

3 November 2008

Public

amnesty international

Afghanistan
Submission to the UN
Universal Periodic Review
Fifth session of the UPR Working Group of
the Human Rights Council
May 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

Under section B, Amnesty International raises concern in relation to the 2004 Constitution and the rule of law, the death penalty and unfair trials, and transitional justice and impunity.

Section C highlights Amnesty International's concerns in relation to the erosion of freedom of expression, women's human rights, civilians caught in the conflict, and internally displaced people and returnees.

In section D, Amnesty International makes a number of recommendations for action by the government to address the areas of concern.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

Afghanistan

Amnesty International submission to the UN Universal Periodic Review

Fifth session of the UPR Working Group, May 2009

B. Normative and institutional framework of the State

The 2004 Constitution and the rule of law

In December 2004, Afghanistan adopted a new Constitution that explicitly commits the government to observe the UN Charter, the Universal Declaration of Human Rights and international human rights treaties to which Afghanistan is a party.² Article 58 of the Constitution enshrined the establishment of the Independent Human Rights Commission of Afghanistan (AIHRC) and expanded its mandate from focus on transitional justice to having the responsibility to “*monitor respect for human rights in Afghanistan as well as to foster and protect it*”.

In 2006, the Interim Afghanistan National Development Strategy, the country’s road map for development, and the Afghanistan Compact, a political agreement between Afghanistan and donor countries, established a human rights benchmark for the government, the AIHRC, and its international supporters to strengthen the country’s capacity “*to comply with and report on its human rights treaty obligations*” by the end of 2010.

In its March 2008 annual review, the Joint Co-ordination Monitoring Board, which oversees the implementation of these benchmarks, conceded that progress had been slow in the area of human rights, and that there was still insufficient civilian oversight of government security forces and law enforcement agencies, most notably the National Directorate of Security.

In areas of the country controlled by the government, impunity prevails at all levels of administration. Arbitrary arrest and detention by the police and other official security agencies, as well as semi-official militias, are widespread. The Afghan judicial and security sectors lack the personnel, infrastructure and political will to protect and promote human rights. Additionally, more than 600 detainees are being held at the US-run Bagram military airbase³ and other US military facilities outside the protection of international human rights laws and domestic laws.

The Ministry of Justice (MOJ), which serves as the Government’s lead agency for implementation and mainstreaming of human rights, does not sufficiently collaborate with the AIHRC. Citizens lack confidence in the formal justice institutions and regard them as slow, ineffective and often corrupt. Most Afghans, and particularly women, have difficulty accessing courts and legal assistance; most cannot afford court fees or the transportation costs for attending often distant courts. Traditional community-based assemblies (*jirgas* and *shuras*) handle an estimated 80% of all disputes in Afghanistan, but they operate in isolation of state courts and without benefit of minimal standards of due process or evidence.

² Afghanistan has ratified, inter alia, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Rights of the Child and its two Optional Protocols.

³ The ICRC reports, in its July 2008 operational update, that it is visiting 600 detainees at Bagram military airbase.

The death penalty and unfair trials

In October 2007, the government executed 15 men. These were the first executions for three years marking an end to an unofficial moratorium on executions.

On 22 January 2008, Sayed Parwiz Kambaksh was sentenced to death for “blasphemy” in a grossly unfair trial, reportedly for breaching Article 347 of the Penal Code (disturbing or stopping a religious ritual or process or damaging a place of worship), an offence that does not carry the death penalty. On 21 October, the sentence was commuted to 20 years’ imprisonment.

On 16 April 2008, the Supreme Court of Afghanistan upheld around 100 death sentences issued by lower courts against individuals convicted of crimes including murder, rape, kidnapping and armed robbery. Afghan law provides for the death penalty for a wide array of crimes.

The trial proceedings in most of the cases violated international standards of fairness, including providing inadequate time for the accused to prepare their defence, lack of legal representation, weak evidence and the denial of the defendants’ right to call and examine witnesses. The strict adherence to the right to be presumed innocent was also not respected, given that some convictions were not based on “*clear and convincing evidence leaving no room for an alternative explanation of the facts.*”

Transitional justice and impunity

Only a handful of those responsible for serious violations of human rights and the laws of war during three decades of conflict ranging from the time of Communist rule (1978-1989), through the civil war period (1989-1996) and the Taleban era (1996-2001), have been brought to justice.

