

AFGHANISTAN

**Back-tracking, compromises
and failed pledges – human
rights sidelined in Afghanistan**

*Amnesty International
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February 2014*

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INTRODUCTION

In this submission, prepared for the Universal Periodic Review (UPR) of Afghanistan by the UN Human Rights Council in January - February 2014, Amnesty International assesses the Afghan government's human rights record over the past four years (May 2009 to June 2013). Amnesty International notes that insecurity, corruption, weak state institutions and shortfalls in funding remain serious challenges to improving the human rights situation in Afghanistan. However, the Afghan government and its international partners must bear responsibility for failing to prioritise human rights. While there have been some occasional attempts to improve the country's human rights situation, the government has yet to demonstrate genuine political will, through international assistance, to fulfil its international human rights obligations, including undertaking the necessary legal and institutional reforms to strengthen the rule of law and bringing perpetrators of human rights violations to justice, regardless of rank.

Amnesty International also assesses progress made by Afghanistan to implement key recommendations made by other states during its previous UPR review. Despite the government's promises to implement recommendations to strengthen support for the Afghan Independent Human Rights Commission, its functioning has since been severely compromised.

Amnesty International also highlights the most pressing human rights issues that have plagued the country over the past four years, including the lack of protection of civilians in conflict, arbitrary detention, torture and other ill-treatment, violence against women and girls, a worsening displacement crisis, and the death penalty. The organization makes a number of recommendations to the government to address these concerns.

FOLLOW UP TO THE PREVIOUS REVIEW

The previous government, also under President Karzai, accepted over 100 recommendations during the 2009 review, including to improve women's human rights¹ and the justice system,² to implement the 2005 Action Plan for Peace Justice and Reconciliation,³ to strengthen support for the Afghan Human Rights Commission,⁴ and to improve media freedom.⁵

Since that review, the government has made some progress, including through new laws, notably the Elimination of Violence Against Women Law in 2009, and training programmes for several hundred prosecutors and defence lawyers. In government-controlled areas, journalists and media organizations have generally enjoyed some freedom of expression despite threats from state and non-state actors.

However, some government measures to implement the UPR recommendations have been limited in scope and have even served to undermine some of the very recommendations it had accepted. For example, the government pledged to review the Shi'a Personal Status Law of March 2009 which regulates the personal affairs of Afghanistan's Shi'a population, including with regard to divorce and separation, inheritance, and marriageable age, because this law legitimised discriminatory social norms towards Shi'a women. Despite some revision of the law (as recommended by several states) in July 2009, a number of

discriminatory provisions remain, breaching the constitutional provision that men and women have equal legal status.

The 2005 Peace, Reconciliation and Justice Action Plan (approved by the government and international donors in 2006) to address past human rights violations and promote national reconciliation, expired in 2009 and was not renewed. A few of the Plan's action points have been implemented, including the establishment of a panel to advise the president on senior political appointments; however, this panel has not proved to be a credible vetting mechanism to prevent individuals who are alleged to have committed or facilitated serious human rights violations from holding public office. The spirit and aims of the Action Plan have been further undermined by the promulgation in 2009 of the National Reconciliation, General Amnesty and National Stability Law, which grants immunity from criminal prosecution to people involved in serious human rights violations and war crimes over the past 30 years and to members of the Taliban and other armed groups who pledge to cooperate with the Afghan government.

NORMATIVE AND INSTITUTIONAL FRAMEWORK IN AFGHANISTAN

NEW LEGISLATION AND REGULATIONS

In 2009, the Elimination of Violence Against Women (EVAW) Law was passed by presidential decree while parliament was in recess. The law, which criminalises some 20 acts of violence against women, is considered one of the government's landmark achievements since the Taliban era. However, challenges remain in fully implementing the law, including application of the law by police, prosecutors and the courts. In May 2013, the Parliamentary Committee on Women, Human Rights and Civil Society sought parliament's endorsement of the law. Many women's rights activists and civil society organizations fear that parliament, with its conservative majority, will water down the bill or throw it out completely.

In 2011, the small number of women's shelters that have been established in Afghanistan came under political pressure when the Ministry of Justice drafted a regulation on "Women's Protection Centres" seeking to give greater government control over their operations. Following an outcry from civil society groups and international NGOs, the draft regulation was revised and adopted.

