



UPR Submission

Afghanistan
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Summary

The Government of Afghanistan is a party to most international human rights treaties and has enshrined fundamental freedoms into its constitution. However, the human rights situation in the country is undergoing a rapid decline, in major part because of the government's failure to fulfill its international legal obligations to hold those responsible for serious human rights abuses to account. Although the worsening security situation, flaws in the international response, and lack of state capacity are significant mitigating factors in this failure, the government has also shown a lack of courage and leadership in challenging the powerful factions that continue to abuse the rights of Afghans.

The government and international community have almost totally failed to implement the Peace, Reconciliation and Justice Action Plan within the tight three-year designated period 2005-2008. The current poor security environment and lack of progress means that a significant extension of the mandate of the Action Plan is necessary. The government and some international actors have cited the insecurity as an obstacle to bringing justice. But truth, reconciliation, and accountability for human rights abuses and war crimes are a necessary component of a long-term and stable peace. Warlordism and corruption has undermined government strength and credibility, which in turn feeds the insurgency.

This submission will focus on three areas where Human Rights Watch has conducted recent research and campaigning, as well as some brief remarks about critically needed institutional reforms.

Freedom of Expression and Freedom of the Press

Freedom of expression is diminishing for those who criticize government officials, insurgents, or powerful local figures. Threats, violence, and intimidation are regularly used to silence opposition politicians, critical journalists, and civil society activists.

In January 2008, 23-year-old student Sayed Parviz Kambakhsh was sentenced to death on blasphemy charges, accused of downloading, doctoring, and distributing an article among friends. In October his death sentence was commuted to a 20 year prison sentence: still an excessive punishment. Kambakhsh's detention and trial was marred by denials of due process – including confessions extracted under duress, limited access to a lawyer, and a closed and abbreviated trial.

The government through various unlawful means has increasingly restricted press freedom. Dozens of journalists have been arbitrarily detained, some held without

charge for days, weeks, or months. The law requires that complaints against journalists are first assessed by the Media Violations Committee before being referred to the Attorney General: this is often flouted by people in positions of power who complain directly to the police, National Directorate of Security (NDS), or the Attorney General. This was the case in July 2008, when a private TV program airing accusations of government corruption was pulled off air on the orders of the President's office. The intelligence services detained the presenter, Mohammad Nasir Fayez, for two days.

Journalists also come under violent attack from warlords, insurgents, parliamentarians, and the security forces. In conflict areas the government exerts undue pressure on members of the press areas who have legitimate journalistic contacts with insurgent groups. The response to crimes against journalists remains weak, adding to the sense of vulnerability in the profession. The body of 25-year-old journalist Abdul Samad Rohani, a BBC correspondent, was found with multiple knife and bullet wounds in June 2008. Despite the creation of a government investigation, friends and colleagues of Rohani have no expectation of an adequate investigation and prosecution taking place.

Girls Access to Secondary Education

There have been commendable improvements in access to primary education for girls and boys, with the number of enrolled students at a historic high. However, half of all school-age children, including the majority of girls, remain out of school, and gender disparities are high at the secondary and higher education levels. According to Ministry of Education (MOE) data, in 2007 girls comprised only 37 percent of the gross enrollment rate at the primary level, 27 percent at the lower secondary level, and only 25 percent at the higher secondary level. Even in areas free from armed conflict, Afghan girls continue to face immense obstacles to education, such as a lack of girls' schools and transport, fear of sexual harassment and violence while en route to school, and early marriage resulting in drop out. The severe shortage of qualified female teachers outside of urban areas has not been adequately addressed.

In research carried out in 2008, Human Rights Watch found that the Ministry of Education has neglected key strategies that could affect Afghan families' decisions to continue their daughters' educations. The ministry has failed to accord girls' secondary education the same importance as boys' secondary education. The ministry has also allowed the diversion of resources earmarked for girls' schools. Despite innovative programs pioneered by many NGOs, girls are often relegated to informal, home-based programs from which they will earn only informal education credentials. Without formal education credentials, girls will be unable to become the teachers, health care workers, lawyers, civil servants, and other skilled workers that the country desperately needs for its development.

Despite a presidential decree guaranteeing married girls' right to attend school, in April 2008 the Ministry of Education reinstated a policy directive ordering schools to separate married girls from other students and provide separate classrooms for them. One of the rationales cited in the policy is that married girls may "gossip," presumably about sexual relations, with unmarried girls. There is no such policy for married boys, and this discriminatory directive may result in pushing married girls out

of the educational system. Girls' schools already lack resources and are unlikely to be able to offer separate classes and teachers for married girls.

