

PRESS STATEMENT

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I have spent 12 days in Afghanistan at the invitation of the Government and I am deeply grateful to them for the full cooperation I received. I have visited Helmand, Kabul, Kandahar, Kunar, Nangarhar, Jowzjan, and Parwan and met with victims and witnesses, Provincial Governors, Ministers in the national Government, senior international military officers, civil society, the Afghan Independent Human Rights Commission, the UN, and many others.

I should make clear that I am not a staff member of the United Nations. In other words, I am not a member of UNAMA or the UN Secretariat charged with implementing official UN policy. Instead, I play a different role within the UN system. I have been appointed by the UN Human Rights Council to provide that body with a report analyzing problems relating to unlawful killings and making recommendations for how those killings could be more effectively prevented. It will be for the Government, the United Nations, the international community, and civil society to give those recommendations appropriate consideration.

The problem of killings is a significant one in Afghanistan. In the past four months, hundreds of civilians have been killed. They have died from bombs, missiles, explosive devices, police fire, beheadings and domestic violence. Those responsible include the police, militia groups, the Taliban and other anti-government elements, and the international forces. In the absence of urgent action by all parties, the months and years ahead will see many more civilians killed unlawfully. The message of my report is that a great many of these deaths can be readily avoided.

In these preliminary observations I identify several steps that should be taken urgently. In my final report, to be released several months from now, I will go into considerably more detail.

Afghanistan is enveloped in an armed conflict. But that does not mean that large numbers of avoidable killings of civilians must be tolerated. The level of complacency in response to these killings is staggeringly high. In a nutshell: police killings must cease; widespread impunity within the legal system for killing must be rejected; the killing of women and girls must end; the international military forces must ensure real accountability for their actions; and the United Nations should give greater prominence to the role of human rights in its activities.

Ensuring the accountability and transparency of the international military forces

The international forces in Afghanistan should take seriously the principles of accountability and transparency, the importance of which they so frequently proclaim in other contexts. They should have no particular reluctance to adhere to these principles. I have seen no evidence that the international forces present in Afghanistan commit widespread intentional killings in violation of human rights or humanitarian law.

But the international military forces have reportedly killed as many as 200 civilians, often in joint operations with Afghan security forces, in the first four months of this year. The

majority of these were the result of air strikes or close air support. In many cases, these attacks appear to have been lawful, though tragic. The killings by the international forces that most frequently raise issues under international human rights and humanitarian law are those that occur during surprise night-time raids and those that occur when soldiers fire at vehicles or passers-by that they (wrongly) suspect of being attackers.

But the response of the international forces combines great seriousness of intent and adherence to the applicable law with a surprisingly opaque and unsatisfactory outcome.

In a few instances, this opacity may be intentional. For example, there have been a number of raids for which no state or military command appears ready to acknowledge responsibility. I inquired into one such raid while I was in Kandahar. In January 2008, two brothers were killed in a raid in Kandahar City which was led by international personnel. The victims are widely acknowledged, even by well-informed Government officials, to have had no connection to the Taliban, and the circumstances of their deaths are suspicious. However, not only was I unable to get any international military commander to provide their version of what took place, but I was unable to get any international military commander to even admit that their soldiers were involved.

I also looked at raids in both Kandahar and Nangarhar provinces that involved international forces accompanied by Afghan forces. The identity of the international forces has yet to be fully clarified. While I received credible information that the Afghan forces were, in the case of Nangarhar, the Shaheen Unit working with armed international personnel and, in the case of Kandahar, Afghans working with international forces out of the Ghecko military base, I never received a definitive answer as to how they fit into anyone's chain of command. Based on my discussions, there is no reason to doubt that at least some of these units are led by personnel belonging to international intelligence services. The Minister of Defense, the head of NDS and ANA commanders confirmed that they do not fall under their command. I will explore this issue in greater depth in my report, but let me say for now that it is absolutely unacceptable for heavily-armed internationals accompanied by heavily-armed Afghan forces to be wandering around conducting dangerous raids that too often result in killings without anyone taking responsibility for them.

Most failures of accountability and transparency are more prosaic, but these ordinary failures are also troubling. In speaking with relatives or witnesses, I would ask which of the international forces carried out the killing. Even those who had tried to follow up their cases at PRTs and other military bases often did not know the answer to this question. Getting clarification from the international forces is like entering a maze. I experienced this maze myself. One ISAF commander explained that while he could confirm whether a particular operation was conducted by conventional ISAF troops and then clarify which national contingent they belonged to, he would have to pass the case up the chain of command to clarify whether it had been conducted by ISAF special forces, and that I would have to ask the commander in charge of Operation Enduring Freedom (OEF) to determine whether and which coalition forces were responsible.

