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UNIVERSAL PERIODIC REVIEW

**Written statement* submitted by Amnesty International,
a non-government organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2009]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

National Development Strategy

Amnesty International welcomes recommendations made by states to Afghanistan to strengthen its capacity to implement the national development strategy, particularly to achieve its benchmarks on governance, rule of law and human rights.¹ We welcome the Afghan government's support of these recommendations and urge it to commit to implementing them promptly and in full.

Amnesty International also calls on the government to:

- Uphold Article 7 of the Afghan Constitution by guaranteeing human rights, as stipulated in international human rights treaties to which Afghanistan is a state party;
- Uphold Article 58 of the Constitution by safeguarding the independence of the Afghan Independent Human Rights Commission, supporting its work and pledging to implement its recommendations at all levels of government;
- Meet all seven indicators of the human rights benchmark by the 2010 deadline as outlined in the Afghanistan Compact.

Action Plan for Peace, Justice, and Reconciliation adopted in 2005

Amnesty International welcomes efforts by the government to consider the recommendation calling for full implementation of the Action Plan for Peace, Justice, and Reconciliation adopted in 2005.² We urge Afghanistan to indicate its full support for this recommendation and commit to its implementation in full.

Despite a clear desire by the Afghan people for a transitional justice process that would provide truth and accountability for the country's deplorable record of serious human rights abuses, only a handful of individuals have been prosecuted (mostly outside of the country) for gross violations of human rights abuses and war crimes during three decades of conflict ranging from 1978 – 2001.

The government and its international supporters jointly committed in the 2006 Afghanistan Compact to implement the Action Plan, but have failed to implement many of its concrete proposals, among them to bar those accused of having committed war crimes or serious human rights abuses from positions of power. On the contrary, the Afghan Parliament sought to undermine the Action Plan by passing the "National Stability and Reconciliation" bill, aimed at providing immunity from prosecution to suspected war criminals.

Amnesty International calls on the government to:

- Initiate a transparent, independent, judicial investigation into all credible allegations against anyone suspected of serious human rights abuses;

¹ A/HRC/12/9, paragraph 95, recommendations 79 and 92

² Ibid, paragraph 96, recommendation 24

- Implement the 2005 Action Plan for Peace, Justice and Reconciliation, in particular its provision for a truth-seeking mechanism to document past human rights in Afghanistan, while ensuring that such a mechanism operates alongside rather than substitutes any judicial proceedings;
- Ensure that the Special Advisory Board to the President for Senior Appointments bars those suspected of having committed war crimes, crimes against humanity or serious human rights abuses from holding government posts;
- Introduce legislation to repeal the “National Stability and Reconciliation” bill, known as the “Amnesty Law”;
- Put in place mechanisms to vet candidates facing credible allegations of serious human rights abuse in advance of the parliamentary elections in 2010;
- Enact domestic legislation to implement the Rome Statute of the International Criminal Court and to ensure that Afghanistan fully co-operates with the Court.

Impunity within state bodies at the national and local levels

Amnesty International welcomes the government’s commitment to consider recommendations to redouble efforts to address corruption within state bodies at the national and local levels and urges it to indicate its full support of these recommendations.³

In interviews conducted by Amnesty International over the past months, many Afghans have expressed frustration at the government’s apparent indifference towards human rights, the blatant impunity for those suspected of serious human rights violations, including war crimes, and the lack of accountability for government and parliamentary officials widely believed to be involved in corruption and criminal activities.

Amnesty International’s research has also found that some police officials are linked to criminal gangs and involved in violent crime, such as kidnapping and armed robberies. Amnesty International has received credible reports that entire police precincts have failed to investigate reported crimes or arrest suspects, and have released suspects despite their clear links to crimes.

Amnesty International calls on the government to:

- Implement a clear and transparent mechanism to prevent the appointment of candidates with a record of human rights abuses to senior levels of central government and the judiciary, or to positions as provincial governors, chiefs of police, district administrators and provincial heads of security;
- Create a permanent Afghan-international body to oversee the vetting of police candidates and ensure that no candidates with records of human rights abuses are appointed to senior positions;

³ Ibid, paragraph 96, recommendations 11 and 28.

