

Afghanistan

Human rights challenges facing Afghanistan's National and Provincial Assemblies – an open letter to candidates

Afghanistan is at a critical juncture in its development as the Afghan people prepare for nationwide elections for its National Assembly (*Wolesi Jirga*) and provincial councils.

In the near future candidates will learn whether they have been chosen to become deputies and take part in Afghanistan's first representative assemblies for a generation. They will have the responsibility of framing laws that will shape the lives of millions; establishing practices that may lead the nation in decades to come.

This open letter is an appeal to deputies to become familiar with Afghanistan's international human rights obligations¹ and to put human rights at the top of their legislative agenda once they are in office. The *human rights of women* and *the rule of law over the rule of the gun*, the subject of this open letter to candidates, are two of Amnesty International's (AI) human rights concerns in Afghanistan. This open letter also introduces the organisation to prospective deputies.

What is Amnesty International?

Amnesty International, an independent, non-governmental organization with more than a million members worldwide, has a vision of a world in which every person enjoys all of the human rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. In pursuit of this vision, we undertake research and action focused on preventing and ending grave abuses of the rights to physical and mental integrity, freedom of conscience and expression, and freedom from discrimination, within the context of promoting all human rights, which are indivisible and interdependent.

The organisation does not support or oppose the views of the victims whose rights it seeks to protect; rather we are concerned solely with the impartial protection and promotion of human rights laws and practices. AI's members form a global community of human rights defenders whose principles include international solidarity, effective action for the individual victim, the universality and indivisibility of human rights, impartiality and independence, and democracy and mutual respect.

Enable the women of Afghanistan to lead lives free from fear of violence

The women and girls of Afghanistan face an uncertain future. Millions suffer a hidden, pervasive violence at the hands of their own families and communities. They

¹ Afghanistan is party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), the Convention against Torture (CAT) and the Convention on the Elimination of Racial Discrimination (CERD).

are cornered by an absence of the rule of law, by the primal place of traditional practices or customs, including forced or underage marriage and those relating to ‘honour’, depriving them of a voice in their own lives; and by codified laws that demean women and fail to give them the same protection enjoyed by men.

As deputies are aware, women candidates have been targeted and killed during the campaign period and AI shares the fears of defenders of women’s rights that these attacks will continue once women take their place in nationwide assemblies.

Amnesty International’s reports have conveyed women’s accounts of suffering for several years now². Their voices call out for change and AI urges you to work with the government to build on the measures enacted aimed at advancing women’s rights and place in society³.

Changes to the criminal justice sector have been slow to positively affect the lives of the majority of women in Afghanistan. Amnesty International has received numerous accounts from Afghan women of continuing impediments in accessing justice. They include a judiciary that lacks adequate professional training and is overwhelmingly male and sentences for ‘crimes’ such as “running away” which have no legal basis. There is evidence that discriminatory attitudes of police officials condemn female victims to further violence: in many instances, women fleeing violent abusers are often returned to their perpetrators, or placed in jail.

Prisons across Afghanistan contain women who allege that they have not committed a criminal act. Many jailed women claim to be incarcerated for transgressing social norms and morals, such as refusing to marry against their wishes or fleeing violence from family members.

While the Afghan Constitution provides for equality between men and women⁴, it does not contain clear and unequivocal safeguards against violations and abuses of

² See, *inter alia*, *Afghanistan: Women failed by progress* (AI Index: ASA 11/015/ 2004); *Afghanistan: ‘No one listens to us and no one treats us as human beings’ - Justice denied to women* (ASA 11/023/2003); *‘Stop Violence against Women’: Lives Blown Apart – Crimes Against women in times of conflict* (ACT/77/075/2004) and *Women still under attack – a systematic failure to protect* (ASA 11/007/2005), issued 30 May 2005.

³ The active participation of women in public affairs in the post Taliban period has been marked: more than 200 women attended the emergency Loya Jirga (Grand Assembly) in early 2002, while 102 of the 500 delegates of the constitutional Loya Jirga in December 2003 were women. Article 83 of the Constitution of the Islamic Republic of Afghanistan, adopted on January 2004, provides the basis for equality of women before the law while Article 22(1) of the law governing the conduct of the *Wolesi Jirga* and provincial councils’ election determines women’s participation in the election as “*in accordance with the requirements of ... the Constitution, according to which the number of female representatives shall be at least twice the number of existing provinces of the country.*” Therefore, there will be at least 68 out of 249 seats filled by women – three of which must be for Kuchi women - for the *Wolesi Jirga* and between three and eight seats on each of the provincial councils.

⁴ Article 22 of the Constitution.

their rights by individuals, state and non-state actors. A Constitution cannot be sufficient to prevent human rights violations.

Though the perpetrators are invariably ordinary members of the Afghan population, the lack of effective protection and prosecution from the state towards the abusers has created a culture of acceptance and impunity. The first responsibility lies with the state to uphold its duties to all its citizens, male and female.

