

No Time to Lose

Promoting the Accountability of the Afghan National Security Forces



Members of the Afghan security forces in Baghlan, part of Pamir 303, the interior ministry forces commanded by General Daoud Daoud.

As greater responsibility is handed over to the Afghan National Security Forces, there is a serious risk that unless adequate accountability mechanisms are put in place, violations of human rights and humanitarian law will escalate – and Afghan civilians will pay the price. Troop-contributing states have been slow to honour their moral and legal obligation to ensure the accountability of the national security forces; and time to do so is running out.

Summary

By 2014, the Afghan national army and police – under the authority of the Ministries of Defence and Interior, respectively – are expected to assume full responsibility for the protection of Afghan civilians. But as international military actors prepare for withdrawal, there are serious concerns regarding the professionalism and accountability of the security forces they will leave behind.

The civilian toll of the conflict in Afghanistan is getting worse each year. In 2010 at least 2,777 civilians were killed – the highest since 2001. Armed opposition groups continue to account for the highest number of civilian casualties and the most serious violations of human rights and humanitarian law; but the Afghan National Security Forces (ANSF) – financed, trained and equipped by the international community – also account for substantial civilian harm. At least 10 per cent of Afghan civilians killed in the conflict in 2010 were killed by their own security forces.

But civilian casualty statistics do not convey the full extent of harm caused to the civilian population by the ANSF. Human rights organisations have documented a series of alleged violations of human rights and humanitarian law on the part of the national security forces, including night raids carried out without adequate precautions to protect civilians, the recruitment and sexual abuse of children, mistreatment during detention, and the killing and abuse of civilians by local police seen by many communities as criminal gangs.

The international community has been pouring money into the war in Afghanistan for almost a decade, but serious efforts to strengthen the professionalism and accountability of the national security forces only really began in 2009. For the best part of a decade there has been a striking lack of attention to the development of qualified security personnel, and equally, a lack of attention to the institutional reform necessary to ensure accountability. There is no satisfactory mechanism by which an individual can lodge a complaint against the ANSF; nor for the processing of complaints; nor for the dissemination of findings or the payment of compensation. The military justice system functions only for those without political connections, there is no permanent institution devoted to investigating allegations of harm caused by the ANSF, and civilian casualties caused by the ANSF are not even counted by the government. As greater responsibility is handed over to the national security forces, there is a serious risk that unless adequate accountability mechanisms are put in place, violations of human rights and humanitarian law may escalate – and Afghan civilians will pay the price.

Combating abusive conduct on the part of the ANSF and the climate of impunity in which abuse takes place, as well as improving the government's response to civilian harm caused during lawful combat operations, is a moral, political and legal imperative both for the international community and the Afghan government. Afghan communities have high hopes for their own security forces; but a perceived lack of accountability for violations, as well as 'collateral damage' followed by neither apology nor redress, undermines the perceived legitimacy of the Afghan government and makes those high hopes appear misplaced. All states also have a legal obligation to ensure respect for international humanitarian law, and this includes a duty to take action to stop violations. Some states have additional obligations under domestic law and policy regarding security forces they fund, train, arm, equip, or operate alongside.

As international forces prepare for a phased withdrawal of troops in the lead up to transition, time to develop the professionalism and accountability of the national security forces is running out. It's not too late; but an adequate response will not be possible without genuine political will at the highest levels of civilian and military leadership, both Afghan and international.

Recommendations to the Afghan Government and the International Community:

1. Ensure that individuals put forward for inclusion in the ANSF are credibly and consistently vetted for gross violations of human rights.
2. Improve the quality of training for the ANSF. Training for the ANP must include sufficient emphasis on community-based policing, good governance, the rule of law and accountability; and all components of the ANSF should be trained in international human rights and humanitarian law as appropriate.
3. Increase the number of women in the ANSF, as well as in the design and implementation of training and mentoring programs.
4. Provide more substantial political and financial support to government institutions and mandated independent bodies that receive and investigate complaints against the ANSF, such as the Ministry of Interior's Gender and Human Rights Unit and the Afghan Independent Human Rights Commission.
5. Ensure that ANSF personnel who abuse their authority, violate codes of conduct or otherwise fail to fulfil their obligations under Afghan or international law are transparently investigated and appropriately disciplined and/or prosecuted.

6. Enhance efforts to ensure that the conduct of ANSF personnel is subject to independent oversight, and appropriate information made available to the public.
7. Ensure that incidents resulting in civilian harm are properly monitored and followed by credible, transparent investigations.

To the Afghan Government:

8. The Ministries of Interior and Defence should make a genuine commitment to ensuring that relevant codes of conduct are communicated to and understood by all ANSF personnel, as well as the public.
9. In consultation with international military forces and civil society representatives, develop a uniform, consistent, transparent procedure for the payment of compensation in the event of civilian harm.

To the US and the Afghan Ministry of Interior:

10. Suspend further expansion of the Afghan Local Police until appropriate vetting, training and oversight can be assured, previous initiatives have been evaluated, and independent monitoring of the program has been established.
11. Terminate community defence initiatives falling outside the formal structure of the Afghan National Police, and suspend all government funding for such initiatives.

To the EU:

12. Adopt guidelines for EU training missions so as to ensure that these missions build the recipient state's capacity to promote respect for international human rights and humanitarian law.

To all states supporting the ANSF:

13. Develop mechanisms for improved public reporting regarding efforts to enhance the professionalism and accountability of the ANSF, and progress made.

Introduction

In March 2011, Afghan President Hamid Karzai announced the first provinces and cities where responsibility for security would be handed over to the national security forces, commencing July 2011. The announcement signalled the beginning of a process of transition that is scheduled to conclude with the full transition of responsibility to the Afghan National Security Forces (ANSF) by 2014. But as security continues to deteriorate, there are serious concerns regarding the professionalism and accountability of the security forces that will be left behind.

2010 was the deadliest year for Afghan civilians since 2001. As in previous years, armed opposition groups continue to account for the highest number of civilian casualties; but the national security forces also account for substantial civilian harm. Such harm is caused in violation of human rights and humanitarian law, as well as during the course of lawful combat operations. And despite billions of dollars poured into security sector reform over the past decade, accountability for violations is seriously lacking, as are mechanisms for appropriately responding to harm caused during lawful operations.

There is growing awareness amongst some within the International Security Assistance Force (ISAF), and some components of the Afghan Ministries of Interior and Defence, regarding the need to urgently develop the professionalism and accountability of the ANSF. But this has not been translated into effective action on the ground; and at the international level the apparent lack of awareness regarding the gravity of the problem borders on complacency. The US Government's most recent progress report on Afghanistan was almost silent on the issue of accountability, with its assessment of the Afghan National Army (ANA) referring exclusively to operational effectiveness.¹ The UK's December 2010 progress report stated that 'the capabilities of the ANSF are ... improving through training, partnering, mentoring and experience in the field'², and the January report noted only that 'progress continues to be made'.³ In late 2010, responding to a question regarding the UK's role in building professional, accountable security forces, one senior military official replied simply that 'we cannot control how Afghans fight'.⁴

Afghan communities desperately want security, and have high hopes for their own security forces. But a perceived lack of accountability for abusive conduct, as well as 'collateral damage' followed by neither apology nor redress, undermines the perceived legitimacy of the Afghan government and makes those high hopes appear misplaced. States providing support to the ANSF *can* influence how Afghans fight, and doing so is not only a political and moral imperative but

also a legal obligation. But as international military actors prepare for withdrawal, time to do so is running out.

This paper outlines key concerns regarding the conduct of the ANSF, with a focus on violations of human rights and humanitarian law, and provides a brief analysis of the legal responsibilities of states that support the ANSF. The paper concludes with a discussion (and critique) of some of the more significant recent initiatives to promote accountability, and recommends action to be taken by the Government of the Islamic Republic of Afghanistan (GIROA) and international donors to improve the accountability of the ANSF and better protect Afghan civilians.