The situation is even worse when it comes to the accountability of individual soldiers. As is well known, the responsibility for prosecuting crimes committed by members of the international forces in Afghanistan belongs to their sending country. If an Australian commits an unlawful killing, responsibility for investigating and prosecuting that incident lies with the Australian Government; if a Norwegian commits an unlawful killing, responsibility for investigation and prosecution lies with the Norwegian Government. What is less well

known is that *no one* in Afghanistan tracks the outcome of investigations and prosecutions. I met a witness in Jalalabad who lost family members in the well-known 4 March 2007 incident in which soldiers responded to a suicide attack on their convoy by shooting at a number of people over the next 20 kilometers of road. He was surprisingly open-minded about the responsible soldiers being tried by their sending country, but he was angry that he had not been provided with any information as to whether the soldiers involved had come before a court martial, whether they had been convicted or acquitted, and whether there were ongoing proceedings. Then I visited the regional commander, and he didn't know either. He explained that his unit had arrived in Afghanistan and that accountability for incidents involving the previous unit was its responsibility and that it had taken all the relevant files when it left the country. To his credit, he recognized that this was a problem. Another regional commander with whom I spoke suggested that it was not such a problem whether the status of investigations and prosecutions could be tracked because compensation was the main concern. As he correctly noted, the bottom line is that those wishing to know the final outcomes of any prosecutions should read the local newspapers in all of the troop-sending countries. This is a wholly unsatisfactory situation.

The international forces operating in Afghanistan have a responsibility to make sure that there is a coherent, unified system of accountability which Afghans and others can follow. However messy this system may be on the inside, composed as it must be of multiple mandates and of disparate national military justice systems, it is essential that those pieces add up to a coherent whole. Affected individuals should be able to go to a military base operating under any mandate, and receive prompt straightforward answers to questions such as: who were the international forces who raided my house last night? Or, I believe my brother was unlawfully killed by a soldier from the international forces; has he been put before a court martial?

Police reform

In most parts of the country, the police are the face of the Government. Indeed, in a significant number of districts, the *only* government officials seen by the people are the police. For someone living in such an area, the legitimacy of the Government depends almost entirely on police behaviour. If they maintain law and order for all, the Government will have legitimacy. If they extort, intimidate, and kill, the Government will have no legitimacy. All too often, the police do not truly represent the interests or diversity of the community. They are drawn dominantly from the members of one tribe or the followers of one commander. They function not as enforcers of law and order, but as promoters of the interests of a specific tribe or commander.

In the course of my visit, these problems were especially visible in the South. When I spoke with elders from conflict-affected areas, I was repeatedly told that abuses by the police were tempting people to support the Taliban. A senior Government official listed the security threats in his province as coming both from the Taliban and from criminal elements among the Government security forces. An international military commander stated bluntly that the police in his area of operations are corrupt and predatory and that the people have no experience of the police delivering services, but only of confiscating their goods and money.

These realities have not, however, been adequately recognized by the Government or the international community. One illustration must suffice. I examined a recent incident in which police are alleged to have massacred a group of men from a rival tribe. Those killed may or may not also have been sympathetic to the Taliban. Following extensive discussions

with all parties it seems unlikely that we will ever know precisely what actually happened. But the point is that no-one in the Government has any interest in investigating, much less prosecuting, those responsible. And no-one in the international community seems prepared to change that situation.

The Government and the international community have consistently missed opportunities to remove corrupt and abusive individuals from the state's security forces and power structures. The pay-and-rank reform program designed to transform the Afghan National Police from a force thick with militias and local thugs into a professional, national police force had some undeniable successes, but its implementation grew half-hearted over time. Similarly, it is notorious that candidates linked to illegal armed groups were not disqualified in the 2005 elections despite an elections law requiring precisely that.

A key reason for these failures to act is the extent to which senior Government and international officials focus on "stability" and "security" rather than "human rights". This trade off is sometimes stated delicately or diplomatically, but it is nonetheless made. The belief that human rights can be traded off for stability and security seems widely held. It is gravely misplaced. The dynamic that I saw repeatedly was well captured by a senior official who bluntly asserted that at least half of the "anti-government elements" in his area had joined the Taliban armed opposition due to the torture, abuses, and misguided strategies of his predecessor. While this may be a self-interested assessment, that does not make it any less true.

