

## **Afghanistan Independent Human Rights Commission Submission under UPR mechanism**

**Key words:** Constitutions, dignity, freedom of expression, the situation of women and children, rule of law, poverty, PWDs, IDPs, returnees, transitional justice, insecurity, civilian casualties, impunity, and corruption.

### **A. Domestic normative and institutional framework for promotion and protection of human rights**

1. The new Constitution of Islamic Republic of Afghanistan, in which a Bill of Rights has been enshrined, has laid a strong and effective foundation for promotion and protection of human rights. According to Article 7 of the Constitution, Afghanistan is required to observe the UN Charter, international human rights treaties to which Afghanistan is party and the Universal Declaration of Human Rights. Afghanistan is a State Party to six of eight core international human rights treaties, namely ICESCR, ICCPR, CAT, CERD, CEDAW and CRC along with its two Optional Protocols. It has also ratified 15 ILO conventions, the four Geneva Conventions and the Rome Statute of the International Criminal Court (ICC). Article 58 of the Constitution further establishes the Afghanistan Independent Human Rights Commission (AIHRC) to independently monitor, promote and protect human rights in Afghanistan.

### **B. Protection and promotion of human rights on the ground:**

2. The right to dignity, enshrined in the Constitution of Afghanistan, is still widely violated by law enforcement agencies. The AIHRC data for 2008 shows that violation of the right to dignity is on the top of the list. Torture, inhumane and degrading treatments are committed by Afghan National Police (ANP) and National Directorate of Security (NDS). Almost none of prisons, detention centers, holding cells and correctional centers conform to international human rights standards

3. Over the last four years, freedom of expression has experienced significant improvements. The Law on Media provides necessary legal support and assurances to media outlets. However in practice journalists have been facing numerous challenges in the form of murder, kidnapping, intimidation, apostasy and blasphemy charges, physical violence and attacks on local radio stations, and confiscation of equipments by national and International Forces, local power-holders as well as anti-government elements. The Ministry of Information and Culture has not only provided the least amount of necessary support but has also, in some cases, created obstacles and limitations for media organizations.

4. The situation of women has improved in comparison to the years of war. Equality before the law for women and men in the new Constitution, participation of women in political processes, presence of women in governmental and non-governmental organizations, establishment of Ministry of Women Affairs and improvement in education opportunities of women are important advancements in this regard. However, their representation in the afore-mentioned areas is very symbolic and limited to some elite and educated urban women. Afghanistan has ratified the Convention on Elimination of Discrimination Against Women (CEDAW). Yet, effective and practical steps for its implementation, including revision of existing laws and enactment of new laws on elimination of violence and discrimination against women have yet to be taken. Women are subject to numerous forms of physical and psychological violence, such as forced and under-age marriage, physical abuse, rape and other forms of sexual harassments, trafficking, bad

dadān<sup>1</sup>, honor killing and other forms of violence. A number of them submit to their disappointments and hopelessness by resorting to self-immolation, addiction to drugs and fleeing homes. The mainstream women of the country have seen little or no fundamental change in their lives. The data of AIHRC reveals that most victims of human rights violations are still women.

5. Afghanistan is a State Party to the Convention on the Rights of Child (CRC). It has also adopted a Juvenile Justice Law in 2005. Despite progresses, however, AIHRC studies reveal that children are the most vulnerable group of Afghan society. Their access to education is hampered by an ever-increasing insecurity, including assassination and intimidation of female teachers and students. Child marriage and rape and other forms of sexual exploitations are a challenge faced by children. During a period of five months in 2008 alone, as many as 32 cases of child rape was registered by AIHRC. The numbers of children, faced with the worst forms of child labor, is unfortunately, increasing day by day. Children in need of special care, like those with disabilities, are generally neglected in national as well as local planning. Statistics suggest that around 80% of children do not have National Identification Cards, which causes numerous problems, including under-age marriage and unfair court proceedings.

6. The commitments of government, set out in the Afghanistan Compact and the Afghanistan National Development Strategy (ANDS) in the sector of governance, rule of law and human rights have not been fulfilled effectively. Persistent corruption and maladministration, discrimination, nepotism, favouritism and political expediency in public appointments, which are committed in violation of law have widened the rift between people and government and have resulted in people's frustration and loss of confidence in the system. AIHRC report in 2007 shows that 59.1 % of people refer their civil and criminal cases to informal mechanisms of justice (local shura and tribal jirga) and only 36.2 % of them consult formal justice system.

7. Despite international support for rebuilding and socio-economic development of Afghanistan, the reconstruction process has been very slow and has brought about little tangible improvements in the lives of Afghans and their enjoyment of socio-economic rights. They continue to face a chronic poverty. According to AIHRC data, as many as 37% of Afghans earn less than a dollar per day and an estimated number of more than seven million are threatened by hunger and serious shortage of food. The majority of people, including in urban areas, do not enjoy an adequate standard of living. The densely populated urban areas of the country lack any basic services, including safe drinking water and clean environment.