The Afghan National Security Forces

Who's Who in the ANSF?

The ANSF includes both the ANA (which includes the Afghan Air Force) and the Afghan National Police (ANP). The term is also sometimes used to encompass the National Directorate of Security – Afghanistan's intelligence services. The ANA falls under the authority of the Ministry of Defence; the ANP under the Ministry of Interior (MoI). There are also a number of community defence initiatives that do not fall within the formal structure of the ANSF but nonetheless receive some level of support from the government.⁵ The professionalism and operational capacity of the different components of the ANSF have developed unevenly, with the ANA comparatively well regarded (albeit fraught with problems), the ANP lagging far behind, and community defence initiatives widely criticised for a lack of professionalism, abusive behaviour and a near complete absence of accountability. All components have been substantially expanded in recent years, and some improvements made, but in all cases the pressure to increase the number of boots on the ground has been at the expense of attention to the professionalism and accountability of the force.⁶ As of March 2011, the ANSF comprised 159,363 ANA and 125,589 ANP, with a target of 171,000 ANA and 134,000 ANP by October 2011.⁷

The Afghan National Army

The ANA is organised into six corps in six regional commands. Each corps consists of several brigades, which are in turn made up of battalions, called *kandaks*. Each regional command holds at least one commando *kandak*. Since late 2010 the ANA has also fielded its own special forces teams, with recruits drawn from commando units, modelled on the US Special Forces. The ANA currently has lead responsibility for security in Kabul province, but in most of the rest of the country defers to the security lead responsibility of international forces. As of September 2010, out of 26 ANA corps and brigades assessed by ISAF training teams, 17 were assessed as effective with assistance or advisors, and nine were assessed as 'dependent on coalition forces for success.' None were assessed as 'independent'.⁸

The Afghan National Police

The 2010 National Police Strategy describes four 'main pillars' of the ANP: the Afghan Uniformed Civilian Police (focusing on the core functions of policing and public services), the Afghan National Civil

Order Police (the lead police organisation in counter-insurgency operations), the Afghan Border Police and the Afghan Anti-Crime Police. The more recent Afghan Local Police (ALP) is described as a 'sub-pillar' of the ANP.⁹

The development of the ALP, as with previous community defence initiatives, is based on the premise that the ANSF does not have sufficient strength to provide security across the whole of the country, and that community members are capable of providing some first layer defence. The ALP (which is supported by the US) follows a series of community defence initiatives that have been trialled in recent years, including the Afghan National Auxiliary Police, the Local Defence Initiatives and the Afghan Public Protection Program. The programs have in all cases failed to provide effective community policing, in most cases have absorbed existing militia with almost no vetting or training of recruits, and have generally been feared by the communities they are supposed to protect.

With the launch of the ALP in late 2010, some efforts have been made to address the more substantial failings of earlier initiatives. In theory, the program is established only on community request, recruits are nominated by *shuras* (community leadership structures) and carefully vetted, and commanders report to the district chief of police.¹⁰ Reports are mixed as to the extent to which this reflects the reality on the ground. Some communities report that it is local warlords (not 'communities') who request the ALP; and that while selection is in some cases done through the *shuras*, in many cases the *shuras* are made up of former *mujahedeen* commanders who use the program as a means by which to provide their own militias with salaries and a cloak of legitimacy.¹¹ In other cases the *shura* process is circumvented altogether, with selection done by local commanders operating independently of the *shura*.¹² While these criticisms are in some cases justified, it is likely that at least some of the criticism levelled at the ALP is in fact directed at local militia (*arbakai*) who operate in villages that have not been formally sanctioned as ALP sites, but who nevertheless claim to be and operate as ALP – often with the support of a district governor looking for a quick fix to insecurity.¹³ Many communities have had devastating experiences with militias, and in many cases do not (and have been given no reason to) distinguish between the former *arbakai* and the newer ALP.¹⁴

The ALP is envisaged as a transitional program which will ultimately be absorbed into the main pillars of the ANP. The force currently comprises around 5,000 recruits, in 34 'validated' sites. Immediate plans are to roll out the program in 63 sites – with possible further expansion to 30,000 recruits in 100 sites.¹⁵ There is a serious risk that with expansion, the challenge of ensuring appropriate vetting and ac-

countability, and the risk of the program being subverted in the interests of local powerbrokers, will be seriously exacerbated.

Support and Training for the ANSF

The international military effort in Afghanistan comprises the NATO-led ISAF, and the US-led US Forces–Afghanistan (USFOR-A). ISAF and USFOR-A operate under unified ('double-hatted') command, with General David Petraeus reporting to the NATO Allied Joint Forces Command as head of ISAF, and to US Central Command as head of USFOR-A. ISAF currently comprises 132,203 troops from 48 countries, organised into regional commands led by the US, Italy, Turkey and Germany.¹⁶

A framework for the coordination of support to Afghanistan's security forces was agreed at a conference of international donors in 2002, following which five nations each agreed to lead and coordinate assistance to one component of Afghanistan's security sector. The US agreed to lead/coordinate assistance to the military, and Germany to lead/coordinate assistance to the police.¹⁷ In 2006, the international community re-affirmed its 'strong support' for the Afghan government in establishing and sustaining security and stability in Afghanistan.¹⁸

The bulk of ANSF training and institutional development is provided by the Combined Security Transition Command Centre-Afghanistan (CSTC-A) and the NATO Training Mission-Afghanistan (NTM-A) – which since 2009 have operated under unified command and with 'synchronised missions'.¹⁹ While NTM-A/CSTC-A operates as a joint operation, CSTC-A falls under the command responsibility of US Central Command (through USFOR-A) while NTM-A falls under the responsibility of NATO Joint Forces Command (through ISAF). Since 2007, the European Police Training Mission (EUPOL) has also played a role in police training and institutional development.

Funding for the ANSF is channelled through various trust funds:

- The Afghan Security Forces Fund, the majority of which is appropriated by the US Congress, covers ANSF 'equipment, supplies, services, training, ... and funding'.²⁰ The majority of these funds (and all funds appropriated by US Congress) are utilised by CSTC-A.
- The NATO ANA Trust Fund, established in 2007, covers ANA equipment, services, training and salaries.
- The Law and Order Trust Fund for Afghanistan covers the operational costs of the ANP, including salaries.

Contributors to the ANA Trust Fund 15 September 2010

Germany	\$68.7m
Australia	\$44.5m
Netherlands	\$31.1m
Norway	\$22.6m
Luxembourg	\$13.4m
Japan	\$11.7m
UK	\$6.2m
Denmark	\$5.8m
Spain	\$5.5m
Italy	\$4.3m
Turkey	\$2.1m
Finland	\$1.5m
Sweden	\$1.2m
Czech Republic	\$0.4m
Slovenia	\$0.3m
Bulgaria	\$0.2m
Switzerland	\$0.2m
Estonia	\$0.1m
Lithuania	\$0.1m

Source: 'Equipping and Sustaining the Afghan National Army: NATO-ANA Trust Fund' (NATO Fact Sheet, October 2010)

The US has been by far the largest contributor to Afghanistan's security sector, having provided nearly \$30bn to the Afghan Security Forces Fund.²¹ Contributions to the ANA Trust Fund amounted to nearly \$377m as of September 2010, with substantial contributions from Germany, Australia, the Netherlands and Norway.²² Total contributions to the Law and Order Trust Fund amounted to \$1.7bn as of September 2010, with substantial contributions from the US, the EU and Japan.²³ Many states (NATO and non-NATO) have also exported sizeable amounts of military equipment to Afghanistan.²⁴

