



AIHRC

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Stakeholder Submissions

Afghanistan Independent Human Rights Commission (AIHRC)

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1- Introduction of the Afghanistan Independent Human Rights Commission¹

The AIHRC was established in June 2002 and has constitutional and legal mandate to monitor human rights situation in Afghanistan. Article 58 of the Constitution provides that an Independent Human Rights Commission to monitor human rights and work toward promotion and protection of human rights in Afghanistan. Further and in accordance to the same Article, the law of the AIHRC elaborates the broader mandate of the AIHRC and assign the commission to take effective action in order to fulfill its constitutional mandate. Therefore, providing periodic reports to the government, the public and other relevant national and international institutions fall under the AIHRC mandate. The, AIHRC was re-accredited with "A" status by the GANRI, which is maintained up October 2019.

2. Major achievements of the Afghanistan government in the area of protection and observance of human rights during 2014-2017

During this reporting period, as a result of the hard work of the AIHRC and NGO/CSO's, the Afghan government has made positive achievements in the areas of promotion and protection of human rights as well as protection of victims of human rights violations, for example:

2.1. The practice of *Bacha Bazi* (Child exploitation for sexual purposes), has been included in the new Penal code of 1395 and has been criminalized. So, it is a positive action taken to protect child victims and punish the perpetrators in according with the law.

2.2. War crimes, crimes against humanity and genocide are criminalized in the criminal code, adopted in 1395 (2017), and based on that a department for the investigation of such crimes was established at the Attorney General's Office.

2.3. Protecting and preservation of the environment, the Penal Code of 1395 also criminalizes the environmental violations.

2.4. To protect the human dignity of women and their human rights, the Law on the Prevention and Prohibition of Harassment of Women and Children was signed to be enforced.

2.5. A Presidential decree was issued for prohibition of forced and compulsory virginity test of young girls. The virginity test also was prohibited by the new penal code.

2.6. From 2014 to 2017, Afghanistan has witnessed improvements in the prevention of torture. The number of cases of torture have been declining since and has dropped from 278 in 2014 to 78 in 2017. Similarly, Afghanistan withdrew reservations on CAT, and ratified the UNCAT Optional Protocol and established a committee against torture, led

by the AIHRC. Though we have yet to see the accountability mechanism for torture is implemented.

3. Implementation of recommendations on the previous Afghanistan's UPR and upcoming challenges

Regarding the previous States' recommendations during the previous UPR, the Government of Afghanistan developed an action plan for the States' recommendations and implemented it through relevant government departments.

During 2014 and 2017, despite the signs that the Afghanistan government has made good progress in several areas, including the improvement of the human rights situation, many challenges still continue to remain, and Afghanistan citizens' access to and exercising their human rights are faced with challenges, threats and restriction:

3.1. The withdrawal of foreign troops and the transfer of security responsibility to Afghan forces and the continuation of war and instability in the country have had a negative impact on the human rights situation, especially on the security of citizens.

3.2. The emergence and operations of the so-called ISIS groups have led to more fears and insecurity, and the group attacked and threatened people. The group has been responsible for attacks against minority groups, including the Hazaras and other minorities recently Sikhs.

3.4. The continuation of war and the conflict, the attacks on the civilians, cities, and villages by the antigovernment forces, specially Taliban and ISIS through suicide bombers and land-mine attacks in cities, especially in Kabul and Jalalabad remain as a major concern for the people. As a result of the conflict, thousands of families and individuals have become displaced and have a deplorable living condition. The Afghan government has failed to provide adequate social services, accommodation and jobs.

3.5. The Afghan government has been unable to address impunity and effectively and adequately process and redress people's complaints of violations of their human rights by powerful people and government officials. The above problems have caused human rights violations continue in Afghanistan. The AIHRC has registered 18,433 complaints of human rights violations during 2014-2017. Statistics from the AIHRC show the number of complaints in 2014, as 733 the lowest, and 7432 complaints in 2017, the highest.

3.6. The AIHRC has registered and investigated all complaints of human rights violations through the relevant justice and judicial authorities. Out of the number of complaints filed, 9,093 cases have been identified as human rights violations. The above-mentioned statistics are just part of the human rights violations and complaints in Afghanistan, where complainants and victims have had the opportunity to fill petition and register

them with the AIHRC offices, but many victims of human rights violations have not been able or have not had the opportunity to submit their complaints to AIHRC offices.

3.7. The deterioration of the security and economic situation as well as the continuation of the war have resulted in the displacement of people, brain drain, the vulnerability of the poorest families and the increase in social and economic inequalities in the country. According to the World Bank report, in 2014, 36 percent of Afghans were living in poverty², but now the figure is around 54 percent³. This is a wake up call for tackling the poverty and unemployment, because this has direct effect on security, conflict, and improvements of human rights.