NATIONAL POLICIES

The government and international donors have identified "governance, rule of law and human rights" as the key pillars of development for Afghanistan and have formulated commitments and benchmarks for performance in these areas in key national policy documents, including the 2006 Afghanistan Compact, the Afghan National Development Strategy (2008-2013) and the related National Priority Programmes, and the Tokyo Mutual Accountability Framework agreed at the Tokyo Development Conference in July 2012. However, the government has fallen short on delivering in these areas due in major part to significant funding gaps. Moreover, the government and its international partners have focused on short-term stability and security, without strengthening human rights and the rule of law.

NATIONAL INSTITUTIONS

The stewardship of the Afghan Independent Human Rights Commission (AIHRC) has been weakened with the appointment in June 2013 of five new commissioners, several of whom have a poor record of respecting and promoting human rights. The appointments were made after only little consultation with civil society although such consultation is required by guidelines set out in the 1993 Paris Principles on national human rights institutions. The independence and expertise of the AIHRC has been precarious since December 2011 when President Karzai decided not to renew the terms of three of the commissioners. The AIHRC chairperson attributed this decision to the anticipated release of the AIHRC's conflict mapping report covering serious crimes and abuses committed by armed factions from 1978 to 2001, which has not received government or international backing, and which remains unpublished.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

PROTECTION OF CIVILIANS IN CONFLICT

Thousands of civilians have suffered targeted and indiscriminate attacks by armed opposition groups, with national and international security forces also responsible for civilian deaths and injuries. During 2009-2012, the UN Assistance Mission to Afghanistan (UNAMA) reported a total of 28,532 civilian casualties, including 8,333 civilian deaths. Civilian casualties have increased by 24 percent in the first five months of 2013, with 3,092 civilians killed or wounded.⁶ The majority of civilian deaths over the UPR reporting period have been attributed to insurgent groups, with their use of improvised explosive devices particularly to blame.

A series of Tactical Directives issued by NATO in 2010 to the International Security Assistance Force (ISAF), including to regulate night raids, aerial strikes and indiscriminate fire on residential compounds, have contributed to a reduction in civilian casualties and injuries by international forces over the reporting period, according to UNAMA. In March 2010, most US special operations forces were for the first time brought under the same chain of command as regular US and NATO forces. However, forces such as the US Army's Delta Force and the Navy Seals, as well as civilian contractors, intelligence agencies, and special operations units from other countries remain outside the regular chain of command.

Amnesty International remains concerned by the apparent lack of effective and independent investigations into civilian casualty incidents and lack of access to justice for surviving civilian casualties and their families.

ARBITRARY DETENTION, TORTURE AND OTHER ILL TREATMENT

Arbitrary arrest and detention by the police and other security agencies, as well as by private militias working with the Afghan and international security forces, remain widespread. The National Directorate of Security (NDS), Afghanistan's intelligence service, continues to arbitrarily arrest and detain suspects without access to defence lawyers, families, courts or other outside bodies. UNAMA reports of September 2011 and

January 2013 found that torture and other ill-treatment persist in numerous detention facilities across Afghanistan.⁷ In February 2012, NATO forces halted prisoner transfers to some Afghan jails due to those findings, but in recent months some NATO troop-contributing countries have resumed transfers or stated that they were planning to do so.

On 25 March 2013, Afghan authorities assumed formal custody of the US detention facility at Bagram, despite concerns expressed by Amnesty International at torture and other ill-treatment of detainees by Afghan security forces. Amnesty International is also concerned that the USA continues to arbitrarily detain prisoners in its exclusive and indefinite control at Bagram – without charge or trial, and with no access to counsel.

Allegations of human rights violations by members of the Afghan Local Police are widespread and Amnesty International has raised concerns over weaknesses in vetting processes, training, command and control, and accountability and oversight mechanisms. More than 100 members of the Afghan Local Police were reportedly jailed for murder, rape, bombings, beatings and robbery in 2012. In June 2012, President Karzai called for the disarming of a US-supported Afghan Local Police Unit in Kunduz whose commander was convicted for raping 18-year-old Lal Bibi.

INTERNALLY DISPLACED PERSONS AND RETURNEES

Internal displacement has almost doubled since the last UPR in 2009.⁸ Some half a million – 493,000 – people are now displaced within Afghanistan, with over 100,000 people newly-displaced by conflict in 2012, according to UNHCR. Returning refugees frequently find that they are unable to return to the areas they originally fled.

For most internally displaced persons (IDPs), their rights to adequate housing, food, water and sanitation, health, education and other human rights have not been fulfilled. Over the past two winters there were over 100 confirmed IDP deaths in settlements in Kabul, mostly children, who reportedly died from the cold or illness. Displaced communities are also under constant threat of forced eviction.