Training the Afghan National Army

Training and mentoring for the ANA, well as the planning and execution of ANA operations, is overseen by NTM-A/CSTC-A.²⁵ Recruits receive eight weeks of basic training, and this is followed – for roughly one third of recruits – by five weeks of advanced combat training. Following initial training, the international community's primary mechanism for mentoring the ANA is through 'Embedded Training Teams' (US-led) and 'Operational Mentor and Liaison Teams' (led by non-US NATO partners), which live and work with ANA units.²⁶

Despite substantial investment and some progress, the ANA continues to suffer from shortfalls in training personnel, faulty equipment, poor infrastructure and logistics, and high attrition rates. The development of the ANA has been characterised by a focus on quantity over quality, and a focus on infantry training at the expense of attention to non-combat training and the development of logistics capabilities.²⁷ A US Department of Defense report to Congress in November 2010 acknowledged that 'logistics planning remains more of a discussion topic than a tool for execution,' that partnered units were heavily reliant on ISAF to control operations, and that staff members' low literacy levels hindered their ability to effectively manage staff functions and exercise command and control.²⁸

Training the Afghan National Police

Police reform in Afghanistan was initially led by Germany, following the division of responsibilities for security sector reform in 2002. But the German effort was fraught with problems, and in 2003 the US stepped up its own support for the ANP under the State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL). By 2004 US assistance exceeded the German program, and in 2005 – in a move that sits awkwardly with current US policy regarding State Department leadership of security sector reform²⁹ – the US Department of Defense took over from the INL as the lead actor (through NTM-A/CSTC-A) for US police training and institutional development. Since 2007 EUPOL (which has now formally taken over from Germany as the international lead on police training) has also pro-

'Unfortunately the coalition and international community's efforts from 2003-2009 yielded an Afghan policeman ... who was poorly equipped and largely untrained, unable to successfully conduct his duties without significant Coalition Force assistance ..., and illiterate with only some optional literacy training programs'.

NTM-A Commanding General Lt Gen William Caldwell, remarks at the International ANP Symposium, 26 January 2011

vided some support, with a focus on civilian policing.³⁰ EUPOL's impact has been limited, however – due primarily to the size of the mission never having been equal to its mandate.³¹

Until 2009, ISAF's standard model for the development of the police force was to 'recruit a new policeman, then assign him to a police district with the intention to train him at some future point' – a strategy referred to as 'recruit-assign-intend to train'.³² Consequently, there are now 'several tens of thousands' of police who still have not received even the most basic training.³³ Those who were trained were put through a program that was heavily focused on military skills, with just one week out of eight devoted to the basic civilian policing functions of investigating crimes and upholding the rule of law. Police emerged from the program with little knowledge of policing ethics, criminal procedures, the Afghan constitution or human rights law.³⁴

Some improvements have been made, with training now mandatory for all new recruits ('recruit-train-assign'), more than 20,000 police enrolled in literacy training, and a curriculum that includes a greater focus on community-based policing.³⁵ But the basic training has been shrunk to just six weeks – or just three weeks in the case of the ALP.³⁶ The basic curriculum still 'mainly covers the use of firearms', and is carried out primarily by military officers with no policing background³⁷ – perhaps a reflection in part of the leading role of the US Department of Defense (as opposed to State) in police reform. Low literacy rates, the calibre of recruits, high attrition rates and a shortage of international trainers continue to present major challenges. EUPOL has attempted to provide some ongoing mentoring after the initial six-week training, but as one informant recently told the UK's EU Select Committee, this is 'not working out tremendously well'.³⁸ The National Police Strategy acknowledges that the ANP 'can sometimes behave in a militaristic manner, which can intimidate the population', and that current police activities seldom focus on traditional policing functions.³⁹ Most Afghans continue to view the ANP as 'lawless armed men, rather than trusted law enforcement officials'.⁴⁰

Conduct of the ANSF

At least 2,777 civilians were killed in the conflict in Afghanistan in 2010, the highest since 2001.⁴¹ And despite a perception on the part of Afghan soldiers and police that the ANSF are not responsible for civilian casualties, at least 10 per cent of Afghan civilians killed were killed by their own security forces.⁴² But civilian casualty statistics do not convey the full extent of harm caused to the civilian population by the ANSF, excluding for example children recruited into or sexually abused by the armed forces, mistreatment during detention, and communities living in fear of government-supported community de-

fence initiatives they see as criminal gangs. The following section provides an overview of some of the more concerning practices engaged in by the ANSF – resulting in significant distress to communities now, and at risk of escalation unless adequate accountability mechanisms are put in place.

Night Raids

Night raids are in most cases carried out under international leadership, with the participation of Afghan Special Forces. In certain circumstances the regular ANA and/or the ANP also participate in raids. At least 102 civilians were killed in night raids in 2010, including eight women and nine children.⁴³ In a three month period towards the end of the year, an average of 17 night raids were carried out each night. One in five resulted in the death of at least one occupant of the raided house.⁴⁴

While the past two years have seen some improvements, night raids still in many cases involve excessive use of force, destruction and/or theft of property, and abusive conduct towards women and children.⁴⁵ In one particularly heinous incident in February 2010, US Special Forces together with Afghan forces entered a private house in Paktia province, shot and killed five civilians including three women, and physically assaulted other family members and forced them to stand barefoot in the cold for several hours.⁴⁶

A particular concern expressed by communities is the reliance by both international and national security forces on faulty intelligence, with little effort made to verify information with local authorities prior to raids. According to figures released by General Petraeus in 2010, for every 'targeted individual' killed or captured in raids, three non-targeted individuals were killed and another four detained.⁴⁷ Also distressing to communities is the lack of respect shown by those carrying out the raids for Afghan religious and cultural values – according to which in many areas a woman should not be seen (much less handled or spoken to) by a man other than an immediate family member, and entering a house without permission is regarded as an extreme invasion of privacy. Tactical Directives issued by ISAF in January and December 2010 directed that any entry into an Afghan house should be 'led and accomplished' by ANSF, and that raids should be conducted with dignity including 'searches of females by females'.⁴⁸ But research shows that in many cases international forces continue to take the lead,⁴⁹ and with just over 1000 women in the ANSF across the whole of the country, in many cases the questioning and searching of women can only be carried out by men. Moreover, while a shift towards ANSF leadership is a positive development, research suggests that the ANSF are in many cases no more respectful than international forces, and that abuses occur both with and without their presence.⁵⁰

The recruitment and abuse of children

A further concern across all components of the ANSF is the recruitment and abuse of children. While the GIRoA does as a matter of policy prohibit the recruitment of children into the armed forces, the Afghan Independent Human Rights Commission (AIHRC) reports that in many cases the families of young boys, desperate for an ANSF salary, bribe Ministry of Interior (MoI) verification officers to issue false identification documents. These are rarely questioned by officials when young boys sign up to the ANSF.⁵¹ The Secretary General's recent report on Children and Armed Conflict noted that ANP recruitment campaigns had in some cases been carried out in school compounds, and that girls and boys over the age of 16 were being accepted into police training.⁵² Incidents of sexual abuse and exploitation of boys (including the practice referred to as *bacha bazzi* or 'dancing boys') by the ANSF have also been reported, although the subject is so taboo that understanding the extent of the problem is difficult.⁵³

Mistreatment during detention

Among the most serious allegations directed at the ANSF are allegations of torture and other cruel, inhuman or degrading treatment or punishment during detention. In a survey carried out by the AIHRC between 2006 and 2008, covering 398 detainees being held by all components of the security forces, 98.5 per cent said that they had been abused. Allegations included 'punching, kicking, slapping and humiliation', the deprivation of sleep, food or water, beating with a scorching bar, iron bar or police baton, and 'flogging by cable and electric shock.'⁵⁴ AIHRC also interviewed 98 law enforcement officers, less than a quarter of whom said that they used 'the collection of evidence and documents' to investigate crime. 30 per cent said that they used 'methods based on law and logic' or 'technical methods'; the remaining 40 per cent either declined to answer the question or said that they used 'other methods'.⁵⁵