Death Penalty

Legal experts and human rights organizations in Afghanistan have long expressed concerns that international due process and fair trial standards are generally not met in capital cases. Previously, prisoners in Afghanistan have been executed with little or no warning. On October 7, 2007, the authorities executed by firing squad 15 prisoners who were on death row at Pule Charkhi prison. Neither the prisoners nor their relatives were informed in advance about the executions. All prisoners were on death row for crimes that had typically been commuted to prison sentences in the past. Despite the outcry over these executions, in April 2008 100 death sentences were upheld by the Supreme Court. In a number of these cases, thorough investigations had not been carried out and the courts had not disclosed crucial evidence leading to convictions. Human Rights Watch opposes the death penalty in all circumstances as an inherently cruel and unusual form of punishment and a violation of fundamental human rights.

Institutional Reform

Critical reforms of the judiciary, police, and National Directorate of Security (NDS) are needed to ensure the state is capable of protecting its citizens' rights. The appointment of properly trained and independently minded judges and prosecutors, who owe no allegiance to factional leaders or regional strongmen, is crucial. The police are frequently cited by Afghans as the most corrupt institution in the country. The culture of impunity will continue unless corrupt senior figures are removed from their positions and held accountable. There are persistent reports of mistreatment in NDS detention, which cannot be adequately investigated without greater transparency and better access to NDS facilities. Human rights officials, including those of the Afghan Independent Human Rights Commission (AIHRC) and the United Nations Assistance Mission in Afghanistan (UNAMA), state that their access to NDS facilities around the country is erratic. The mandate of the NDS is opaque, but appears to include broad scope to arrest and detain; anyone detained should be promptly brought before a judge, charged with a legally cognizable offense, and have access to counsel and family members.

Recommendations

Freedom of Expression and Media Freedom

Human Rights Watch urges the Government of Afghanistan to:

- Observe national laws which require complaints against journalists to be taken first to the Media Violations Committee rather than the office of the Attorney General, the police, or the intelligence services.
- Take civil rather than criminal action when bringing complaints against journalists, as recommended by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression.
- Provide media awareness training for government officials and elected representatives in order to create an understanding of freedom of expression, and the role of critical, non-defamatory journalism.
- Stop detaining members of the press for having journalistically legitimate contact or interviews with anti-government elements.

- Conduct thorough criminal investigations when journalists are attacked or killed.

Girls Access to Secondary Education

Human Rights Watch urges the Government of Afghanistan to:

- Create specific targets for building more girls' and co-educational secondary schools as part of planned or future school construction targets on a basis of equity with boys.
- Expand existing primary schools to include secondary classes, convert boys' secondary schools into co-educational schools, and explore multipurpose use of existing buildings and other strategies to expand access for girls.
- Make equal access for girls a condition of the creation of new schools in every area. Where girls and boys are offered different forms of education, such as in *madrassas* and home-based schools, the ministry should ensure that girls and boys have equal access to a quality education and formal education credentials.
- Instruct the Ministry of Education to widely publicize and enforce the 2004 presidential decree lifting the prohibition against married girls and women attending school.
- Revoke the policy to segregate married girls into separate classrooms.
- Instruct the Ministries of Education and Transportation to partner and work with communities to develop secure routes, methods of transportation, and community protection plans for school girls and young women at the secondary school level.
- Provide incentives and safe and appropriate housing facilities for female teachers in rural areas.
- Monitor the number and location of women teachers.

Death Penalty

Human Rights Watch urges the Government of Afghanistan to:

- Refrain from signing the death sentences that are currently waiting for Presidential approval.
- Until such time as the death penalty is abolished, suspend the use of the death penalty in Afghanistan.

Institution reform and addressing impunity

Human Rights Watch urges the Government of Afghanistan to:

- Prioritize and speed up the judicial reform process to develop judges and prosecutors who are professional and independent.
- Remove corrupt police officials and ensure that future appointments are depoliticized and subject to vetting.
- Provide human rights officials access to all NDS detention facilities, and take all necessary steps, including revision of existing laws, to ensure that all persons detained have full due process rights. Consider placing persons arrested by the NDS in the custody of the police.