The report goes on to highlight the main human rights challenges in Afghanistan segregated by topics.

4. Violation of the right to liberty and security of person

The government has been unable to ensure the citizens' security. The problem of insecurity in Afghanistan has become a widespread, serious and desperate issue. This problem has undermined all dimensions of the economic, social, cultural and political life of the people of Afghanistan. Insecurity threats, suicide, explosions, arbitrary murders, weaknesses of the rule of law, impunity from punishment and corruption have caused people to be in fear and panic in their everyday life in the streets, alleys, markets, work place and going to a recreation.

4.1. According to the AIHRC's investigation, the right to liberty and personal security of citizens during the past four years (1393-1396) shows a rising graph. In 1396, there were 234 cases of violations of the right to liberty and personal security registered in the AIHRC, which represents a 15% increase over the same period in the last year. Thus, in 1395, 203 cases, in 1394, 199 cases, and in 1393, 168 cases of violation of the right to liberty and security of person were registered in the AIHRC.

5. Violence against women

Violence against women is one of the most serious violations of human rights, which undermines the human dignity of victims, and it can violate other human rights as well. During 2014 and 2017, the AIHRC has registered, investigated and followed around 19,920 cases of violence against women and referred them to the relevant legal entities. Out of these cases, 845 cases were cases of women who were murdered. The statistics of women's violence and murders are much higher than those mentioned in this report,

²,World Bank Report, Poverty Analysis in Afghanistan, Progress in Risk
◊ Date of visit: May 29 <http://www.acbar.org/upload/1494232625214.pdf>

³,World Bank Report, Poverty Analysis in Afghanistan, Progress in Risk
◊ Date of visit: May 29 1397 <http://www.acbar.org/upload/1494232625214.pdf>

as there are serious obstacles to the victims' referral to the relevant centers and institutions for recording and tracking these cases.

5.1. The prosecution and punishment of perpetrators of violence against women by government agencies, as well as the implementation of the EVAW Law and the Law for the Prevention of the Sexual Harassment against Women and Children have been ineffectively done and challenges remain unchanged. For examples, in 2015, only 72 perpetrators of murdering women were arrested, while 241 cases of murder were registered. Similarly, in 2016, 142 perpetrators of violence against women reported fugitives. These statistics show that the government and the law enforcement agencies have failed to properly and timely investigate cases of violence against women and cases of murder that are among the most serious cases of human rights violations.

5.2. Insecurity, corruption, the increased culture of impunity, lack of rule of law, the spread of harmful custom and tradition in society, lack of awareness of people of the law and human rights, poverty and economic problems are among the factors of violence against women in Afghanistan that during this period have not been adequately and practically addressed by the government. Taliban continued to killings and extra judicial and arbitrary punishment of women in the area of under their control.

6. Children's situation

Although the Afghan government is committed to the observance and implementation of a number of documents and conventions on the rights of the child, during this period, the situation of children and children's access to and enjoyment of their human rights faced with many challenges:

6.1. AIHRC investigations show that many children are deprived of their human rights and suffer of doing hard works. Based on the AIHRC's report, out of 5,700 children in 28 provinces, 51 percent were employed, 93 percent had been working as unpaid workers. At the same time, they have been exposed to inappropriate environmental working conditions that 14 of these children were hurt or were ill due to poor working condition.⁴

6.2. Involvement of children in wars and conflict is one of the worst cases in Afghanistan. In a study conducted by the AIHRC in 2016 and 2017, 57 boys were said to be recruited in the military groups; 50 percent was recruited by the government agencies and 25 percent by the private individuals. Meanwhile, 25% of the boys who were given the weapons were not familiar how to use the weapon. Family pressure, economic problems and the need for employment, religious reasons and pressure from the armed forces have been the reasons for joining the military ranks. The statistics do not cover all areas of

⁴Report on the Situation of Children in Afghanistan in 1394 and 95, AIHRC

Afghanistan, and only in areas where the AIHRC has been able to cover, and there are no statistics available for the insecure areas where more children are used for military purposes.

6.3. According to a AIHRC's national inquiry in 2017, 13 percent of children have been sexually assaulted, 44 percent have experienced physical violence and 44 percent mental violence.⁵.

6.4 Early marriages of children under the age of 15, despite its legal prohibition, remains a major challenge for children. In 2015, the AIHRC recorded 235 cases of child marriage. The graph of the victims of early marriage is higher because many victims do not have the ability, awareness, facilities and the opportunity to refer to relevant institutions for filing a case. The main reasons for underage marriage, the victim of which is generally girls, are social, cultural and economic factors, as well as informal justice problems.

6.5 Of the children interviewed in the study, 71 of them have had physical and mental disabilities, 19% of the children were displaced. Registered cases show that children are exposed to threats such as trafficking, rape and abuses⁶.

