



## Submission to the Universal Periodic Review of Afghanistan January 2019

### Introduction

Afghanistan's last Universal Periodic Review (UPR) was in January 2014, when most international forces were preparing to withdraw and hand over security responsibilities to the Afghan National Security Forces. Afghanistan's human rights situation has deteriorated since then, as fighting has intensified between government forces and insurgent groups, including the Taliban and the Islamic State of Khorasan Province (ISKP), the Afghan branch of the Islamic State, which emerged in 2015. Civilian casualties have steadily increased. In 2013, at least 8,638 civilians were killed or injured; in every year since, civilian casualties have surpassed 10,000.

Widespread fraud and violence marred the 2014 presidential elections, and the resulting impasse ended with a deal between the candidates and the establishment of a national unity government. President Ashraf Ghani came into office vowing to undertake a number of reforms to tackle corruption. He also made commitments regarding specific human rights concerns in the areas of torture, women's rights, and media freedom. While some of these reforms have resulted in legislation or new policies, these have had minimal effect in curbing abusive practices by state security forces, the judiciary and other institutions. Torture of detainees is routine, and the government has failed to hold perpetrators—including senior police officials—accountable. Afghan special police units have carried out forced disappearances and summary executions with impunity. Violence against women, including rape, murder, mutilation and assault—is widespread, and the perpetrators are rarely brought to justice. The number of girls in school is falling due not only to insecurity, but to discriminatory practices, lack of female teachers, and schools that lack boundary walls and toilets. While the media remain a vibrant part of Afghan civil society, the government has failed to investigate and prosecute dozens of cases of violence against journalists by security forces.

### 1. Torture, Enforced Disappearances and Summary Executions

During Afghanistan's second cycle UPR, several member states made recommendations urging that the Afghan government take steps to eliminate torture and other cruel, inhuman or degrading treatment or punishment (Denmark); elaborate a road map to improve prison conditions and to prevent mistreatment of prisoners (Poland); deploy possible additional efforts to prevent cases of torture and ill-treatment and to prosecute perpetrators (Italy); and intensify the fight against impunity (Germany).

In its response to recommendations made during the interactive dialogue, the Afghan delegation initially indicated that it would intensify its efforts to curb torture and prosecute perpetrators; implement, in the national legislation, provisions of the Convention against Torture; consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture; and respond positively to requests to visit made by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or

punishment.<sup>1</sup> Only the recommendation to respond positively to requests to visit made by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment made it into the government's [written response](#). However, as of July 2018, the government had not extended an invitation to the Special Rapporteur.

In the first year after the National Unity Government took office in September 2014, President Ghani announced a “zero-tolerance” approach toward torture and launched a national action plan to end it. Human rights activists in Afghanistan reported a slight decrease in the incidence of torture at that time, as police and intelligence officials were under increased scrutiny. However, by mid-2015, as fighting with the Taliban intensified, human rights activists reported that torture had resumed to previous levels or had increased in many places. In [its 2017 report, the United Nations Assistance Mission to Afghanistan \(UNAMA\)](#) found the highest levels of torture of conflict-related detainees in police custody since it began monitoring detentions in 2010. The UNAMA report said that 39 percent of detainees were subjected to beatings, electric shocks, or near suffocation by the Afghan police and intelligence agents. Police in Kandahar province tortured or mistreated a reported 91 percent of detainees, including by “forcibly pumping water into their stomachs, crushing their testicles with clamps, suffocating them to the point of losing consciousness, and applying electric current to their genitals, among other practices.”

In April 2017, the UN Committee Against Torture reported that it was “gravely concerned about the general climate and culture of impunity in Afghanistan as evidenced by the large number of cases of alleged human rights violations’ cases involving senior State officials,” and that it was concerned at the numerous reports, including from UNAMA, the International Criminal Court, the Afghanistan Independent Human Rights Commission (AIHRC) and human rights groups “that beatings, electric shocks, suspensions, threats, sexual abuses, and other forms of mental and physical abuses are largely and increasingly practiced on detainees” by the National Directorate of Security (NDS), Afghan National Police (ANP), and Afghan Local Police (ALP) in order to extract confessions.

While the Afghan government has fulfilled its obligation to bring national legislation into conformance with the Convention against Torture, incorporating the crime of torture in domestic law, it has not enforced the law. The government withdrew its reservations to the Convention against Torture and ratified the Optional Protocol. However, [amendments to the Criminal Procedure Code](#) allow security personnel to hold suspects accused of terrorist crimes and crimes against internal and external security for up to 70 days without requiring those suspects to be brought before a judge. Such provisions increase the risk of torture.

[Impunity remains the norm among the country’s security forces](#). The government has established human rights units in the relevant agencies, required personnel to participate in training on human rights, and reformed the law, but it has not prosecuted any ANP, ALP or NDS officials for torture. Those responsible for the most egregious practices, including senior police officials in Kandahar such as [Gen. Abdul Raziq](#), continue to enjoy government support. Human Rights Watch have received reports that ANP forces under Raziq have been responsible for forced disappearances and summary executions in Kandahar. There have been no official investigations into these incidents and no prosecutions.