We need to recognize that ensuring respect by Government security forces for basic human rights is *necessary* in order to ensure security and stability.

But what does this mean for policy? There are, of course, myriad development plans, sectoral strategies, training programs, and so on, covering every component of the Government's security forces. But I believe that several key considerations need to be taken into account.

First, Afghanistan needs a police force that can play both a law enforcement and para-military role. There is a well-known debate between those who favor two different models of a police force. Some focus on one designed to prevent and respond effectively to burglaries, thefts, domestic disputes, and murders. Others favor constructing a police force that can hold territory by fighting "anti-government elements". But this way of framing the issues is no longer helpful. Any police force that does not deal effectively with the crimes that plague people in their everyday lives will be discredited. And any police force that works in conflict-affected areas must be prepared to engage with insurgents. Training must thus encompass both aspects.

Second, training alone will not fix Afghanistan's police force. Training is important but we know well that people who have an interest in summarily executing their enemies don't stop doing so simply because they've read the Universal Declaration of Human Rights or received instruction in an escalation of force protocol. One cynical, but perhaps not entirely inaccurate, view of training was expressed by a well-informed interlocutor who was asked what he expected of the local police once they had completed their training under the "focused district development" (FDD) program. He wryly observed that they would be able to extort more effectively.

The FDD program has, in an unexpected manner, pointed the way toward genuine reform. The program works by taking an entire district's police force to another location to receive intensive training. While they are being trained, the Afghan National Civil Order Police (ANCOP) moves in to police the district. They have generally been well-received. Why? The answer may lie partly in their training, but the dominant factor seems to be that the ANCOP police do not have any connection to local tribes, commanders, or warlords.

There are a number of plausible approaches, ranging from a more comprehensive pay-and-rank reform effort to the construction of some kind of national gendarmerie. But any serious effort to reform the ANP must focus on establishing a police force that represents the interests of communities rather than the narrow interests of particular tribes, warlords, and politicians.

Third, the Government must stop establishing and legitimizing more militias. It seems that the now abandoned "auxiliary police" program amounted to little beyond legitimizing existing militias by giving them Government uniforms. It is not clear, however, that the lessons of that experience have truly been learned. A senior Government official explained to me that the "social outreach program" of the Independent Directorate for Local Governance (IDLG) is intended to mobilize the local population for its own protection. He explained that there will never be enough ANP or ANA to perform tasks such as protecting schools in conflict-affected areas and that the "social outreach program" involves asking a local tribal leader to do so. As a side benefit, he noted, building such bridges between the Government and local militias would generate intelligence on the infiltration of anti-government elements, the location of IEDs, and so on. But this approach seems likely only to increase the risk to the local population and to lead to the empowerment of favored groups within a community to extort, intimidate, and kill their opponents.

Fourth, the police must be better trained and equipped with a view to reducing the unacceptable rate at which police officers die, which is almost five times that of the military.

Finally, the problem of killings by the police and other armed personnel acting under the authority of Government officials has been largely overlooked. This should end. While there are no reliable figures on the number of such unlawful killings, there are enough particular cases that it is certain that the overall number is high. There is a crying need for a system which ensures that when the police and/or their political masters are accused of multiple killings an independent investigation is launched. The killing of nine and the wounding of 42 unarmed protesters in Sheberghan on 28 May 2007 provides a classic example. Local and national political interests conspired to ensure that no effective investigation was undertaken. When the Afghanistan Independent Human Rights Commission (AIHRC) prepared a detailed but damning report, the response was to ignore it and set up separate inquiries. These inquiries appear to be going the way of most such efforts. The technique is to let time pass until the evidence has faded and other political concerns have claimed the limelight. The matter can then be quietly filed away. The interests and claims of the wounded and of the families of those killed are simply ignored.

Local police are, not unusually, incapable of meaningfully investigating themselves. A national police investigative task force should be established for this purpose. The investigative powers of the AIHRC should also be strengthened and the local and national government should be given ninety days to respond in detail to the Commission's findings.