- Establish an effective, adequately resourced and independent police ombudsperson with the authority to investigate complaints against the police, including complaints of human rights violations perpetrated by the police or of police failure to investigate human rights-related offences.

Gender equality and women's human rights

Amnesty International welcomes the government's willingness to consider recommendations calling for greater efforts to promote gender equality and women's human rights consistent with Afghanistan's obligations under the *Convention on the Elimination of all Forms of Discrimination against Women*.⁴ We urge the government to indicate its full support of recommendation 18 and give effect to it without delay.

Despite some positive measures to advance women's rights and gender equality, Afghan women and girls continue to encounter discriminatory laws, policies and practices. Women and girls face endemic domestic violence, trafficking, forced marriages, including ever-younger child marriages, and being traded in settlement of disputes. The police, the courts and other justice sector officials seldom address women's complaints of abuses, including beatings, rape and other sexual violence. Women victims and defendants have little recourse to justice and are discriminated against in both the formal and informal justice systems. Women fleeing abusive marriages are often detained and prosecuted for alleged offenses such as "home escape" or "moral crimes" that are not provided for in the Penal Code and are at variance with international human rights law.

Amnesty International calls on the government to:

- Instruct the Ministry of Interior to ensure that there is prompt, impartial and effective investigation of all reports of violence against women, that those responsible are brought to justice in fair trials without recourse to the death penalty, and that victims are granted reparations;
- Modify or abolish existing laws (such as in the Penal Code), regulations, customs and practices that discriminate against women in family matters. In particular, to ensure that women are given unqualified legal equality with men in law and in practice to freely choose a spouse and to enter into marriage only with full and free consent, and are granted equal rights and responsibilities during marriage and its dissolution;
- Define explicitly the following forms of violence as criminal acts: violence occurring in the family against women and girls, including sexual violence; the giving of girls and women in marriage as a means of dispute resolution; forcing women or men to marry against their will or otherwise without informed consent, with particular provision in this regard for girls and boys below the legal minimum marriage age; rape, including marital rape and rape of children; and other sexual assaults;
- Ensure that 'honour' crimes and violence in the family are treated as serious criminal offences;

⁴ Ibid, paragraph 96, recommendation 18.

- Develop programs to recruit women police officers and train other staff to enable women's access to administrative and judicial assistance;
- Establish more safe shelters for women fleeing domestic violence;
- Commit to implementing the National Action Plan for Women across the country.

Moratorium on executions and eventual abolition of the death penalty

Amnesty International is disappointed to note that the government has rejected a series of recommendations calling for a moratorium on executions, the eventual abolition of the death penalty, and ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights.⁵ We call on the government to urgently reconsider its position on these recommendations and to state its support of all of them.

Nine people were executed in 2008, and at least 111 others are on death row. On 16 April 2008, the Supreme Court of Afghanistan upheld approximately 100 death sentences issued by lower courts against individuals convicted of crimes, including murder, rape, kidnapping and armed robbery. Trial proceedings in Afghanistan are marred by irregularities and fall below international standards of fairness, including providing inadequate time for the accused to prepare their defence, lack of legal representation, reliance on insufficient evidence and denial of defendants' right to call and examine witnesses.

The government's report of 24 February 2009, submitted for the Universal Periodic Review in May 2009, noted that following a review process, 300 prisoners transferred from Guantanamo Bay and Bagram to Pul-e Charki were subsequently found to be innocent, and their release was recommended.⁶ Such a high number of detainees being found innocent is yet another reason for the government to reconsider its position on the death penalty.

Amnesty International calls on the government to:

- Commute all death sentences in Afghanistan and re-introduce a moratorium on all executions, in line with the 2007 UN General Assembly resolution, with a view to the abolition of the death penalty.

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⁵ Ibid, paragraph 97, recommendations 1-10.

⁶ A/HRC/WG.6/5/AFG/1.

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