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Afghanistan: The international community must act immediately to ensure respect for the rule of law

More than a year and a half after the US-led military intervention, the rule of law in Afghanistan is being seriously undermined by the failure of the international community to provide urgently needed assistance, according to a report published by Amnesty International today.

"As the international community focuses on the reconstruction of Iraq, it must not rescind on promises made to the Afghans," said Amnesty International. "Afghanistan is still on the critical list, and its recovery is being hampered by the failure of the international community to provide long-term political and financial support to the justice sector. Re-establishing respect for the rule of law is an essential pre-requisite for peace and security."

The US-led military intervention was accompanied by an international commitment to provide support to ensure the re-establishment of the rule of law in Afghanistan. However, the promised programme of assistance to the judicial system lacks strategic direction and has been delayed in its commencement. "Funds pledged thus far fall short of what is required to ensure effective reconstruction of the criminal justice system," Amnesty International said. "As a result, the Afghan judicial system is barely functioning -- where courts have been established, they lack the basic facilities necessary to ensure the administration of justice."

"In addition, the absence of effective government control outside Kabul, the existence of ongoing conflict and a *de facto* rule by commanders and armed groups in certain areas of the country are factors which are currently undermining the legitimacy of the Afghan courts and the independence of the judiciary. The international community's unwillingness to provide effective security outside of Kabul has left the judiciary extremely vulnerable, and in many areas individuals remain above the law because of their place in the community or because they are able to use threats and intimidation to influence court proceedings."

The rights of the accused are not being protected by the criminal justice system. Accused persons, including children, are being denied the right to a fair trial, and there is a widespread problem of arbitrary detention. The Afghan police have not been provided with the equipment necessary to investigate crime and they routinely resort to torture. Many judges lack the necessary qualifications and training to properly apply domestic law, let alone international law. As a result, both adults and children are being convicted despite a lack of evidence after grossly unfair trials. Economic influences have also led to a widespread

problem of corruption."

The high level of discrimination against women in Afghanistan is also reflected in the criminal justice system. Female victims and defendants are being denied access to justice and discriminated against by both the formal and informal justice systems. "The system is failing to protect victims of rape, domestic violence and forced underage marriage," stated Amnesty International. "Girls and women are being prosecuted for engaging in consensual sexual activity -- in some areas, the police randomly pick up girls and women and subject them to forced virginity tests."

Girls and young women are also imprisoned for "running away" from forced marriages or abusive spouses. In one case documented in the report, an 18-year-old girl accused of refusing to marry her cousin in defiance of her family's wishes was told by the judge at her first court appearance that she "should be stoned". Another, aged 14, received three years' imprisonment for "running away" from her abusive husband whom she was forced to marry.

"Informal judicial mechanisms are also ordering girls and young women to be being given away, as a form of compensation in criminal cases," Amnesty International revealed.

"There is an urgent need to ensure that the international community and the Afghan government take steps to ensure that women's human rights are protected. Legal reform is required to ensure that women are no longer discriminated against and affirmative action must be taken to ensure that women are represented in the police and judiciary."

Over the past 23 years of continuous armed conflict, Afghan people have been the victims of human rights violations and abuses on a huge scale. Despite the scale of war crimes, crimes against humanity and other serious human rights violations and abuses, a climate of impunity prevails and justice for victims continues to be denied. "Ending impunity is crucial for ensuring justice and preventing the repetition of such crimes," Amnesty International said.

The challenge of reconstructing a judicial system in the wake of almost a quarter of a century of conflict is a formidable one. Amnesty International identifies a range of practical measures that can be taken by the Afghan government and the international community. In particular, the organisation recommends the establishment of an independent judicial services commission with a mandate to investigate judicial misconduct. It also recommends the establishment of a public complaints mechanism, and the development of a programme of training and support to build the capacity of defence lawyers. "Legal reform is also urgently required to ensure that the human rights of all Afghan people are protected and that persons responsible for committing human rights violations and war crimes are brought to justice."

"Afghanistan requires comprehensive, long-term support and assistance to ensure that it develops a judicial system that is based upon respect for the rule of law, and which operates in a manner that is consistent with universally accepted human rights standards. Respect for the rule of law can only be achieved if there is a sustained commitment and support from the international community and key Afghan actors," the organisation concluded.

For a full copy of the report, please see <http://web.amnesty.org/library/index/engasa110212003>

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