The December 2005 Action Plan on Peace, Justice and Reconciliation sought to address past abuses and promote national reconciliation. The Afghan government and its international supporters jointly committed in the 2006 Afghanistan Compact to implement the Action Plan. The Action Plan encompasses five measures: (1) acknowledgement of the suffering of the Afghan people, including the building of memorials; (2) vetting human rights abusers from positions of power and encouraging institutional reform; (3) truth-seeking and documentation; (4) reconciliation and national unity; and (5) establishing an accountability mechanism.

Little headway has been made in these five key areas, as acknowledged by the Joint Co-ordination Monitoring Board⁴ in January 2008. The government has not supported the Action Plan, including by failing to set up an advisory panel to help the President vet senior political appointments pursuant to Action point 2. Action point 5, addressing potential accountability for abuses, was undermined by the passing of an amnesty bill in March 2007, which attempted to provide immunity from prosecution to suspected perpetrators.

Many regional officials and militia commanders – so-called warlords – continue to flout the law. Only a handful of individuals have been prosecuted for these crimes. In 2006, Asadullah Sarwari, a government minister and former head of the intelligence service in the Communist government, was put on trial and sentenced to death for alleged war crimes committed between 1978 and 1992; however, his trial fell below international standards of fairness. Other cases have been successfully tried outside Afghanistan under the principle of universal jurisdiction, including in 2005 in the Netherlands (Habibullah Jalalzai and Heshamuddin Hesam) and in 2004 in the UK (Faryadi Zardad).

The prominence in the government and parliament of several key figures accused of serious human rights violations has seriously undermined their legitimacy and credibility. The government acceded to the Rome Statute of the International Criminal Court in February 2003, but it has yet to enact effective implementing legislation.

⁴ The JCMB is a high-level Afghan-international decision-making body entrusted with overseeing implementation of Afghanistan’s development plan.

C. Promotion and protection of human rights on the ground

Erosion of freedom of expression

Freedom of expression, which briefly flourished after the fall of the Taliban in 2001, has eroded as a result of increasing threats and attacks by both state and non-state actors.

The Taliban and other anti-government groups have targeted journalists, blocking nearly all reporting from areas under their control. In March 2007, the Taliban beheaded journalist Ajmal Naqshbandi and killed his driver Sayed Agha in Helmand province. Journalists have also been targeted by criminal gangs and warlords. On 7 June 2008 Abdul Samad Rohani, an Afghan journalist working for the BBC in Helmand province, was abducted and shot dead the next day, possibly as a result of his investigation of the narcotics trade. In May 2008, Afghan television journalist Nilofar Habibi was stabbed at the doorstep of her home in Herat, apparently for not wearing a *burka*. In June 2007, unknown gunmen shot and killed Zakia Zami, director of the private radio station *Radio Peace* in Parwan province. She had been critical of local warlords, who had warned her to close the station.

The government - in particular the National Directorate of Security (NDS) (the intelligence service) - and the Ulema Council (council of religious scholars) have attempted to reduce the media's independence. In addition to Sayed Parwiz Kambakhsh (see section above on the death penalty), Ahmad Ghous Zalmai, a journalist and former spokesman for the Attorney General, and Mullah Qari Mushtaq were each sentenced to 20 years' imprisonment for publishing a Dari translation of the Quran without the Arabic text.

In July 2008, the NDS detained Mohammad Nasir Fayyaz, presenter of the television programme *The Truth*, for "misrepresenting" government officials. In 2007, the NDS twice detained Kamran Mir Hazar, editor of an online news website, *kabulpress.org*, apparently for publishing articles critical of the government. In April 2007, at the instruction of the Attorney General, Abdul Jabit, police raided the offices of *Tolo TV*, to arrest journalist Hamed Haidary as well as the station head, for "incorrectly" quoting the Attorney General in a news bulletin. In June 2006, the NDS had issued a vague directive demanding that media outlets restrict reporting that is "against the national interest".

Women's human rights

Violence against women is on the rise and Afghan women are among the worst off in the world in terms of exercising basic human rights. According to the National Action Plan for the Women of Afghanistan (NAPWA), the average Afghan woman has a life span of 44 years, around 20 years short of the global average. Maternal mortality is one of the highest in the world at an estimated 1,600 to 1,900 per 100,000 live births and the literacy rate for adult women is 21% compared to 36% for men. Boys are twice as likely as girls to complete primary school, and this difference widens significantly at higher levels of education.

The last four years have witnessed increased participation by women in politics and public life. However, the conditions under which Afghan women exercise political rights remain constrained by social prejudice and violence.⁵ The most publicized such attack was the Taliban's assassination of Safia Ama Jan, head of Kandahar province's Women's Affairs Department, on 26 September 2006.