The ability of NGOs and UN entities to respond to the urgent needs of displaced communities is hampered by low levels of funding for the Ministry of Refugees and Repatriation and an overall reduction in international humanitarian aid. Amnesty International research has found that humanitarian organizations are constrained by a *de facto* Afghan government policy which discourages humanitarian assistance which might provide a degree of permanence for the IDP settlements. This means that provincial authorities often deny permission to humanitarian organizations to drill wells and instead those organizations must pay for tanker deliveries to provide clean water.

The Ministry of Refugees and Repatriation has drafted a national policy to address the protection needs of IDPs in Afghanistan. The draft policy contains significant measures that, if implemented and adequately resourced, could dramatically help to fulfil the rights of IDPs.

THE RIGHTS OF WOMEN AND GIRLS

There is a significant gap between commitments to gender equality and women's rights and their implementation. Many of the objectives outlined in the National Action Plan for Women of Afghanistan (2008-2013) remain unfulfilled. In March 2012, President Karzai endorsed an Ulema Council (Council of Religious Scholars) code of conduct, according to which women should only travel with a male guardian and not mix with men in the

workplace or educational institutions.

Despite the passing of the 2009 Elimination of Violence Against Women Law women and girls continue to face endemic domestic violence, trafficking, so-called “honour” killings, forced and child marriages, and being traded to settle disputes. Attacks on schools and on female students also continue. The Afghan Independent Human Rights Commission documented more than 4,000 cases of violence against women from 21 March to 21 October 2012 although the true number is likely to be far higher.

Women human rights defenders are also at huge risk, such as Hanifa Safi, the Director for Women’s Affairs in Laghman Province, who was shot dead in July 2012; her successor Nadia Sidiqi was killed in December 2012. Women human rights defenders from across the country have told Amnesty International that the police, courts and other justice sector officials seldom address women’s complaints of abuses, including beatings, rape and other sexual violence, and frequently fail to press charges against and prosecute suspected perpetrators of violence against women. Despite efforts to increase the number of women in law enforcement roles, women are still insufficiently represented among the police force and judiciary.

Women who attempt to flee abusive marriages are often detained and prosecuted for alleged offences such as “home escape” or “moral crimes” although these “offences” are not provided for in the Penal Code and breach international human rights law.⁹

Women’s participation in peace and reconciliation processes remains limited. Only nine women have been appointed to the High Peace Council – the body tasked with negotiating with the Taliban and other armed groups – and even these women have been sidelined in key peace negotiations, contrary to UN Security Council resolutions on Women, Peace and Security. Amnesty International and civil society organizations are concerned that human rights, including women’s rights, are being traded away in the talks for the sake of political expediency.

DEATH PENALTY AND JUSTICE SYSTEM

Despite serious fair trial concerns expressed by Amnesty International, legal experts and other human rights groups, the Supreme Court has upheld death sentences and a number of executions have been approved by President Karzai over the reporting period. In October 2010, President Karzai, acknowledging Afghanistan’s fallible justice system, ordered the judiciary to review all death row cases; however, some 18 individuals were executed between June 2009 and May 2013. Amnesty International opposes the death penalty in all cases as a cruel, inhuman and degrading punishment that violates the right to life.

FREEDOM OF EXPRESSION

Afghan journalists have attained some level of media freedom in government-controlled areas, but continue to face threats and attacks by both state and non state actors. A draft Mass Media Law, tabled in 2012, proposes greater government control over the media. It envisages the creation of a 15-member High Media Council, headed by the Minister of Information and Culture and comprising other government officials, and charged with checking and controlling press and broadcast media.

In areas under Taliban influence or control, journalists face severe restrictions in reporting, and are frequently subject to threats and attacks. On 21 February 2012, journalist

Khadem Bhadurzoy was reportedly beheaded by insurgents in Urgon District of Paktika Province in south-eastern Afghanistan.

Media workers also face intimidation, interference and attacks from state actors. *Radio Kapisa FM* director, Hojatullah Mujadadi, was arrested on 18 September 2010, which was election day, and detained by the National Directorate of Security (NDS) for four months. He claims he was threatened by both the Kapisa governor and NDS officials because of his independent coverage of the situation in the province. The NDS accused him of acting as an accomplice to the Taliban.