8. In the latest survey on socio-economic rights, conducted by AIHRC, 15% of respondents in urban areas and 30% in rural areas have said that they do not have access to health services. Quality mother and child health care (MCH) is mostly unavailable; resulting in still high maternal and child mortality rate.

9. Despite increase in number of students, construction and rebuilding of schools, access to education is not inclusive yet. It is estimated that more than half of school-age children do not attend schools. In this context, girls are particularly vulnerable and constitute only 35% of students. The number of girls in secondary and high schools considerably decreases and only one fourth of high school graduates are girls. Lack of girl's schools is another factor as currently only 15% of schools have been reserved for girls.

10. Peoples with disabilities (PWD) constitute another vulnerable segment of Afghan society. Physical and physiological limitations challenge their work and enjoyment of social services and education. Government only pays a tiny amount of \$ 8 to \$ 10 per month to each. One of the main challenges facing PWDs is discriminatory approach towards them on the basis of political

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<sup>1</sup> Bad dadān is giving into marriage of girls to settle blood debt and other disputes

background (distinction between Jihadi<sup>2</sup> and non-Jihadi PWDs). Despite widespread universal recognition of the Convention on the Rights of Persons with Disabilities, Afghanistan has not signed it.

11. Currently around three million Afghan refugees live in Iran and Pakistan. Over recent years, the return of refugees has been slowed down in the face of deterioration of security situation, unemployment and poverty in the country. While Iran and Pakistan have been emphasizing on return of refugees, the Government of Afghanistan has neither a specific plan for their stay in those countries nor a program for their sustainable return. For this, some of the returnees have migrated back.

12. There are currently an estimated number of 235,000 registered IDPs. They are mostly facing with lack of health services, shelter and unemployment. Most of the returnees and IDPs are reluctant to return to their place of origin due to insecurity and lack of sustainable livelihood opportunities. They ultimately join the ranks of jobless and poor people in urban areas.

13. The Government of Afghanistan has failed to design and implement effective programs for settlement of nomadic Kochis, improvement of their lives and education of their children. On the other hand, the existing condition of Kochis has resulted in violent conflicts with local residents over pasturelands every year.

14. The people of Afghanistan became subject of most egregious forms of war crimes and crimes against humanity over three decades of war. In a national consultation, carried out by the AIHRC in 2004, nearly 70% of the people identified themselves as victims of the crimes and demanded perpetrators to face justice. At the recommendations of the consultation, the Government of Afghanistan supported by AIHRC, UN and civil society designed the Action Plan for Peace, Reconciliation and Justice. Aside from announcing a National Day of Victims and a Presidential advisory board for senior political appointments established only recently, no other serious step has been taken by the Government to demonstrate its political will towards implementation of the plan, initially supposed to complete by end of 2008. AIHRC, though, has been fulfilling its responsibility under the Action Plan through documenting atrocities, mapping conflicts and building memorial monuments.

15. On the other hand, the National Assembly of Afghanistan further slowed down the implementation of the Action Plan by adopting, in February 2007, of a so-called Charter of Reconciliation and General Amnesty, which would only disappoint people and encourage personal revenges.

### **C. Identification of achievements, best practices, challenges and constraints**

16. Following the new Constitution of Afghanistan, adopted in 2004, the establishment of Afghanistan Independent Human Rights Commission (AIHRC), enshrined in Article 58 of the Constitution as the national institution for promotion, protection and monitoring of human rights, is a milestone achievement of Afghanistan. In order to fulfill its Constitutional mandate, AIHRC has legal authority and quasi-judicial power. Its focus of activity has so far been mainly on protection and promotion of the rights of children, women, PWD, monitoring and investigation of human rights violations, transitional justice and human rights education. It has by now established 12 regional and provincial offices, manned with 591 staff members.

17. AIHRC has, since its establishment in 2002, given human rights awareness to as many as 207,419 persons through 6,569 workshops and awareness-raising programs. It has also sponsored and broadcasted 2 documentary and 14 movies, 4 TV spots, 360 hours of radio and 153 hours of

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<sup>2</sup> Jihadi refers to those who fought during the holy war against the Soviet Union

TV programs. In addition to other publications, it has also printed and disseminated 730,000 copies of its monthly Human Rights Magazine as well as 1,365,500 copies of brochures, posters etc. It has given human rights awareness to 15,111 children through child-to-child initiative and trained 20,3775 children through human rights volunteers' campaign.

18. As far as human rights protection is concerned, AIHRC has, since establishment in 2002, received 13,389 complaints, out of which 12,555 complaints have been investigated. It has also managed to close down more than 50 private jails and has freed 3,614 illegally detained persons.

19. Based on a Memorandum of Understanding between AIHRC and the Ministry of Education, human rights messages and topics have been incorporated into Dari/Persian and Pashto books of school curricula from grade 7 though 12. Also, violent contents of all school subjects that run counter to human rights and civic values have been removed.