Other violations of human rights and humanitarian law

Information regarding abusive conduct on the part of the ANSF is difficult to obtain, due in part to the absence of reporting mechanisms, and in part to reluctance on the part of community members to overtly criticise the security forces – particularly the police.⁵⁶ Other alleged violations of human rights and international humanitarian law have been reported, however, and it is likely that the occurrence of such incidents is more widespread than the level of reporting suggests.⁵⁷ In an incident in Herat province in 2010, three Afghan soldiers allegedly attempted to rape a young girl. When she resisted, one of the soldier's guns 'went off' and she was shot in the head.⁵⁸ In an incident reported to the AIHRC in Ghor province in

mid-2010, members of the police stood by 'laughing and clapping' as two women were beaten in public by local elders.⁵⁹ In another incident reported to the AIHRC in 2010, a man was in a taxi on the way to market in Kandahar when he was approached from behind by a police car. He pulled over to let the car pass, and was shot and killed by a child sitting in the back of the police car.⁶⁰ In an incident documented by the UN in April 2010, a police officer was killed when his vehicle was struck by an improvised explosive device in Tirin Kot. Armed men employed by a local powerbroker affiliated with the police reportedly arrived at the suspected perpetrator's home, killed him, and dragged his body behind a truck.⁶¹

In the case of the ALP, statements from communities regarding the past criminal behaviour of recruits raise particularly serious concerns regarding the conduct that can be expected of those same men once brought within the structure of the ALP. Recent research in Kunduz province found that groups described by communities as criminal gangs were being 'lined up' to enter the ALP; research in Herat found that in some communities the level of fear was such that men were 'arming themselves against the ALP'.⁶² In Baghlan, former *Hesb-i-Islami* commander Noor ul Haq and his men, recently recruited into the ALP, have been accused of 'robbing and beating villagers, breaking into homes at night and carrying out revenge arrests and even killings'.⁶³

In addition to concerns regarding the criminal histories of recruits, research indicates that in some areas ALP units are themselves engaged in violations of international human rights and humanitarian law. Elders in Baghlan province report that already the ALP has been responsible for one kidnapping and one 'disappearance' following an altercation between an individual and an ALP commander,⁶⁴ and ISAF officials acknowledge that Noor ul Haq and his men have 'beaten residents and held people in temporary detention'.⁶⁵ In Baghlan, Kunduz and Herat, community members report that 'externally provided force and the protection offered by a badge and uniform' have put the ALP in a position of strength as compared to the rest of the population, and that this is frequently used to 'harass previous foes and avenge old disputes'.⁶⁶

'Caught in the crossfire'

Not all civilian harm caused by the ANSF is caused in violation of international law. As in any armed conflict, civilians are caught in the crossfire and can be killed, injured or suffer property damage even when the conduct of military operations accords with international humanitarian law. In 2010, 171 civilians were killed in air strikes launched by international forces, and 45 in 'escalation of force incidents' (international and/or national forces shooting at suspected at-

tackers)⁶⁷ – attacks which may or may not have been carried out in compliance with the rules of international law regarding the conduct of hostilities. Statistics do not distinguish between civilians killed by national and international military forces; however given the ANSF's relative lack of competency and professionalism, and the lack of mechanisms in place for minimising civilian harm, there is a serious concern that as the ANSF assume greater responsibility for combat operations the number of civilians caught in the crossfire could increase.

Lack of Accountability

Community resentment over violations of human rights and humanitarian law by the ANSF, as well as resentment caused by incidental civilian harm caused during lawful combat operations, is exacerbated by what is perceived to be an overwhelming lack of accountability. Key issues include ambiguous and non-transparent chains of command (meaning that community members are often unable to identify which forces were responsible for alleged misconduct); a lack of public awareness regarding how or where to lodge a complaint; a fear of retaliation; slow or non-existent investigation and response; the fact that even when investigations are conducted the findings are often not made public; and a consistent failure to provide apology, compensation or redress.

Following the night raid in Paktia province, discussed above, the bodies of the victims were carried through town in protest. The MoI and ISAF announced that a joint investigation was underway, but the findings of the investigation have not been published.⁶⁸ In the case of the young girl killed by the ANA in Herat, the corps commander initially refused to initiate an investigation, and the alleged perpetrator was assisted to flee the area. An investigation was finally initiated under pressure from the ANA's legal advisors, but there has been no investigation into the attempted cover up.⁶⁹ Following the incident in Ghor, the AIHRC lodged a complaint with the MoI, but was informed that the authorities were unable to investigate the incident due to insecurity in the province.⁷⁰ Following the incident in Tirin Kot, the UN pursued the incident both with the provincial chief of police and the implicated powerbroker. No investigation was ever conducted.⁷¹ Nor was there any investigation, apology or compensation following the shooting in Kandahar.⁷² AIHRC's research on mistreatment and abuse in law enforcement institutions found that of 171 complaints lodged, just three per cent had been investigated, and not one had resulted in prosecution.⁷³ In the case of civilian casualty incidents resulting from legitimate ANSF operations, transparent investigations are rarely conducted, and such incidents are almost never followed by appropriate apology and redress.

'The problem of killings by the police and other armed personnel acting under the authority of Government officials has been largely overlooked. ... 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.'

Philip Alston, Special Rapporteur on Extra-Judicial, Arbitrary or Summary Executions, Press Statement, May 2008

"Security forces that abuse civilians do not win the populace's trust and confidence; they may even be a cause of the insurgency. A comprehensive security force development program identifies and addresses biases as well as improper or corrupt practices."

US Army, Counterinsurgency, Field Manual 3-24, 2006

The lack of accountability is nowhere more pronounced than in the case of the ALP. The theory is that 'if an ALP member gets out of line, the complaints will be made to the elders', and 'the elders will then sit down with the leaders and say "this is unacceptable, you've got to clean up your act."' ⁷⁴ But this theory assumes that community members feel able to raise complaints without fear of retaliation; that the elders act in the interests of their community and are not just former warlords using the platform of the ALP to provide legitimacy to their own militia; and that ALP recruits will accept the disciplinary measures imposed. But as one human rights worker remarks, 'who cares about the *shura*? The ALP doesn't care about the *shura*, and people don't report things to the *shura*, either because of fear of retaliation, or because the *shura* lacks legitimacy, or just because they know that nothing will come of it.' ⁷⁵ Even where the right ingredients are in place – an ALP genuinely selected by a legitimate *shura* with the community's interests at heart – a remaining question is what the *shura* can do with a problem that it is unable to solve. The theory is that *shuras* may refer issues to the district authorities. But the whole premise of the ALP program is that units are stood up where insecurity is such that regular police forces cannot be established. And if district authorities are unable to travel to the villages, it is difficult to see how they will support the *shura* in holding the ALP to account.

Failure to combat abusive conduct on the part of the ANSF and the climate of impunity in which such abuse takes place, or to improve the government's response to 'collateral damage', could have serious political repercussions. It is well understood that armed opposition groups are responsible both for the largest number of civilian casualties and for the most serious violations of international human rights and humanitarian law ⁷⁶ – but Afghan communities harbour a strongly felt belief that their own security forces must be held to a higher standard. As one investigator with the AIHRC explained to Oxfam, 'everybody knows that the Taliban abuse human rights, but people have more hope from their own forces. And where there's a lot of hope, there's a lot of blame.' ⁷⁷ Abuses on the part of the ANSF provoke outrage, and this outrage is exacerbated by a perceived lack of accountability. 'Collateral damage' similarly provokes outrage where such incidents are not followed by appropriate investigation, apology and redress, including the payment of adequate compensation. This undermines popular support for (and the perceived legitimacy of) the GIRoA, thus undermining international efforts to foster the development of effective governance. ⁷⁸

But addressing the accountability of the ANSF is not only a political imperative; it is also a legal obligation. The remainder of this paper describes the nature of the legal obligation of supporting states vis-à-

vis the conduct of the ANSF, and some of the steps that have been taken to promote accountability; and recommends particular action that can be taken by the GIRoA and the international community in order to develop more accountable security forces.