Women

The problems in the criminal justice system are multiplied exponentially for women. In Kandahar, a female staff member of mine asked a roomful of women to whom they could lodge a complaint if they faced abuse within the home, or feared for their lives. The room erupted with ironic laughter. They replied that for many of them, even leaving the house to make a complaint would be difficult. If they could leave, they would be too ashamed to make their concerns public. And if they did make a complaint to the police, they did not believe that the ANP would take any action. They felt they would only be punished further, or be imprisoned for running away. In short, far too many women at risk of being killed simply have nowhere to turn.

Women's referral centres, recently set up in Jalalabad and Parwan, appear to be making a real difference. Such initiatives warrant strong support from the government and the international community. Prosecutions of crimes against women would also be assisted by setting up in the Attorney-Generals office a strong special office for female victims.

Women are also threatened or targeted for assassination by the Taliban and other anti-government elements for a range of reasons. These reasons include having sons working for the ANP or ANA, working for the Department of Women's Affairs, or for advocating for their basic rights. Some women also said they had been threatened by Government authorities for speaking out.

Women and armed conflict

I received testimony from many women who have lost fathers, husbands, sons, and brothers in the current conflict. Whether the men were killed in air strikes, by military convoys, or by armed groups, the end result for the women is usually disaster. Some had received monetary assistance from the Government of Afghanistan or ISAF for their losses, but many were not even aware of such possibilities. If they are lucky, their families will support them. Some will enter the workforce, and receive very low wages. Those without access to education or employment are forced on to the streets to beg in order to feed their children.

Honour Killings

In Jalalabad, I spoke with a family member of a boy and girl who were killed because they had allegedly had sexual relations outside of marriage. The boy and girl were invited to a "dinner" by their uncles. When they were asleep, the uncles shot and killed both of them. The body of the boy was sent to his father. The girl was buried without offering any funeral prayers. None of the family members made a complaint to the police. The police knew about the deaths, but did not investigate. Such cases are very common. In Kandahar, many women stated that honour killings occur in their neighborhoods, but they are rarely reported and investigated.

It needs to be seen by all that these cases are really dishonour killings. They dishonour the family by tolerating murder. Like any other murders, such cases need to be investigated by police, prosecuted by the Attorney-General's office, and the perpetrators punished by the courts.

Imposing a moratorium on executions

The Supreme Court recently submitted some 100 existing death sentences covering the past six years to President Karzai. In line with the constitution and international standards, these

death sentences cannot be carried out without his approval. There are strong reasons why he should take the opportunity to impose a moratorium on executions.

Taking this decision does not require getting into the larger debate over whether Afghanistan should abolish the death penalty. The criminal justice system is deeply flawed. Even the police, prosecutors, and judges who comprise the system acknowledge that corruption and incompetence are widespread. Sometimes, they will acknowledge this even about their own institutions, but they will invariably point to grave failings in other components of the system. Almost all my interlocutors agreed that the criminal justice system is incapable of ensuring respect for due process rights. The wealthy and well-connected escape serious punishment. And, while some well-informed interlocutors did not think that any genuinely innocent person has yet been sentenced to death, others felt certain that there are innocents on death row. Proceeding with executions on this basis clearly violates international legal standards.

The criminal justice system and corruption

Impunity results from the failings in the functioning of the criminal justice system. Time and again I received complaints that many killings are not investigated by the police, that the prosecutors far too often do not proceed to prosecute alleged killers, and that the judiciary corruptly exonerates many individuals. The result is a system which provides a thoroughly unacceptable degree of impunity to those accused of killings. While specific reforms to the justice system are essential, corruption seems to be the common thread running through many of the problems.

Corruption is endemic. It fuels resentment, despair, and anti-government activities. Pervasive corruption cannot be eliminated overnight but there is a pressing need to establish a visible and credible mechanism with the power to subpoena witnesses and evidence, and to launch prosecutions. Above all, it must be designed to withstand the inevitable pressures of both corrupt politicians and those in government who feel obliged to turn a blind eye to corruption so as not to jeopardize their ability to govern. Independent corruption agencies have been successfully established in many states including Nigeria, Hong Kong and Australia. A series of carefully targeted prosecutions of egregious cases would work wonders in terms of sending the necessary message. While this will require international funding, national ownership is indispensable.

The Taliban and other anti-government elements

Over the past four months, the Taliban and other anti-government elements have killed approximately 300 civilians. Roughly three quarters of these civilians were killed in suicide attacks. While the majority of suicide attacks appear to target legitimate military objectives, many of these attacks are nonetheless unlawful because it should be obvious that they will result in far more civilian than military deaths.