The Afghan government is also failing in other areas to comply with its obligations under international human rights law. Human Rights Watch has documented summary executions of civilians by NDS special police units in Nangarhar, Kabul and Kandahar, and has received reports that

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<sup>1</sup> Italy, Russian Federation, Spain, Egypt, Tunisia, Hungary, Latvia, Mexico, Tajikistan, Thailand, France, Czech Republic, Poland, United Kingdom, Sweden, Morocco, Germany, Netherlands, Switzerland, Uruguay, Estonia, Slovakia, Austria, Denmark, Algeria and Portugal. A/HRC/26/4, 136.82-84., 137

other ANSF special forces, including the Khost Protection Force, have been responsible for [extrajudicial executions of civilians](#) . The Afghan government has continued to rely on militia forces, [some of which](#) have killed and assaulted civilians. Afghan security forces [have been complicit](#) in the sexual exploitation and recruitment of children, and as with other kinds of abuse, the government has failed to hold the perpetrators accountable.

### **Recommendations**

- Promptly and thoroughly investigate all allegations of torture of detainees, enforced disappearances, and summary executions and appropriately prosecute all those found responsible for committing, ordering, or acquiescing in these crimes.
- Enforce the existing legal prohibitions on the use of coerced confessions in judicial proceedings and take appropriate disciplinary action against prosecutors and judges who permit the use of such information.
- Provide compensation for all victims of torture in accordance with Afghanistan’s Anti-Torture Law.
- Promptly and thoroughly investigate all allegations of and appropriately prosecute all those found responsible for the recruitment and sexual exploitation of children.
- Invite the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Afghanistan.

## **2. Women’s Rights**

In the 2014 UPR, the Afghanistan delegation accepted numerous recommendations<sup>2</sup> on improving implementation of the 2009 Law on the Elimination of Violence Against Women (EVAW law), including the measures recommended to Afghanistan by the Committee on the Elimination of Discrimination against Women in July 2013. During the review (A/HRC/26/4), the Afghan delegation responded to some of the questions raised regarding the EVAW law, stating that the government strongly believed in the implementation of the law, and that perpetrators of violence against women would be prosecuted and punished. The government included none of these recommendations in its written response. It did accept the recommendation (Mexico) to invite the UN Special Rapporteur on violence against women. In November 2014, the Special Rapporteur visited Afghanistan and issued a report in May 2015.

In research carried out in 2017 and 2018, Human Rights Watch found that Afghan women seeking justice after facing violence continue to face formidable obstacles. Police routinely refuse to register cases and instead tell women who have been the victims of domestic violence to return to their husbands. In May 2018 [UNAMA reported](#) that even the most serious cases of murder and rape often never reach the courts. Afghan authorities routinely turn victims away or pressure them to accept mediation. Mediation does not provide justice to female victims of serious crimes, offering victims only a promise from her abuser not to repeat the crime. In some case, mediators themselves inflict abuse, for example by ordering girls or women to be given as compensation for murder, forcing women and girls to marry men who raped them, or excusing murder in the name of “honor.”

Despite a pledge from President Ghani in 2016 to end the imprisonment of women accused of running away from their families, Afghan police and prosecutors continue to jail women and girls for on charges of “moral crimes” that include “running away” from home, and committing or attempting to commit *zina*, or having sex outside of marriage. Rape victims can be charged with *zina* and

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<sup>2</sup>Austria, Australia, Belgium, Brazil, Canada, Chile, Croatia, Denmark, Ecuador, France, Finland, Germany, Greece, Iceland, Iran, Ireland, Indonesia, Italy, Latvia, Lithuania, Malaysia, Maldives, Mexico, New Zealand, Norway, Philippines, Portugal, Slovenia, Sweden, Tajikistan, Turkey, Uruguay, and the US. (A/HRC/26/4, 136.131-153)

imprisoned. These girls and women are subjected to invasive vaginal and anal examinations performed by Afghan government doctors, sometimes repeatedly on the same girl or woman including young girls, purportedly to determine whether a woman or girl is a “virgin.” These tests have no scientific validity and can constitute sexual assault. In a 2016 report, [the Afghanistan Independent Human Rights Commission](#) called “virginity tests” a form of sexual assault that should be abolished. Afghan officials claim that the government had since banned the examinations, but [officials have told Human Rights Watch](#) that the practice remains widespread, and many judges, prosecutors, and police officials told us they routinely order “virginity tests.”

In the second cycle, eight countries, including Bhutan, Chile, Croatia, Djibouti, Ecuador, Mexico, Portugal, and Switzerland, made specific recommendations urging the Afghan government to ensure equal access to education for women and girls. In its [opening statement](#) during the review, the Afghan delegation stated that “women’s rights and gender equality remained a top priority for the Government. ... Girls currently represented about 40 per cent of the nearly 9 million children attending school in Afghanistan. About 30 per cent of the school teachers and 15 per cent of the university lecturers were women.”