Legal Responsibilities of Supporting States

Under International Law

All parties to the conflict in Afghanistan are bound by the rules of international humanitarian law applicable in non-international armed conflict. These include: the obligation to distinguish between civilians and combatants and to direct attacks only at combatants; the prohibition of attacks expected to cause disproportionate civilian harm; and the requirement that in the conduct of military operations, all feasible precautions be taken to minimise civilian harm.⁷⁹ Parties to the conflict are required to ensure special respect and protection for children, meaning in particular that sexual abuse and the recruitment of children into the armed forces are prohibited, and to respect the specific protection needs of women.⁸⁰ Murder, cruel or inhumane treatment, sexual violence and arbitrary detention are also violations of international humanitarian law.⁸¹

The ANSF also have obligations under international human rights law, including the obligation to respect and ensure respect for the right to life, to freedom from torture and other cruel, inhuman or degrading treatment or punishment, and to freedom from arbitrary arrest or detention.⁸²

While primary responsibility for the protection of Afghan citizens rests with the GIRoA, under article one common to the four Geneva Conventions, all states also have a duty to ensure respect for international humanitarian law. As interpreted by the International Committee of the Red Cross (ICRC), this entails an obligation on the part of states to 'exert their influence, to the degree possible, to stop violations' of international humanitarian law.⁸³ The ICRC advises that in fulfilment of this obligation, in the conduct of military operations states should ensure that international humanitarian law is 'translated into measures and mechanisms' at both the doctrinal and procedural level; that armed forces personnel are trained in the application of international humanitarian law; that commanders receive training commensurate with their responsibility and that legal advisors are available to advise commanders; that the system of individual responsibility for serious violations of international humanitarian law is rigorously applied; and that there be visible, predictable and effective sanctions, whether penal or disciplinary, in order to ensure respect for international humanitarian law and to deter violations.⁸⁴ Adequate measures should also be taken to control the availability of arms and ammunition 'so that they do not end up in the hands of those who may be expected to use them in violation of international humanitar-

ian law'⁸⁵ – meaning that states engaged in the transfer of weapons should assess the extent to which recipient states are formally committed to respecting norms of international humanitarian law, and refuse to transfer weapons to those who 'fail to diligently implement preventative and enforcement measures.'⁸⁶

Specific recommendations as to what this may require in the context of Afghanistan are provided below, but suffice to note that assisting states should ensure that appropriate vetting procedures are in place, that ANSF personnel are adequately trained in international humanitarian law, and that alleged violations of international humanitarian law result in credible, transparent investigations and prosecutions where appropriate.

Under Domestic and Regional Law

Some international forces also have obligations under their own domestic (or regional) laws to deny military assistance to security forces with a history of human rights abuses, or where there is a risk that such assistance may be used to aid repression or to violate international humanitarian law. Some international forces also have obligations under domestic law (and/or policy) to report – and in some cases to take action to prevent – violations of international humanitarian law.

Restrictions on the provision of military assistance

In the case of US forces, the so-called 'Leahy provisions' in the annual Foreign Operations Appropriations Acts and Defense Appropriations Acts prohibit the provision of military assistance to any unit of the security forces of a foreign country where there is credible evidence that such unit has committed gross violations of human rights.⁸⁷ Gross violations of human rights, for the purposes of the legislation, include 'torture or cruel, inhuman or degrading treatment or punishment' and 'other flagrant denial of the right to life, liberty or the security of the person'.⁸⁸

The Leahy provision in the Foreign Appropriations Acts applies to funding for weapons and training, while the corresponding provision in the Defense Acts applies only to training. Where credible evidence of gross human rights violations exists, assistance may nevertheless be provided if, in the case of funds appropriated under the Foreign Operations Appropriations Acts, the host country is 'taking effective measures to bring the responsible members of the security forces unit to justice', or in the case of funds appropriated under the Defense Appropriations Acts, 'all necessary corrective steps have been taken'.⁸⁹ Funding for the Afghan Security Forces Fund is appropriated annually under the Defense Appropriations Act, and thus, such funding must not be utilised to train ANSF units where there is credible evi-

dence that the unit has committed gross violations of human rights, unless necessary corrective steps have been taken.

In fulfilling their obligations under the Leahy provisions, State Department personnel must ensure that military and law enforcement personnel are carefully vetted prior to inclusion in Department of Defense-funded training programs, and that full consideration is given to all available information relating to human rights violations. Vetting procedures must 'ascertain that no one against whom there are credible allegations of gross violations of human rights is currently assigned to the units in question'. Where such allegations exist, 'corrective steps' may involve adjusting the planned activity, or removing some of the participants.⁹⁰

In light of the above discussion regarding the criminal histories of some of those recruited into the ANP (particularly the ALP), and compounded by the fact that vetting, while improving, has in many instances been minimal (one ISAF official reflected that in 2008, community members were 'basically rounded up off the street, told they were doing cash-for-work, and then they'd turn up at the training and told they were police'⁹¹), it is difficult to see how the provision by the US of training to at least some of these units could *not* have been in breach of the Defense Appropriations Acts.

While no other states have restrictions on the provision of security assistance equal to those of the US, member states of the EU are bound by the Council's Common Position on the exportation of military technology and equipment. The Common Position requires member states to 'deny an export licence if there is a clear risk that the military technology or equipment to be exported might be used for internal repression ... [or] in the commission of serious violations of international humanitarian law.'⁹²

In assessing whether there is a clear risk that a proposed export might be used for internal repression, member states are advised to consider the current and past human rights record of the proposed 'end-user', whether law enforcement agencies are trained in human rights, whether there is impunity for human rights violations, and whether there are independent monitoring bodies and national institutions for the promotion or protection of human rights.⁹³ In assessing whether there is a risk that equipment/technology might be used to commit serious violations of international humanitarian law, questions for consideration include: whether the state has taken action to prevent and investigate violations of international humanitarian law; whether the state requires its military commanders to take action against those who have committed violations; whether the state trains its security forces in international humanitarian law; and whether mechanisms

are in place to ensure accountability for violations of international humanitarian law committed by the armed forces.⁹⁴

ANSF activity that involves the unlawful killing or injury of civilians, arbitrary detention or cruel, inhuman or degrading treatment or punishment may amount to serious violations of international humanitarian law and/or repression as defined by the Common Position. EU member states are required to deny the provision of military equipment or technology to the ANSF if there is a clear risk that the equipment/technology might be used in this manner.

While the term ‘military technology and equipment’ includes instruction or training in the use of such equipment⁹⁵ - this does not encompass general training, mentoring or institutional development for foreign security forces. Even if it did, the provision of training (or mentoring, or institutional development) does not require an export licence, and thus the Common Position - which sets the criteria upon which EU member states must deny an export licence - has no application. In other words, member states providing training to the ANSF, either bilaterally or as part of NTM-A or EUPOL, are under no obligation to consider the matters that they would be obliged to consider if providing military equipment. As EU member states move away from the provision of military equipment and towards a greater focus on training and institutional development, this leaves a critical gap in the EU’s policy framework for security sector reform.