Women in Afghanistan suffer from high rates of domestic violence and do not have recourse to legal protection. According to the AIHRC, forced and underage marriages remain rampant: in 2004 in Helmand province, the AIHRC registered 144 cases of forced marriage. According to the Afghan Civil Code, the legal age of marriage for girls is 16 or 15 with the consent of her father or competent court. However, because of

⁵ Islamic Republic of Afghanistan, Ministry of Women's Affairs, National Action for the Women of Afghanistan 2007, p. 9-10

customary practices, approximately 57 percent of girls marry before the age of 16.⁶ Women who seek to flee abusive marriages are often detained and prosecuted for alleged offenses like “home escape” or “moral” crimes that are not provided for in the Penal Code.⁷

Civilians caught in an escalating conflict

Civilian casualties have been increasing every year since 2001 with 2008 proving to be the bloodiest year yet. According to media reports and records by NGOs, by 31 August 2008, more than 1,400 civilians had died in the conflict since January 2008. Most civilians were injured as a result of insurgent attacks (primarily suicide bombings or use of improvised explosive devices). Some 40 percent of civilian casualties are due to operations by Afghan and international security forces. Airstrikes alone killed 395 civilians between January 2008 and the end of August 2008. In response to criticism, in September 2008 NATO revised its rules of engagement to decrease the threat to civilians.

While some families of civilian casualties have received financial compensation from governments involved in military operations in Afghanistan, a systematic program of assisting those injured by Afghan and NATO/ US forces has yet to be developed.

Amnesty International is particularly concerned about the policy of NATO and US forces to hand over detainees to the National Directorate of Security (NDS), Afghanistan's intelligence service, which has demonstrated a pattern of human rights violations perpetrated with impunity. Dozens of NDS detainees, some arrested arbitrarily and detained incommunicado without access to defence lawyers, families, courts or other outside bodies, have been subjected to torture and other ill-treatment, including being whipped, exposed to extreme cold and deprived of food.

The plight of internally displaced people and returnees

The Afghanistan IDP task force, comprising aid agencies and the government, estimates that more than 200,000 people are internally displaced in Afghanistan because of “conflict, ethnic tensions or human rights violations, natural disasters such as drought, or secondary displacement in the case of refugees and deportees who have returned from neighbouring countries”.⁸ The situation for internally displaced people in conflict zones remains desperate as international and local humanitarian agencies by and large are unable to gain access to them and assess their needs.

More than five million Afghans have returned home since 2001 according to UNHCR and there are still over two million Afghans registered in Pakistan and around 1 million in Iran. UNCHR provides \$100 in aid to those refugees who agree to return home, but this sum barely covers the rising cost of transport, food and accommodation.

Many returnees from Pakistan and Iran face destitution, with scarce job opportunities, lack of access to land, shelter and water in addition to lack of basic services, such as health care and education. Some returnees become internally displaced because their property has been appropriated by local power-holders. Some 30,000 Afghans are living in makeshift camps in Nangahar and Laghman provinces following the closure in April of Jalozai refugee camp in Pakistan, which was home to some 80,000 people.⁹

D. Recommendations for action by the State under review

⁶ Islamic Republic of Afghanistan, Ministry of Women's Affairs, National Action for Women of Afghanistan 2007, p. 39.

⁷ Islamic Republic of Afghanistan, Justice Sector Strategy, June 2008, p. 1.

⁸ IMDC, “Afghanistan: Increasing hardship and limited support for growing displaced population”, 28 October 2008.

⁹ Integrated Regional Information Networks (IRIN), “Conflict-affected displacement “major” humanitarian challenge - Afghan Red Crescent”, 20 November 2007 and UNCHR Global Report 2006.

In order to uphold its commitment to human rights protection, Amnesty International calls on the government to:

The 2004 Constitution and the rule of law

Support the establishment of a Human Rights Unit in the Ministry of Justice to collaborate closely with the Independent Human Rights Commission of Afghanistan and promote effective protection of human rights;

Ensure that to the extent that traditional assemblies make quasi-judicial rulings, their procedures and decisions are in accordance with international standards of fairness, including the possibility of appeal to state courts and full equality for women;

Establish a clear and appropriate legal framework with full respect for relevant procedural safeguards for all international forces operating in Afghanistan.

The death penalty and unfair trials

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;

Ensure that those on death row are granted a fair trial in accordance with international law and standards.

Transitional justice and impunity

Implement the Transitional Justice Action Plan, in particular a truth-seeking mechanism to document past human rights in Afghanistan alongside any judicial proceedings, and establish an Advisory Panel for Appointments, to bar those accused of having committed war crimes, crimes against humanity or serious human rights abuses from holding senior government posts;

In advance of the presidential elections (2009) and parliamentary elections (2010), vet candidates facing credible allegations of serious human rights abuse and links to armed groups, militias and the drug trade;

Enact legislation that implements the Rome Statute of the International Criminal Court and allows the state to fully co-operate with the International Criminal Court.