By 2018, those percentages have fallen, and the situation for girls’ education is getting worse. For the first time since 2002 the number of Afghan children studying is falling. A June 2018 UNICEF report found that up to 3.7 million children in Afghanistan – nearly half the children in the country – are out of school, and 60 percent of those are girls. In six of the country’s 34 provinces—Helmand, Kandahar, Paktika, Uruzgan, Wardak and Zabul—only 15 percent or less of girls are in school. The UNICEF findings are consistent with an [October 2017 Human Rights Watch report](#) that found that while deteriorating security is a significant barrier to girls’ education, girls were at increasing risk of missing school due to discrimination against girls within the school system; child marriage; lack of female teachers; and lack of facilities including boundary walls and toilets. The Afghan government [has 5,260 boys’ schools but only 2,531 girls’ schools](#), and 60 percent of Afghan government schools have no toilets, which deters girls, especially those who have begun menstruation, from attending school.

### **Recommendations**

- Promptly investigate and appropriately prosecute cases of violence against women, including so-called “honor killings.” EAW institutions should refer criminal offenses of violence against women to the criminal justice system, not to mediation or traditional dispute resolution mechanisms. Disciplinary action should be taken against EAW judges and prosecutors who seek mediation in criminal cases.
- End the abusive practice of “virginity examinations,” and discipline police, prosecutors and judges who order them.
- Enforce the Supreme Court ruling decriminalizing “running away” and discipline police, prosecutors and judges who continue to prosecute and imprison girls and women on such grounds.
- Take concrete steps to realize the right to primary and secondary education for girls by ending discriminatory practices; recruiting more female teachers and providing financial incentives to encourage female teachers to work in underserved areas; and ensuring that all schools have adequate boundary walls, toilets, and access to safe water.
- Promptly implement the National Action Plan to end child marriage.

### **3. Freedom of Expression and Media Freedom**

In the second UPR cycle, Afghanistan accepted recommendations from Belgium, Lithuania and the Maldives that the government ensure the right of free expression and investigate and prosecute all cases of violence against journalists.

Attacks on journalists have increased since Afghanistan's previous UPR in 2014. In 2017, the [Afghan Journalists Safety Committee \(AJSC\) documented](#) 169 cases of violence and threats against journalists—the highest number since the group was established in 2009. Government officials and security personnel were responsible for slightly more than half of the cases in the 2014-2016 period. Since then, insurgent attacks targeting journalists have increased. On April 30, a suicide bomber disguised as a photographer killed nine journalists in Kabul. Even though the government has [vowed to investigate](#) all cases of threats and violence by security personnel, members of parliament and other officials, and in some cases has launched investigations, it has consistently failed to prosecute the perpetrators. In 2015, [Human Rights Watch documented](#) 15 cases of threats and violence against journalists by government officials; there have been no prosecutions in any of the cases. In addition, Afghan journalists have reported that the government has failed to fully [implement the Access to Information Law](#), enacted in 2014, making it difficult and dangerous for the media to obtain information from public officials.

#### **Recommendations**

- Promptly and impartially investigate all attacks on journalists, and ensure that any officials or security force personnel found responsible for obstructing, abusing, or assaulting journalists are appropriately disciplined or prosecuted.
- Fully implement the Access to Information Law.

### **4. Transitional Justice, Impunity and the 2007 Amnesty Law**

During Afghanistan's second UPR, three recommendations focused on amending the government's amnesty law and ending impunity, and one from Belgium urging the government to prosecute officials implicated in unlawful violence and to put an end to impunity. The government also accepted three recommendations to this effect: to amend the National Reconciliation, General Amnesty and National Stability Law to allow for prosecutions of certain crimes, such as war crimes and torture (Sweden); remedy past human rights violations through the establishment of a transitional justice strategy (Morocco); and release the Human Rights Commission's conflict mapping report and ensure adequate security assistance for its staff (Netherlands).

The government of Afghanistan has made no progress on any of these.

The International Criminal Court prosecutor is seeking to open an investigation into alleged crimes in Afghanistan since 2003, when Afghanistan became a member of the court. Article 88 of the ICC's founding treaty requires members to adopt procedures under their national law to ensure full cooperation with the court. Afghanistan has yet to do so.

#### **Recommendations**

- Repeal the National Stability and Reconciliation Law and take action to end impunity for war crimes and crimes against humanity.

- Impartially investigate and appropriately prosecute crimes against humanity and war crimes in Afghanistan's national courts.
- Publish the Conflict Mapping Report, and initiate a consultative process involving representatives from civil society and communities across Afghanistan to assist in creating an appropriate transitional justice mechanism.
- Ensure full cooperation with the ICC, including through legislation to regulate the relationship between Afghanistan's domestic law enforcement agencies and the court.