The obligation of commanders to prevent violations of international humanitarian law

In international armed conflicts, military commanders have a legal obligation to take action to prevent violations of international humanitarian law by members of their armed forces or persons under their control.⁹⁶ While there is no corresponding obligation in non-international armed conflict, some states, including the US and Germany, require members of their armed forces to comply with the full range of obligations under international humanitarian law in all conflicts howsoever characterised - thus implicitly recognising the commander’s obligation to take action to prevent violations of international humanitarian law in all armed conflicts.⁹⁷

The military manuals and/or defence policies of some states also explicitly require military commanders to report and in some cases to take action to prevent violations of international humanitarian law. US soldiers are required to ‘do their best to prevent violations of the law of war’, and to report actual or suspected violations to their superior.⁹⁸ US Department of Defense policy requires that all ‘possible, suspected or alleged violations’, committed by anyone, must be ‘reported promptly, investigated thoroughly, and where appropriate,

remedied by corrective action.’⁹⁹ Commanders who obtain information about actual or suspected violations must report through the chain of command; and higher authorities receiving such reports must request a formal investigation and also report up through the chain of command.¹⁰⁰ Department of Defense components (military departments, combatant commands, etc) are required to implement ‘effective programs’ (including law of war training and dissemination) to prevent violations of the law of war; to ensure that legal advisors are available at all levels of command; and to institute and implement programs to comply with US reporting requirements.¹⁰¹ In the context of Afghanistan, what this means in essence is that senior US military commanders must take action to ensure that ANSF personnel who violate international humanitarian law are either disciplined through administrative processes or investigated and prosecuted through an effective, functioning military justice system. The military manuals of most other supporting states, while lacking the operational detail found in US law and policy particularly vis-à-vis the armed forces of foreign states, for the most part contain a general obligation on the part of military commanders to report and in some cases to take action to prevent violations by persons within their control.¹⁰²

Promoting Accountability

What's been done

While there is a long way to go, some positive steps have been taken, both by the international community and by the Ministries of Interior and Defence, towards enhancing the accountability of the ANSF. The following section outlines some of the more significant initiatives – and some of the more significant gaps.

Core Values / Codes of Conduct

Over the past year, NTM-A/CSTC-A has worked with the Afghan Ministries of Defence and Interior (together with the UN Office on Drugs and Crime) to develop statements of core values for both the military and the police. In the case of the ANP, the MoI last year approved a 'Commitment of Promise', pursuant to which members of the police pledge not to 'engage in any disgraceful, dishonest or disorderly conduct' including 'wilfully and purposely violating the legal rights of any citizen' or 'torturing or subjecting another person to inhuman or degrading treatment'.¹⁰³ New officers are also required to sign an 'active duty service obligation', according to which they pledge to respect and protect the rights of the Afghan people and to comply with the law.¹⁰⁴ The ANA has a draft 'values statement' – currently awaiting the approval of the Ministry of Defence. These documents do not in themselves create new obligations (being complementary to existing disciplinary regulations) and do not have disciplinary procedures attached to them. In the case of the ANP, a more comprehensive code of conduct (with disciplinary procedures attached) has been drafted and is in the process of review. Illiteracy presents an ongoing challenge, however, with some 30 per cent of police unable to read the code of conduct they are required to 'read and understand'.¹⁰⁵ Nonetheless, the development of values statements and codes of conduct represents a small step forward towards more accountable security forces.

Complaints and Oversight Mechanisms

The past decade has seen some positive steps towards increasing oversight of the ANSF – particularly the police. The AIHRC receives and investigates complaints against all components of the ANSF; and in 2005, with the support of the AIHRC, the MoI established a Gender and Human Rights Unit to investigate allegations of gender based violence and human rights violations committed by the police. But these existing mechanisms face a number of challenges, including a lack of public outreach, a fear of reporting, and a serious lack of resources. The AIHRC is yet to receive any funding from the government, and for several months in 2010 was unable to pay its staff.¹⁰⁶

The 2010 National Police Strategy contains an explicit commitment to establishing independent, external oversight of the police¹⁰⁷ – and the most serious effort in this regard is the EUPOL-supported police ombudsman’s office, which sits within the AIHRC. The objective of the ombudsman’s office is to monitor the performance of the ANP and to investigate alleged serious violations of human rights. The initiative is in its early stages, and it will be some time before it is possible to assess its effectiveness. Issues to watch will include the adequacy and sustainability of funding for the AIHRC, the political will of the MoI, the need for a clear division of competencies between the ombudsman’s office and existing oversight bodies, the practical accessibility of the ombudsman to communities in rural areas, and whether the ombudsman is given oversight over all pillars (and sub-pillars) of the ANP – including, critically, the ALP.

Military Justice Reform

The development of Afghanistan’s military justice system appears, on paper, to be one of the more positive examples of progress towards enhancing the accountability of the ANSF. The last six years have seen the development of the Military Crimes Code, the ANA Law of Military Courts and the Military Criminal Procedure Code, as well as Disciplinary Regulations. The Law of Military Courts creates primary military trial courts and a court of military appeals, and defers to the Supreme Court of Afghanistan as its highest appellate authority.¹⁰⁸ The system is generally regarded as ‘reasonably functional’ – with courts, judges, prosecutors and defence counsel present and functioning in each of the regional commands.¹⁰⁹

But while the system itself is reasonably functional, it is seriously undermined by its position within the military command structure and vulnerability to political influence. As described by a senior ISAF official, ‘the system is schizophrenic; it’s basically functional for junior ranking officials and those who aren’t connected, but has almost no application to Lieutenant Colonels and above.’¹¹⁰ It’s a far cry from the ‘effective program to prevent violations of the law of war’ required by US Department of Defense policy.

The problem is mainly to do with power and patronage, but there are also structural issues that make the abuse of power possible. In each of the six regional commands, there is a legal office comprised of legal officers, defence counsel, prosecutors, judges and a criminal investigations department (CID). The legal offices report to the Corps Commanders. While commanders are required by law to refer crimes committed under their command to the legal office for investigation/prosecution, in practice this takes place at the commander’s discretion.¹¹¹ Most cases adjudicated by military courts are traffic offenses, and the prosecution of senior officers is exceptionally rare.¹¹²

Under Afghan law, military courts have concurrent jurisdiction with civilian criminal courts over offences that violate both military and civilian criminal law¹¹³ - meaning that if the military justice system fails to investigate/prosecute a case, the case can be pursued in the civilian criminal courts. But this concurrent jurisdiction is not recognised in practice. As described by one ISAF official, 'the monster we created is a self-contained military justice system which the strongmen at the top can turn on or off.'¹¹⁴

The past couple of years have seen a number of positive developments. The latest version of the Military Criminal Procedure Code, passed last June, imposes a check on the power of the Corps Commander by empowering the Chief of the General Staff Legal Department ('GS Legal') to authorise investigations where the Corps Commander fails to do so.¹¹⁵ Further, in a structural change recently approved by the Ministry of Defence, the ANA regional legal offices are to be removed from the Corps Commands and made directly accountable to GS Legal. And lastly, the new ANA Code of Structure and Authority for CID and Military Prosecutors ('CID Law') stipulates that commanders are responsible for referring cases to the CID and the prosecutor for investigation/prosecution, that 'no military authority is entitled to interfere or influence the duties and authorities of CID members and military prosecutors', and that the CID and military prosecutors are directly responsible to GS Legal.¹¹⁶ The legislation has been languishing in parliament since 2008, but once passed will be an important step towards credible, independent investigation and prosecution. As stated by one ISAF official, 'you can't install rule of law if you don't have honest, objective, independent investigators who can't be subjected to commander influence'.¹¹⁷

Minimising 'Collateral Damage'

Finally, some significant steps have been taken by international military forces to minimise civilian harm caused during the course of military operations, and to improve the international response to civilian casualty incidents. Recent ISAF initiatives include tactical directives restricting 'close air support' for ground troops in populated areas; tactical directives regarding the conduct of night raids (including the requirement that compensation claim forms and contact details be left at the site); the issuance of standard operating procedures on the escalation of force and the investigation of civilian casualties; 'non-binding guidelines' on ex-gratia payments and in-kind assistance following civilian casualty incidents or damage to civilian property; and the creation of a civilian casualty tracking cell.¹¹⁸ While far from perfect, these initiatives signify an important commitment to (and an appreciation of the strategic importance of) minimising civilian harm. None of these directives, guidelines or mechanisms apply to the ANSF.