20. Afghanistan has had some achievements in legislation. Most important new laws are on juvenile justice, the law of media, electoral law, the law on political parties, marriage registration certificate, the anti-corruption law and the law on establishment, functions and mandates of AIHRC. However, many international obligations of Afghanistan with regards to human rights have yet to be incorporated into existing domestic laws or translated into new laws.

21. Establishment of Human Rights Unit and Family Response Unit within ANP in the Capital and provinces as well as the establishment of Family Court in the Capital are positive steps towards institutionalization of human rights and the right of women in particular. However, none of the units have acquired necessary capabilities to operate efficiently and effectively. Also, the Family Court is limited only to the Capital and has not been expanded to cover all provinces.

22. Insecurity is considered to be the main challenge in enjoyment of human rights by the people of Afghanistan. In the absence of a secure environment, many fundamental rights and freedoms, including the right to life, the right to dignity, the right to liberty and security of person, the right to effective remedy, the right to due process, the right to freedom of movement, freedom of expression and the right to health and education, of the people of Afghanistan have been violated. In spite of increase in the number of International Forces and a relative annual increase of national security forces, the situation of security has been deteriorating day by day. It is now in the worst condition ever since the establishment of the new regime seven years ago.

23. In addition to political and military causes of insecurity, other factors such as rampant corruption in the administration, flagrant violations of human rights, appointment of known perpetrators to high-ranking positions, poverty, unemployment, cultivation of poppy and lack of an appropriate alternative livelihood, have not only contributed to the waves of insecurity but has also strengthened the ranks of anti-government elements.

24. Civilian casualties caused by the military operations of the international security forces and the suicide attacks and terrorist activities of anti-government elements have been considerably increasing; AIHRC has documented 554 civilian casualties in 2007 while as of 3<sup>rd</sup> November 1,156 civilians, including women and children, have been killed in 2008 alone. Military tactics on both sides are blamed for the increase. On one hand, anti-government elements are operating from within civilian areas, launching suicide attacks and killing aid workers and civil servants. On the other hand, international security forces rely excessively on aerial bombardments<sup>3</sup>.

25. While the people of Afghanistan have been thirsty for justice and demanding for perpetrators to be held accountable, a culture of impunity continues to obstruct the realization of human rights and the rule of law. In many cases, criminals and perpetrators have been arrested but later on

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<sup>3</sup> Out of 1,156 civilian casualties as of 3<sup>rd</sup> November 2008, 351 of them were killed at aerial bombardments.

released through corruption and bribery. Judges and law enforcement officials are mostly in one way or the other affiliated or influenced by political and factional strongmen.

26. Corruption is challenging enjoyment of human rights by the people of Afghanistan. It is widespread in most parts of the administration. It is in particular commonplace in courts, prosecution offices and police, resulting in violation of the right to effective remedy and redress. It has also brought the legitimacy of the entire system into question, leading into re-empowerment of local warlords and strongmen and, even, anti-government elements.

27. Although Afghanistan has ratified the UN Convention Against Corruption (UNCAC), yet it has not managed to design and implement any effective anti-corruption mechanism. The so-called judicial, police and administrative reform processes have not had a tangible and satisfactory result so far and have failed to earn the trust of Afghan people. The real selection criteria for recruitment, particularly in police, have been political, factional and ethnic affiliations as well as payment of bribes.

28. Afghanistan is a State Party to six core conventions. But, due to lack of capacity, it has so far reported only on ICESCR last year. With support from AIHRC, the Ministry of Foreign Affairs is currently working on the CRC treaty report.

29. And lastly, a greater challenge for human rights in Afghanistan is the political and instrumental approach to human rights by officials. The approach of high-ranking officials of Afghanistan towards human rights has mostly been shaped by their day-to-day political interests and tactics. This is an issue of great concern to AIHRC. Human rights values and principles must remain at the base of any political development and should never be compromised under any condition or pretext.

**Appendix: AIHRC documents for further reference available at [www.aihrc.org.af](http://www.aihrc.org.af)**

AIHRC recommendations to the Paris Conference, May 2008

Effective factors associated with drug addiction and consequence of addiction among Afghan women, 2008

Human Rights Situation in Afghanistan during 2006-2007

Justice for Children, the situation of children in conflict with the law in Afghanistan

AIHRC Report on General Situation of Children in Afghanistan, 2007

AIHRC annual report for 2007

Report on Economic and Social Rights, 2007

AIHRC investigation into the shooting of demonstrators in Sheberghan on 28 May 2007

Violations of International Humanitarian Law in Afghanistan, Practices of Concern and Example Cases, 2007

AIHRC Investigation: Use of indiscriminate and excessive force against civilians by US forces following a VBIED attack in Nangahar province on 4 March 2007

AIHRC Report on Economic and Social Rights, 2006

Evaluation report on General Situation of Women in Afghanistan, 2006

Annual Report 2005 – 2006

Action Plan of the Government of the Islamic Republic of Afghanistan on Peace, Reconciliation and Justice, 2005

An Overview on Situation of Child Labor in Afghanistan, 2005