Most of the other civilians killed by the Taliban die as a result of targeted assassinations. While these killings are fewer in number, they are significant in terms of intimidating and repressing the population. Often, killing one teacher will close an entire area's schools, killing one proponent of the Government will intimidate many others, and killing one NGO worker will end humanitarian access to a district. These assassinations are completely unlawful, and their consequences are dramatic.

The Taliban has also engaged in a high level of unlawful killing of non-civilians. For example, while it is lawful to target a soldier in the midst of combat, it violates international humanitarian law to abduct and then execute him.

In general, when I conduct country visits and fact-finding missions, I speak with armed opposition groups. I have not spoken with any formal representatives of the Taliban or other armed groups during my visit. Initially, I assumed that security concerns, largely of the armed groups' own making, would make doing so impossible. I was also aware that various actors had reservations about the political implications of doing so. Ultimately, I felt I had no option but to abide by these reservations despite the fact that realistic opportunities were presented to me. However, after having spent two weeks in Afghanistan, I have concluded that not speaking with the Taliban was a mistake. On the ground, the importance of speaking with them is clear. Prominent elders in the South told me directly that the problem with visits by international envoys was that they only spoke to one side. An international military commander expressed surprise that I was not doing so. My considered view is that taking account of information provided by such sources would permit a more nuanced understanding of abuses committed by the Taliban and other armed groups.

Looking toward the future, I would recommend that human rights groups and inter-governmental organizations in Afghanistan develop contacts with the Taliban and other armed groups. I recognize the concern that such contacts would somehow "legitimize" these groups. I cannot emphasize strongly enough that the decision to speak with an armed group for the purpose of requesting its views on particular incidents, criticizing its conduct, and urging better compliance with human rights and humanitarian law does not "legitimize" that group. The bottom line is that the international community does have human rights expectations to which it holds the Taliban and other armed groups. The international community does criticize the Taliban and other armed groups for conducting suicide attacks, assassinations of teachers, and other acts that are at odds with those fundamental human rights expectations. These expectations operate to protect people. They do not thereby affect the legitimacy of the actors to whom they are addressed. Moreover, the international community has an obligation to do all it can to promote compliance with human rights by all actors.

Preliminary recommendations

I have a few preliminary recommendations to make regarding how extrajudicial executions could be more effectively prevented in Afghanistan. I would note, however, that my mission, and this press statement, are only the first steps in a much longer process, and I look forward to an ongoing dialogue with all actors and the Government.

- Ending unlawful killings by the police should be a priority. To that end, there should be a concerted effort to reform the police:
 - Human rights training, while important, will not prevent abuses that are driven by the links between police officers and particular tribes, commanders, and politicians. These links must be broken in order to establish a truly national police force that serves and protects the entire community.
 - All efforts to supplement the police by establishing or legitimizing local militias should be abandoned.

- The debate over whether the police force should play a primarily “law enforcement” or “paramilitary” role is unhelpful. At this stage the police are clearly obliged to play both roles and should be structured and trained accordingly.
- Killings by the police must end. The interminable dragging out of government investigations and inquiries until such episodes are effectively forgotten reinforces impunity. A national police investigative task force is needed, the AIHRC’s investigative powers should be strengthened and the government should have a time limit within which to respond to its findings.
- The Government should impose a moratorium on executions. It is widely agreed that the criminal justice system is not currently capable of reliably respecting due process protections.
- The situation of half of the population – women – in relation to killings is largely ignored. The criminal justice system must be made accessible to them, initiatives such as women’s referral centres should be encouraged, and a special office for female victims should be created by the Attorney-General.
- More attention must be given to the devastating poverty too often suffered by women whose male relatives are killed. And honour killings, which occur in very large numbers, must be treated as the murders that they so clearly are.
- An independent anti-corruption agency should be established and endowed with the necessary powers and resources to prosecute important cases at all levels of government and the judiciary.
- The international forces present in Afghanistan should respect the principles of accountability and transparency. Among other things, they should ensure that, despite the complexity of multiple mandates and disparate national criminal justice systems, any directly affected person can go to a military base and promptly receive answers to such questions as who was responsible for a particular operation and what the status is of any investigation or prosecution.
- A serious effort should be made to pressure and persuade the Taliban and other armed groups to respect human rights and humanitarian law. This effort should include developing contacts with them for the sole, dedicated purpose of promoting respect for human rights. Such efforts should be undertaken subject to security feasibility and in conformity with the provisions of Security Council resolution 1267.