Recommendations

As stated above, enhancing the accountability of the ANSF is both a political imperative and a legal obligation. All states have an obligation under international law to ensure respect for international humanitarian law, and some states have additional obligations flowing from domestic and/or regional law and policy regarding security forces they fund, train, equip, or operate alongside. All states also have a moral obligation and strategic imperative to acknowledge and dignify civilian harm incurred during the course of lawful operations.¹¹⁹ In fulfilling these obligations, and above all to ensure the protection of Afghan civilians, we recommend the following:

To the Afghan Government and the International Community:

1. **Develop a procedure by which individuals put forward for inclusion in the ANSF are credibly and consistently vetted for gross violations of human rights.** The procedure should be transparent, and Afghan civil society groups should be consulted regarding the histories and reputations of individual units. In the case of the ALP, the process of nomination by the *shura* is appropriate, however there must be appropriate inquiry into the composition of the *shura* (including consideration of ethnicity and gender), and the calibre of nominations should be cross-checked with a range of sources such as community elders and religious leaders. US policies in particular should stipulate, publicly, that where members or units of the security forces put forward for inclusion in military training programs have been credibly accused of gross violations of human rights abuses but not investigated or prosecuted, those individuals or units will be disqualified from inclusion in such training.
2. **Improve the quality of training for the ANSF.** The 2010 National Police Strategy contains a commitment to training the police on 'human rights, the legal rights of citizens and how to behave in an ethical manner', and the MoI must be supported to make good on this commitment. Training for the ANP must include sufficient emphasis on community-based policing, good governance, the rule of law, the accountability of police to civilians and the differing security needs of women and men; and training for the Afghan Uniform Civilian Police must not be allowed to suffer as a result of a disproportionate focus on the counter-insurgency focused Afghan National Civil Order Police and Afghan Border Police. In the case of the ANA, a directive issued by the Ministry of Defence in early 2009 provides that all personnel must be trained in international humanitarian law, but the operational plan to make this happen is still under review.¹²⁰ The international community should support the GIRoA to ensure that all components

'Security forces that are honest, impartial, and committed to protecting and serving the entire population, operating under the rule of law, and respecting human rights.'

US Army, *'Characteristics of Effective Host-Nation Security Forces'*, Counterinsurgency, Field Manual 3-24, 2006

of the ANSF are trained in international human rights and humanitarian law as appropriate; and the ANA should be trained on the importance of minimizing civilian harm and strictly adhering to rules of engagement and targeting checklists. Training in Afghan military law should be mandatory for senior ANA commanders.

3. **Increase the number of women in the ANSF, as well as in the design and implementation of ANSF training and mentoring programs.** Increasing the number of women in the security forces, particularly the ANP, is essential to ensure the sensitivity and responsiveness of the security forces to the needs of Afghan men, women and children – particularly in areas where social norms dictate that women may only report crimes to women. The National Police Strategy recognises that 'gender imbalance in the police affects relationship building between the police and society', and aims to recruit 5,000 women into the ANP.¹²¹ But the political will to make this happen is lacking – evidenced by a literacy requirement that is substantially higher for women than for men,¹²² and a failure to ensure appropriate response to abuses against female police officers. Discriminatory recruitment criteria must be revised, and systems to ensure adequate protection for women in the police force should be developed and supported. Increasing the number of women in training/mentoring teams will also assist in building a security force that allows for the safe participation of women, and will create possibilities for the ANSF to be better trained in understanding and responding to the differing security needs of women and men.
4. **Provide more substantial political and financial support to government institutions and mandated independent bodies that receive and investigate complaints against the ANSF, such as the MoI's Gender and Human Rights Unit and the AIHRC.** These bodies should be supported to raise public awareness regarding the existence of complaints mechanisms, and to develop systems that allow individuals to lodge complaints without fear of harassment or retaliation. Systems should ensure that complainants are informed about what to expect and about how to track the process of their complaint, and that at the end of the process, they see results.
5. **Ensure that ANSF personnel who abuse their authority, violate codes of conduct or otherwise fail to fulfil their obligations under Afghan or international law are transparently investigated and appropriately disciplined and/or prosecuted.** The MoI has committed in the National Police Strategy to implementing procedures to warn and punish police who 'misuse their authority, fail to fulfil their duties or meet the standards required of them under

Afghan law', and should be supported to fulfil this commitment. In the case of the ANA, legal offices in each of the regional commands must be given the independence and authority, as well as the resources, to carry out investigations and prosecutions free from command influence, and commanders must be made aware of their obligations regarding the referral of criminal cases. To this end, the passage through parliament of the CID Law must be expedited.

6. **Enhance efforts to ensure that the conduct of ANSF personnel is subject to independent oversight, and appropriate information made available to the public.** In the case of the ANP, there should be an independent body tasked with monitoring, investigating and reporting on police conduct – as envisaged in the National Police Strategy. The office of the police ombudsman, if provided with the necessary political backing as well as technical and material support, may be able to fulfil this role. The ombudsman's office must be independent, accessible, adequately staffed with skilled investigators, and well coordinated with existing oversight mechanisms. In the case of the ANA, civilian courts should be allowed concurrent jurisdiction (in practice as well as in law) over military cases that violate civilian criminal law where the circumstances are such that the case is unlikely to be duly processed through the military justice system. Consideration could also be given to empowering the Attorney General to investigate and prosecute particular cases where the military justice system is unable to guarantee transparent and credible investigation/prosecution.
7. **Ensure that incidents resulting in civilian harm are properly monitored and followed by credible, transparent investigations.** Specifically, the international community should support the establishment of an appropriate governmental body (such as a civilian casualty tracking cell) to monitor and respond to incidents resulting in civilian harm. This should include: mandatory filing of 'spot reports' by ground troops; centralised data maintenance and analysis by appropriately trained officers; consistent reporting to senior commanders; and a commitment by military leadership to immediately address points of concern. The system should oversee investigations into civilian casualty incidents, and ensure that affected individuals and communities are involved in the investigation process and that the results (where appropriate) are made public. It should also oversee the payment of compensation, ensure that affected individuals are informed of and assisted with the process for appeal, and liaise with Afghan communities and civil society on matters relating to civilian harm. The system

should be led by respected military officials, appropriately resourced, and backed by genuine political will.

To the Afghan Government:

8. **The Afghan Ministries of Interior and Defence should make a genuine commitment to ensuring that relevant codes of conduct are communicated to and understood by all ANSF personnel, as well as the public.** Awareness raising campaigns (either through specific trainings, or integration of codes of conduct into existing trainings) should be ramped up, and must ensure that the codes are made accessible to the illiterate majority, and the public should also be made aware of what they can expect from their security forces. The ANP's code of conduct should apply to all pillars and sub-pillars of the police force.
9. **In consultation with international military forces and civil society representatives, develop a uniform, consistent, transparent procedure for the payment of compensation in the event of civilian harm.** Such procedure should provide for 'on the spot' payments as well as apology and recognition of wrongdoing where appropriate; and should provide for a condolence fund, transparently managed and subject to stringent oversight, from which appointed ANSF commanders can draw following incidents of civilian harm. This could be achieved by expanding the President's 'code 99' fund for terror victims, to include all victims of the conflict. The payment of compensation should be monitored, and appropriate information made available to the public.