6.6. Currently, 45% of all schools in Afghanistan have non-standard buildings. According to the Ministry of Education, in 1396, about 1050 schools have been closed or remained inactive in the country due to the threats of anti-government armed groups. According to the 2017 UNICEF surveyⁱ, the number of children who are deprived of going to school is 3.5 million. The level of suffering and deprivation of IDP children, returnees, children with disabilities and Sikh minorities of the right to education is likely more serious and deplorable.

7. Access to justice and judicial institutions

The results of the AIHRC's inquiry in 2017 on citizens' access to justice and the judicial organs will reveal these problems:

7.1. About 16.6% of the primary court in 25 provinces are virtually inactive due to the insecurity and local domination of the anti-government armed groups, and in 2017-4,130 cases that were to be addressed in accordance with legal procedures and timeline, remained undecided.

7.2. The aforementioned statistics suggest that in most of Afghanistan's provinces, citizens did not have access to police offices, and pursuing of cases by the police has

⁵ibid

⁶ Report on the Review of Child Marriage in 1394 and the first three months of 1395, the AIHRC

been faced with serious challenges and obstacles, and thus ensuring security and justice for citizens was also faced with difficulties.

8. Violation of the right to life

because war and insecurity, the right to life as the most fundamental right of citizens is seriously threatened and endangered in various forms and at high levels, and is rising up every day. In 2017- 3,657 cases of violations of the right to life were registered with this Commission, of which 277 cases were cases of violence against women, 12 cases were summary trial, and 3,368 cases were related to armed conflict.⁷

9. Civilian casualties

Disregard to humanitarian and human rights law by parties to the conflict in Afghanistan has caused civilian casualties. Based on the findings of the AIHRC, the number of civilians' casualty during 2017 was 9,754, including 3,368 killed and 6,386 injured. The civilian casualties last year include 4,196 men, 938 women, 2,604 children, and 2,016 people whose age and gender are unknown. Thus, there are 26 deaths and injuries per day, of which 7 are children and 2 are women. The total number of civilian casualties during the 2014-2017 increased to 34,639, of which 11,359 were killed and 23,280 were injured.

9.1. The perpetrators of 69.8% of the total civilian casualties are anti-government armed groups, the perpetrator of 10.7% of casualties are government forces and pro-government international military forces and 19.5% of the perpetrators, have not been identified yet.

10. Recommendations

10.1. Corruption is a major challenge for people to enjoy human rights and peace in Afghanistan. The government is responsible to find out the weak points and deficiencies of the fight against corruption, and create a mechanism to fight corruption transparently, effectively, seriously, sincerely in a nonselective manner. It must end the culture of impunity.

10.2 Ensuring security is the most fundamental duty of government. The government must be responsible for fulfilling its human rights obligations to ensure the security, rights and fundamental freedoms of citizens, and make its efforts to ensure the citizens' security and welfare, through rule of law, good governance, capacity building and

⁷ Civilian casualties may, on the one hand, indicate a flagrant violation of the international humanitarian law or the law of war.

supporting of defense and security forces, and eliminate discrimination against women, and ethnic and linguistic groups.

10.3 The government must effectively end the culture of impunity and maintain its commitments to the values of the Constitution and its international obligations, and prosecute the perpetrators and violators of the law and bring them to justice.

10.4 The government must seriously consider the human rights values and the provisions of resolution 1325, in the peace process and have a transparent stand in this regard, so that the rights, fundamental freedoms, interests and values of the entire Afghan people are preserved.

10.5 The government should support the AIHRC, and make sure the AIHRC's budget, staff security is ensured and its recommendations are implemented. Similarly, support for civil society organizations, human rights defenders, the media and freedom of expression should be explicitly addressed and strengthened through the adoption of specific policies and procedures.

10.6. Under Resolution 1325 and the Sustainable Development Goals, the government has to accelerate the process of gender mainstreaming in the departments, especially the defense and security forces, as well as vigorously and continuously continue fighting against gender-based discrimination, physical, sexual and psychological harassment of women and girls.

10.7. The government should pay more attention to the realization of the right of children to education and adopt protective laws and mechanisms to protect vulnerable children, children with disabilities and children who are exposed to hard works. The government has to provide shelters for children with intellectual/mental disabilities.

10.8. The government must establish correction centers for children with minimum standards. Currently, out of 34 provinces, there are only 15 state-owned buildings, other centers are rental houses.

10.9. The government must embark and implement effective policies on reducing poverty, and unemployment. The implementation of the 2030 agenda, SDG must be seriously become a priority to the GoIRA

ⁱ UNICEF, retrieved 12/06/2018, from: <https://www.unicef.org/press-releases/ongoing-conflict-leaves-nearly-half-children-afghanistan-out-school>