
Advance edited version

Distr.
GENERAL

A/HRC/8/3/Add.6
29 May 2008

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Eighth session
Agenda item 3

**PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL,
ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO
DEVELOPMENT**

**Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions,
Philip Alston**

Addendum

**PRELIMINARY NOTE ON THE MISSION TO AFGHANISTAN
(4 – 15 May 2008)**

1. The Government of Afghanistan was very welcoming and fully cooperative during my 12-day visit to Helmand, Kabul, Kandahar, Kunar, Nangarhar, Jowzjan and Parwan. The United Nations Assistance Mission in Afghanistan (UNAMA) provided superb logistical and other support.
2. The problem of killings is a significant one in Afghanistan. In this preliminary report, I identify steps that should be taken urgently. My final report will be more extensive.
3. Afghanistan is enveloped in an armed conflict. That does not mean, however, 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

4. The international forces in Afghanistan should take seriously the principles of accountability and transparency. I saw no evidence of widespread intentional killings in violation of human rights or humanitarian law by international military forces. However, they reportedly killed as many as 200 civilians, often in joint operations with Afghan security forces, between January and April 2008. Especially problematic are killings during surprise night-time raids and those that occur when soldiers fire at vehicles or passers-by.
5. 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 received credible information that armed Afghan men were working with armed international personnel in certain areas, but never received a definitive answer as to how they fitted into anyone's chain of command. At least some of these units are apparently led by personnel belonging to international intelligence services. Such a situation is absolutely unacceptable.
6. Most failures of accountability and transparency are more prosaic, but these ordinary failures are also troubling. Often those whose relatives had been killed were unable to ascertain any information as to those responsible. Moreover, no-one in Afghanistan tracks the outcome of investigations and prosecutions, and makes such information public.
7. 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.

NATO response

8. Following my press conference in Kabul, NATO-International Security Assistance Force (ISAF) issued a press release criticizing my statement. Sadly the response was largely rhetorical and failed to address the substance of the issues. In the release, it said it was “irresponsible” to suggest that coalition forces had ever committed an intentional killing and implied that no air strikes had ever failed to comply with the law of armed conflict. This level of denial does not bode well for future efforts to address past and continuing problems involving civilian casualties.

Police reform

9. For many people living in rural areas, the perceived 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 function not as enforcers of law and order, but as promoters of the interests of a specific tribe or commander.

10. 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. These realities have not, however, been adequately recognized by the Government or the international community. Often, when killings by the police are alleged, no-one in the Government has any interest in investigating, much less prosecuting, those responsible.

11. 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.

12. 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. The belief that human rights can be traded off for stability and security seems widely held. It is gravely misplaced. 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?

13. First, Afghanistan needs a police force that can play both a law enforcement and para-military role. Any police force that does not deal effectively with the crimes that plague people in their everyday lives will be discredited. Any police force that works in conflict-affected areas must be prepared to engage with insurgents. Training must thus encompass both aspects.

14. Second, training alone will not fix the police force of Afghanistan. The “focused district development” programme has, in an unexpected manner, pointed the way towards genuine reform. The programme 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 ANCOP does not have any connection to local tribes, commanders or warlords.

15. Third, the Government must stop establishing and legitimizing more militias. It seems that the now abandoned auxiliary police programme 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. There is reason for concern that the “social outreach programme” could increase the risk to the local population and lead to the empowerment of favoured groups within a community to extort, intimidate and kill their opponents.

16. 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.

17. 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 9 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.

18. 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 Afghan Independent Human Rights Commission (AIHRC) should also be strengthened and the local and the national Government should be given 90 days to respond in detail to the Commission’s findings.

Women

19. The problems in the criminal justice system are multiplied exponentially for women. When women were asked to whom they could lodge a complaint if they faced abuse within the home, or feared for their lives, 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. If they did make a complaint to the police, they did not believe that the Afghan National Police (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.

20. 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-General’s office a strong special office for female victims.

21. Women are also threatened or targeted for assassination by the Taliban and other anti-Government elements for a range of reasons.

22. Women who have lost menfolk in the current conflict very often end up in disastrous situations. Some receive monetary assistance for their losses, but many are unaware of such a possibility.

23. Honour killings continue to be widespread and numerous. They are rarely reported and even more rarely investigated. The responsibility of the State is high and urgent steps are needed.

Moratorium on executions

24. The Supreme Court recently submitted some 100 existing death sentences covering the past six years to President Karzai. However, the criminal justice system is deeply flawed and is incapable of ensuring respect for due process rights. The wealthy and well connected escape serious punishment. Under such circumstances, there should be a moratorium on carrying out any death sentences in order to avoid violating international legal standards.

Criminal justice system and corruption

25. 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 killing. While specific reforms to the justice system are essential, corruption seems to be the common thread running through many of the problems.

26. 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.

Taliban and other anti-Government elements

27. 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.

28. 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 worker will end humanitarian access to a district. These assassinations are completely unlawful, and their consequences are dramatic. The Taliban have also engaged in a high level of unlawful killing of non-civilians.

29. In future, human rights groups and inter-Governmental organizations in Afghanistan should develop contacts with the Taliban and other armed groups. 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.

Preliminary recommendations

30. Police reform to end unlawful killings should be a priority:

- (a) The links between police officers and particular tribes, commanders, and politicians must be broken in order to establish a truly national police force;**
- (b) All efforts to supplement the police by establishing or legitimizing local militias should be abandoned;**
- (c) At this stage, the police are clearly obliged to play both law enforcement and paramilitary roles and should be structured and trained accordingly;**
- (d) 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 investigative powers of the Afghan Independent Human Rights Commission should be strengthened and the Government should have a time limit within which to respond to the Commission's findings.**

31. The Government should impose a moratorium on executions.

32. 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.

33. More attention must be given to the devastating poverty too often suffered by women whose male relatives have been killed. Honour killings, which occur in very large numbers, must be treated as the murders that they so clearly are.

34. An independent anti-corruption agency should be established.

35. 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, directly

affected persons can go to a military base and promptly receive answers with regard to responsibility for a particular operation and the status of any investigation or prosecution.

36. 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 (1999).