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Afghanistan:

Strengthening human rights and ending impunity for human rights violations:

- To repeal the 2007 National Reconciliation, General Amnesty and National Stability Law;
- To strengthen the independence and capacity of the Afghan Independent Human Rights Commission.

Protection of civilians in the conflict:

- To ensure that all pro-government military action, including by Afghan National Security Forces and international forces, agencies and civilian contractors, is fully compliant with international human rights and humanitarian law;
- To ensure investigation, accountability and remedy for civilian casualties resulting from national and international military operations;
- With the support of NATO/ISAF (International Security Assistance Force), to put in place effective mechanisms to monitor and independently investigate civilian casualties attributed to the Afghan National Security Forces and to ensure timely and effective remedies to the victims.

Arbitrary detention, and torture and other ill-treatment:

- To ensure that transfers of detainees to Afghan authorities do not take place until effective safeguards against torture and other ill-treatment are in place in the detention system;
- To ensure that all allegations of torture or other ill-treatment, whether in Afghan or ISAF/US custody, are promptly, thoroughly, effectively, impartially and independently investigated in accordance with international law, and that those responsible are prosecuted in fair trials, without recourse to the death penalty.

Internally displaced persons and returnees:

- To consider the full range of durable solutions for IDPs and returnees, including local integration or resettlement elsewhere, as well as return to home communities, in safety and dignity;

- To enact and enforce a clear prohibition on forced evictions;
- To allocate adequate financial and human resources for the swift implementation of the National Policy of The Islamic Republic of Afghanistan on Internal Displacement.

The rights of women and girls:

- To establish benchmarks for assessing the implementation of the Elimination of Violence Against Women Law;
- To implement UN Security Council Resolutions on Women Peace and Security, including by supporting the participation of women in peace talks, and continuing to increase the proportion of women playing an active role in the Afghan National Security Forces, in particular the Afghan National Police Force, while ensuring their safety and dignity in their place of work;
- To address the low conviction rate of perpetrators of gender-based violence, including by ensuring that prompt, impartial and effective investigations are carried out into all such allegations, and ensuring that perpetrators are brought to justice.

Death penalty and the justice system:

- To commute all death sentences and to introduce a moratorium on executions with a view to the abolition of the death penalty, in line with UN General Assembly resolutions adopted since 2007, including resolution 67/176 of 20 December 2012;
- To ensure that all those potentially facing the death penalty are tried in accordance with international standards for fair trial.

Freedom of expression:

- To fully and effectively investigate and prosecute those responsible for attacks on journalists, human rights defenders and others exercising their right to freedom of expression;
- To ensure that no government entities restrict the right to freedom of expression, and that media regulations conform to Afghanistan's international human rights obligations.

ENDNOTES

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review of Afghanistan*, A/HRC/12/9, 20 July 2009, for example recommendations: 16 (Indonesia); 24 (Jordan); 26 (Philippines); 27 (Slovenia); 28 (Finland); 29 (Finland); 30 (Switzerland); 31 (Republic of Korea); 33 (Bahrain); 34 (United Kingdom); 35 (United States); 36 (United States); 38 (Tunisia); 39 (Austria); 40 (Sweden); 41 (Albania); 50 (Hungary); 51 (Brazil); 52 (Spain); 59 (Austria); 76 (Algeria) 78 (Islamic Republic of Iran); A/HRC/12/9/Add.1, 18 September 2009, recommendation 19 (Japan).

² A/HRC/12/9, for example recommendations: 12 (Nepal); 13 (The Netherlands); 14 (Pakistan); 19 (Egypt); 47 (Denmark); 61 (Canada); 62 (Austria); 64 (United Kingdom); 65 (Malaysia); 66 (Czech Republic); 67 (Jordan); 68 (Japan); 69 (Spain); A/HRC/12/9/Add.1 recommendation 19 (Japan); 28 (United States); 29 (Turkey).

³ A/HRC/12/9/Add.1, for example recommendations: 23 (Norway), 24 (Mexico), 25 (Netherlands), 26 (Morocco).

⁴ A/HRC/12/9, for example recommendations: 9 (Algeria), 10 (Jordan), 11 (Finland).
A/HRC/12/9/Add.1, for example recommendations: 8 (Finland), 9 (Spain), 10 (Czech Republic).

⁵ A/HRC/12/9, for example recommendations: 56 (Norway), 70 (Sweden), 71 (Spain), 72 and 73 (Hungary). A/HRC/12/9/Add.1, for example recommendations: 34 (United States), 35 (Netherlands).