To the US and the Afghan Ministry of Interior:

10. **Suspend further expansion of the ALP program until appropriate vetting, training and oversight can be assured, previous initiatives have been evaluated, and credible, independent monitoring of the program has been established.** The planned expansion of the ALP risks further stretching the ability of both USFOR-A and the MoI to ensure the program's integrity and to mitigate the risk of the program being subverted in the interests of local commanders. Crucially, the ALP must not be established in the absence of a credible, tribally balanced *shura* comprised of respected elders with genuine capacity to provide oversight; and recruits must be subject to the same disciplinary regulations and oversight mechanisms that apply to the main pillars of the ANP. The findings (and methodology) of independent monitoring of the program should be made available to the public.
11. **Terminate community defence initiatives falling outside the formal structure of the ANP, and suspend all government funding for such initiatives.** This requires greater coordination be-

tween the national and district governments regarding the roll-out of the ALP program. In areas where non-ALP community defence initiatives exist, the MoI should – in consultation with communities and civil society groups – ensure that the members of such groups are disciplined/prosecuted as appropriate, or where requested by communities (and subject to the above recommendation), transitioned to ALP. USFOR-A/MoI should also step up efforts to promote community understanding of the ALP program, with a view to making it more difficult for groups not sanctioned by the MoI to operate under the banner of ALP.

To the EU:

12. **Adopt guidelines outlining initiatives that ought to be put in place in states hosting EU training missions so as to ensure that these missions build the recipient state's capacity to promote respect for international human rights and humanitarian law.** This could be achieved through the development of a new EU Code of Conduct or Common Position on security sector reform – to encompass the training missions of the EU (such as EUPOL) as well as the bilateral training missions of Member States.

To all states supporting the ANSF:

13. **Develop mechanisms for improved public reporting regarding efforts to enhance the professionalism and accountability of the ANSF, and progress made.** Such reporting should include: steps taken to ensure appropriate vetting of recruits; length and content of training; the establishment of oversight mechanisms; the establishment of procedures for monitoring and responding to civilian casualty incidents; and suspected or alleged violations of human rights or humanitarian law by the ANSF and steps taken to investigate/prosecute. In the case of the US, this could be achieved through an expansion of the existing reporting requirements in the annual Defense Authorization Acts; and in other states, by requiring that government progress reports to parliament include the matters listed above and focus much more substantially on the quality (not just the quantity) of the ANSF.

Conclusion

States have been pouring money into Afghanistan for nearly a decade. For four years in a row, ISAF has been the largest UN-mandated military operation in the world, with total troop numbers in 2010 exceeding the combined global total of all UN peacekeeping operations.¹²³ The US alone has spent \$336bn on the war since 2001.¹²⁴ But serious efforts to strengthen the professionalism and accountability of the national security forces only really began in 2009, and even then, the shift from an exclusive focus on force generation was slow to take effect. As acknowledged by NTM-A/CSTC-A, 'before November 2009 there ... [was] a singular focus on quantity, recruitment and assignment of soldiers and police with little or no training, paying them less than a living wage, and an inability to properly develop leaders'.¹²⁵ Today some 86 per cent of recruits are illiterate,¹²⁶ and the majority of the population regard the police in particular as ineffective, corrupt and abusive. Civilian casualties – likely to escalate as the ANSF assume increasing responsibility for combat operations – are not systematically tracked, analysed, investigated or compensated by the government. Vetting systems allow individuals with appalling histories of human rights abuses to slip through the cracks. The UN and human rights groups have documented a series of alleged violations of international human rights and humanitarian law on the part of the ANSF, including night raids carried out without adequate precautions to protect civilians, mistreatment of detainees, extra-judicial killing, and the recruitment and sexual abuse of children. But accountability is seriously lacking.

The past couple of years have seen a number of positive developments. The development of codes of conduct, commitments made by the MoI in the National Police Strategy to improve accountability, the office of the police ombudsman, the revision of police training to include a greater focus on community-based policing, the establishment of the ANA legal school and a legal training program for the ANP, and structural changes in the military justice system, are all steps in the right direction. But there is a long way to go if the security forces that from July this year will gradually assume responsibility for the protection of the population are to be expected to do so in a manner that is competent, professional and accountable both to the law and to Afghan civilians.

As troop-contributing states prepare for a phased withdrawal of international forces in the lead up to transition, the need for appropriate structures to enhance the accountability of the national security forces is a moral, legal and political imperative. It's not too late; but what is required is genuine political commitment at the highest levels of civilian and military leadership, both Afghan and international, to build national security forces that Afghans can trust.

Notes

- ¹ US Department of Defense, 'Report on Progress Toward Security and Stability in Afghanistan' (Report to Congress in accordance with sec 1230 of the *National Defence Authorisation Act for Fiscal Year 2008*, as amended, November 2010), 38.
- ² UK Foreign and Commonwealth Office, 'December Progress Report on Afghanistan' (December 2010).
- ³ UK Foreign and Commonwealth Office, 'January Progress Report on Afghanistan' (January 2011).
- ⁴ Meeting with senior British military official, London, 2010.
- ⁵ Many of the local defence initiatives not falling within the formal structure of the ANSF are 'leftovers' from earlier experiments in community defence, which received (and in some cases continue to receive) various levels of support from the GIRA and/or the international community. Also included in this category are local defence initiatives supported by district governments but without the formal endorsement of the MoI.
- ⁶ NTM-A, 'Year in Review: November 2009 to November 2010' (2010) 3.
- ⁷ US Department of Defense, 'Report on Progress Towards Security and Stability in Afghanistan and United States Plan for Sustaining the Afghanistan National Security Forces' (April 2011), 13.
- ⁸ US Department of Defense, 'Report on Progress Towards Security and Stability', above n 1, 31.
- ⁹ Government of the Islamic Republic of Afghanistan, Ministry of Interior, *Afghan National Police Strategy*, December 2010, 23.
- ¹⁰ Interview with ISAF official, Kabul, January 2011.
- ¹¹ Interview with Peace Training and Research Organisation, February 2011. Particular concerns have been expressed with regards to (among others) the provinces of Baghlan, Kunduz and Herat.
- ¹² Ibid.
- ¹³ Ibid.
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- ⁸¹ These rules have all been recognised by the ICRC as rules of customary international law applicable in non-international armed conflict: Henckaerts and Doswald-Beck, above n 79, rules 89, 90, 93, 99. Common art 3 of the Geneva Conventions prohibits violence to life, cruel treatment and torture and humiliating and degrading treatment; and *Protocol II* prohibits the killing of civilians: *Protocol II*, art 4(2)(a).
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⁹⁹ US Department of Defense, *Law of War Program*, above n 97, 2.

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This paper was written by Rebecca Barber. The author would like to thank: Michael Bailey, Erin Blakenship, Shaheen Chughtai, Marc Cohen, Lawrence Devlin, Elise Ford, Erica Gaston, Tara Gingerich, Noah Gottschalk, Kirsten Hagon, Fahim Hakim, Louise Hancock, Sarah Holewinski, Anita Kattakuzhy, Ann-Kristin Kvilekval, Robert Lidner, Denise Lifton, Britta Madsen, General Abdul Massoud Ragheb, Hussein Nuss-rat, Jamila Omar, Rachel Reid, Victor Schmidt, Shannon Scribner, Mohammed Shafiq Noori, Alan Skurbaty, Scott Stedjan, Johanna Valenius, Annick van Lookeren, Nicolas Vercken, Mirwais Wardak, Surendrini Wijeyaratni, Kristele Younes, and many at ISAF who do not wish to be individually acknowledged but provided valuable input throughout the drafting process.

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The information in this publication is correct at the time of going to press.

Published by Oxfam GB for Oxfam International under ISBN 978-1-84814-866-6 in May 2011. Oxfam GB, Oxfam House, John Smith Drive, Cowley, Oxford, OX4 2JY, UK.

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