Erosion of freedom of expression

Fully and effectively investigate and prosecute all those responsible for attacks on journalists, human rights defenders and others exercising their right to freedom of expression;

Ensure that no government agencies, and in particular the NDS, violate the right to freedom of expression.

Women's human rights

Ensure prompt, impartial and effective investigation of all reports of violence against women and that those responsible are brought to justice in fair trials, and grant victims reparations;

Develop programs to recruit women police officers and train other staff to enable women to access administrative and judicial assistance;

Build and ensure expert staffing for more shelters for women fleeing domestic violence.

Civilians caught in an escalating conflict

All international forces, including US-led Coalition forces and the NATO-led International Security Assistance Forces (ISAF), must immediately impose rules of engagement that ensure full compliance with

international humanitarian law, and improve coordination with Afghan national forces to ensure compliance with these rules;

Ensure that the NDS does not hold any detainees (whether or not initially taken by NATO forces). To the extent that the NDS conducts investigations, these must be in accordance with international law.

Internally displaced people and returnees

Ensure free and safe passage of humanitarian assistance to IDPs and refugees in Afghanistan, especially during the difficult upcoming winter months;

Ensure that returnees have their land and property restituted and intervene effectively where they are unable to recover them.

Appendix: Amnesty International documents for further reference¹⁰

Constitution, judiciary and rule of law:

Afghanistan: Justice and rule of law key to Afghanistan's future prosperity (AI Index: ASA 11/007/2007)

Afghanistan: Case of Abdul Rahman underlines urgent need for judicial reform (AI Index: ASA 11/008/2006)

Afghanistan: Re-establishing the rule of law (AI Index: ASA 11/ 021 2003)

Death penalty and unfair trials

Afghanistan: Prisoner of Conscience sentenced to death for downloading and distributing materials from the internet (AI Index: ASA 11/001/2008)

Afghanistan: Amnesty International dismayed by execution of 15 in Afghanistan (AI Index: ASA 11/014/2007)

Transitional justice and impunity:

Afghanistan: Addressing the past to secure the future (AI Index: ASA 11/003/2005)

Freedom of Expression:

Afghanistan: Protect media freedom from intelligence agency interference (31 July 2008)

Afghanistan: Journalist should be freed (21 October 2008)

Afghanistan: Prisoner of Conscience sentenced to death for downloading and distributing materials from the internet (AI Index: ASA 11/001/2008)

Women's human rights:

Afghanistan: Women human rights defenders continue to struggle for women's rights (AI Index: ASA 11/003/2006)

Afghanistan: Killing of Safiye Amajan violates laws of war and signals need for protection of activists (AI Index: ASA 11/016/2006)

Afghanistan: Women still under attack - a systematic failure to protect (AI Index: ASA 11/007/2005)

Afghanistan: Stoning to death -- human rights scandal (AI Index: ASA 11/005/2005)

Civilians and the conflict:

Afghanistan: Civilians suffer the brunt of rising suicide attacks (AI Index: ASA 11/006/2008)

Afghanistan: All who are not friends, are enemies: Taleban abuses against civilians (AI Index: ASA 11/001/2007)

Afghanistan: Mounting civilian death toll - all sides must do more to protect civilians (AI Index: ASA 11/006/2007)

Afghanistan: Detainees transferred to torture: ISAF complicity? (AI Index: ASA 11/011/2007)

¹⁰ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/afghanistan>

Afghanistan: NATO member states must uphold human rights standards through the establishment of body to investigate alleged violations of Afghanistan's human rights laws, empowered to provide restitution. (AI Index: ASA 11/020/2006)

USA: US detentions in Afghanistan: An aide-mémoire for continued action (AI Index: AMR 51/093/2005)

Refugees, IDPS and returnees:

Pakistan/Afghanistan: Thousands of displaced civilians in border area have right to international assistance (3 October 2008)

Afghanistan: Amnesty International's recommendations regarding refugee returns (ASA 11/001/2003)

Out of sight, out of mind: The fate of the Afghan returnees (AI Index: ASA 11/ 014/2003)

Background:

Afghanistan: No more empty promises in Paris: briefing paper (AI Index: ASA 11/007/2008)

Afghanistan: Human rights challenges facing Afghanistan's National and Provincial Assemblies - an open letter to candidates (AI Index: ASA 11/011/2005)

Afghanistan Annual report entries 2004-2008