reintegration programs that take place.

### **Prison conditions**

#### **Pul-e Charkhi**

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

- ensure that a program is developed for prisoner rehabilitation at Pul-e Charkhi prison.
- rebuild the kitchen to provide adequate food for prisoners.
- ensure that there is access to water and that adequate lighting is provided in all areas of the prison being used to hold prisoners.
- pay particular attention to the needs of prisons outside Kabul. Funds must be given to prisons in the provinces as a priority.

#### **All prisons**

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

- provide resources to ensure that prisons can be rebuilt and new prison buildings obtained.
- provide resources for the creation of separate female prison facilities across the country.
- ensure that women are held in separate detention facilities that male prisoners cannot see into and do not have access to.
- provide resources to ensure that prison conditions conform to international standards. Particular attention should be paid to space, lighting, ventilation and heating.
- provide resources to ensure that food of adequate nutrition is provided by the state to all prisoners and detainees and to prison staff.
- provide all prisoners with prompt and adequate medical care and, if necessary, admittance to hospital. To this end, resources should be provided to ensure that prison medical units have the facilities to provide adequate medical care.



- ensure that prison facilities are kept clean and that rubbish is not kept next to water sources.
- ensure that each prison has sufficient water to cater for the needs of all prisoners being held.

**Family visits**

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

- ensure that prisoners are allowed regular family visits as well as regular communication with their families.

**Rehabilitation**

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

- provide vocational training and rehabilitation for prisoners.
- provide qualified professional teachers and help to establish literacy classes for men, women and children in prisons across the country.
- provide books and other reading materials so that prisoners can keep in contact with the outside world.

**Oversight**

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

- institute effective accountability mechanisms to ensure that complaints can be registered and dealt with effectively.
- ensure that any reports of human rights violations such as torture, including rape and other sexual abuse, by the prison staff are promptly, thoroughly, independently and impartially investigated. Perpetrators should be brought to justice and victims receive redress. In the case of 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 a dedicated, effective, transparent, independent, and adequately resourced prisons Ombudsperson, made up of judges, prosecutors, doctors, lawyers and other experts to carry out both routine and unannounced inspection visits of prisons and police detention centres. This body must be empowered to investigate complaints against prisons staff and be publicly accountable. This body could be established under the umbrella of the AIHRC if they are willing and able to undertake this role.
- ensure that women are duly represented on all monitoring and oversight bodies
- provide Afghan and international human rights and humanitarian organizations regular access to all prisons and other places of detention in Afghanistan.

UNAMA should:

- ensure that such a body is created and give all support possible to assist their work in this area. Until such an independent body 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:
- provide adequate funding and resources to enable an Ombudsperson to be able to fully carry out, without restrictions and limitations, the aims and functions set out in its mandate. 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
- visit prisons to receive complaints orally and in writing, and to deal with them appropriately while an independent inspectorate is established.

### **Treatment of prisoners**

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

- ensure that training given to prison staff includes practical human rights training as an integral part with the emphasis that no-one should be tortured or ill-treated under any circumstance..
- stop the use of manacles and leg irons.
- provide non-lethal equipment, including handcuffs, to prison staff along 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.
- ensure that no male police officer or member of the prisons staff is allowed to visit the female prisoners unless accompanied by a female member of staff.
- investigate any allegations of human rights violations committed by prison staff promptly, thoroughly, independently and impartially.

### **Arbitrary Detention**

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

- ensure that all detainees are brought promptly before a judge, and that anyone who is being held without evidence of having committed a crime is immediately released.
- release prisoners that have served their sentence. This can be helped by the accurate keeping of prison registers. In all registers, clear distinction should be made between pre-trial detainees and sentenced prisoners.

- close all unofficial detention centres immediately and ensure that only officials empowered to do so by law are carrying out arrests.
- ensure that the NSD does not carry out arrests and detention outside its jurisdiction and that it works in conformity with the law and in consultation with the police.
- release all prisoners who have been detained for their peaceful exercise of fundamental human rights
- ensure that no-one is arrested or detained arbitrarily on account of their non-violent expression of their conscientiously –held beliefs.

The US government must;

- provide immediate information concerning the reasons for detention, place of detention and legal process to the family members of all those detained in US detention facilities.

### **Awareness-raising**

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

- develop public awareness and education campaigns nationwide to ensure people know what their rights are regarding arrest and detention
- provide resources for the development of human rights education and awareness-raising programs, including through oral communication channels such as the radio, due to the high rates of illiteracy