⁶ UNAMA News, “Ahead of Council meeting, UN envoy highlights rise in Afghan civilian casualties” 11 June 2013,
<http://unama.unmissions.org/Default.aspx?tabid=12254&ctl=Details&mid=15756&ItemID=36932&language=en-US>

⁷ UNAMA, “Treatment of Conflict-Related Detainees in Afghan Custody - One Year On”, January 2013:
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⁸ See: UNHCR Afghanistan, “Conflict-Induced Internal Displacement—Monthly Update”, January 2013: [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/F5D5FA95E6664D31C1257B270050ABC/\\$file/IDP+Monthly+Update+Jan+2013.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/F5D5FA95E6664D31C1257B270050ABC/$file/IDP+Monthly+Update+Jan+2013.pdf) UNHCR Afghanistan, “Statistical Summary of Conflict-induced Internal Displacement in Afghanistan (as of December 2011)”: http://afg.humanitarianresponse.info/sites/default/files/External_v9.pdf

⁹ “Girls arrested in elopement cases constituted 70 per cent of all female prisoners in the country”. See: <http://www.pajhwok.com/en/2012/09/16/elopement-not-crime-minister-tells-house-panel>.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Afghanistan: The Tokyo Mutual Accountability Framework and the Long Hard Road to Justice, 2 July 2013 (Public Statement, ASA 11/009/2013)

Afghanistan: Talks with the Taliban must focus on justice and human rights, 19 June 2013, (News Story)

Afghanistan national policy for internally displaced persons, 4 June 2013, (Open Letter, Index: ASA 11/005/2013)

Afghanistan: Woman killed for “dishonouring” family, 30 Apr 2013 (News Story)

Afghanistan: Bagram prison transfer raises torture concerns, 8 March 2013, (Public Statement, Index: ASA 11/002/2013)

Afghanistan: Another women’s affairs official murdered, 10 December 2012 (Press release, Index: PRE01/605/2012)

UK holds off on detainee transfers to Afghan authorities, 29 November 2012 (Press release, AI Index: PRE01/585/2012)

Open Letter to the Government of Afghanistan, the United Nations, Other Humanitarian Organisations and International Donors: The critical need for winter assistance and longer term solutions for internally displaced persons in Afghanistan, 19 October 2012 (Index: ASA 11/019/2012)

Afghanistan: Urgent need for justice after killing of female official, 13 July 2012, (Press release, PRE01/344/2012)

Afghanistan: Strengthening the rule of law and protection of human rights, including women’s rights, is key to any development plan for Afghanistan, 26 June 2012, (Open Letter, ASA 11/012/2012)

Afghanistan: Attack on hotel shows Taleban’s disregard for civilian life, 22 June 2012 (Press release, Index: PRE01/305/2012)

Afghanistan: Fleeing war, finding misery: The plight of the internally displaced in Afghanistan, 23 February 2012, (Report, ASA 11/001/2012)

Afghans fleeing war find misery in urban slums, 23 February 2012, (Press Release Index: PRE01/098/2012)

¹ All of these documents are available on Amnesty International’s website:
<http://www.amnesty.org/en/region/Afghanistan>

Afghanistan ten years on: Slow progress and failed promises, 5 October 2011
(Briefing, Index: ASA 11/006/2011)

NATO halts Afghanistan detainee transfers after torture claims, 7 September 2011
(Press Release, Index: PRE01/442/2011)

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Afghanistan, Kabul, 20 July 2010*, 16 July 2010 (Index: ASA 11/009/2010)

*Afghanistan: Control of US special forces in Afghanistan a step toward
accountability*, 17 March 2010 (News Update: Index: ASA 11/002/2010)

Afghanistan: Human rights must be guaranteed during Taleban talks, 26 January
2010 (Press Release, Index: PRE01/025/2010)

Afghanistan: 10-Point Human Rights Agenda for President Karzai, 1 November
2009, (Index: ASA 11/017/2009)

Afghanistan: Taleban must immediately stop targeting civilians in Afghanistan, 28
October 2009, (Public Statement, Index: ASA 11/014/2009)

*Afghanistan: Human Rights Council adopts Universal Periodic Review outcome on
Afghanistan: Amnesty International urges implementation of the Action Plan for
Peace, Justice and Reconciliation*, 25 September 2009 (Public Statement, Index:
ASA 11/013/2009)

Afghanistan: Urgent investigation into civilian deaths needed, 7 May 2009 (Public
Statement, Index: ASA 11/008/2009)

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