Amnesty International calls on assembly members to:

- Publicly condemn all forms of violence against women and urge the relevant authorities to bring perpetrators to justice;
- Propose and ratify laws into national legislation that will give effect to the Covenant on Elimination of all forms of Discrimination against Women (CEDAW), to which Afghanistan is a state party, and ensure that customs, traditions or religious considerations cannot be invoked as justification for violence against women or other forms of discrimination against them;
- Remove from law those provisions which are discriminatory towards women and girls;
- Adopt laws that respect and protect the rights of women and girls, criminalising acts that constitute violence against women, as described in the UN Declaration on Violence against Women, General Recommendation 19 of the UN Convention on the Elimination of Discrimination Against Women,⁵ the Beijing Platform for Action and the Rome Statute of the International Criminal Court;
- Initiate human rights awareness campaigns among the public that engage and local community, including religious, leaders, generating their support for upholding the protection and promotion of women's human rights.
- Challenge the tolerance of violence against women within society and urge traditional and other informal authorities to take effective action to fight it.
- Support women human rights activists and ensure in law and practice that they are protected from violence, harassment and intimidation, both by the authorities and by non-state actors.

Replace the rule of the gun with the rule of law

A generation of armed conflict has left the criminal justice system in tatters and many of the abusers, still able to carry out human rights violations, apparently, beyond the reach of justice.

⁵ Committee on the Elimination of Discrimination Against Women, *General Recommendation 19, Equality in Marriage and Family Relations* (13th session, 1994), UN Doc. HRI/GEN/1/Rev.1, para. 41.

Reform, strengthening and accessibility of the justice system

The rule of law is an essential component in the rehabilitation of Afghanistan. Failure to uphold the rule of law results in continuing, widespread human rights violations, committed with impunity. In Afghanistan, this fosters the perpetuation of violence against women, whether through custom and parallel justice systems or flawed laws and practices; the renewed marginalisation of vulnerable people and communities; impunity for past violations; the imprisonment of prisoners of conscience, unfair political trials, torture and ill-treatment, “disappearances” and unlawful killings.

The formal justice system remains largely inaccessible to the wider Afghan public, especially in rural Afghanistan, where informal or parallel systems dominate. This is due, in part, to the lack of judicial infrastructure in rural areas and in part to the ignorance on the part of judges, prosecutors and other legal professionals of applicable laws and practices. As a consequence, human rights protection and access to a fair and impartial criminal justice system continue to prove elusive⁶.

As a result women particularly suffer condemnation and even imprisonment should they come forward and seek protection from the state.

Recognising that rehabilitation of the justice sector is a long term challenge, Amnesty International calls on assembly members to:

- Establish an effective, adequately resourced and independent police Ombudsperson
- Ensure that the police and all judges are trained in and are adequately familiar with the Afghan Constitution and criminal, civil and other aspects of Afghan law, and receive training in international human rights law and standards;
- Enact legislation that will improve access to justice for women.

Resist human rights abuses and promote accountability in the ‘war on terror’

The presence of human rights law and standards in the justice system contributes to the reduction of human rights violations in the administration of justice. Yet, laws and practices supporting human rights have been under attack in the ‘war on terror’ as armed groups, government and foreign forces continue to carry out abuses of international human rights and international humanitarian law.

⁶ See recommendations in various AI’s reports, including: *Open letter to participants in the international conference on reconstruction assistance of Afghanistan* (ASA11/006/2004); *‘No-one listens to us and no-one treats us as human beings’ op cit*; *Afghanistan: Re-establishing the rule of law* (ASA 11/021/2003); *Afghanistan: Crumbling prison: desperately in need of repair*” (ASA 11/017/2003); *Afghanistan: Police reconstruction essential for the protection of human rights* (ASA 11/003/2003)

Arbitrary detention, without access to legal representation or medical attention violates international laws. Occasionally resulting in death, they constitute a terrible blow to justice and human dignity.

United States (US) and Coalition Forces (CF) operate multiple detention centres on Afghan territory, some of which are not accessible even to the International Committee of the Red Cross. Some of these centres, – including the Bagram facility – have been the site of grave human rights violations – including torture and death in custody, possibly including non-Afghans, taken to or from US facilities for the purpose of interrogation. The Afghan government will be held responsible for torture and ill-treatment in these detention centres a state party to the Convention against Torture (CAT).

Amnesty International is alarmed at reports indicating that The Afghan National Security Directorate, Afghanistan's intelligence service, is carrying out arbitrary arrests and detention cross the country, some allegedly on the request of US forces. Such acts contribute to a climate of impunity and weakening of international standards of protection.

Amnesty International urges assembly members to:

- Enact legislation that will end of the legal limbo represented by the practice of illegal detention, in undisclosed locations, in violation of international law by US and Afghan forces; and granting all detainees full access to lawyers, doctors and families;
- Call on the government to ensure that all detainees are treated humanely, in accordance with international law and standards, and that all those held are charged and given fair trials in a prompt manner;
- Press the Afghan government to carry out an independent inquiry to be carried out into the practices of both Afghan and US/CF forces in respect to detention, with the authority to bring charges against those alleged to have tortured or ill-treated detainees;
- Call on the US and Afghan authorities to halt the forcible return or transfer of foreign nationals to countries where they would face serious human rights violations;
- Call on the government to ensure that any Afghan citizens returned to the country, notably from Guantánamo Bay, are not held without charge;
- Urge the government to grant UN human rights monitoring mechanisms, as well as Amnesty International and other human rights organizations, access to detainees and officials in official and undisclosed locations; and
- Carry out parliamentary investigations into abuses by government forces, foreign forces and armed groups, and explore strategies for raising human rights concerns with armed groups.

Addressing human rights violations allegedly carried out in the past

Amnesty International believes that addressing past crimes is an essential part of rebuilding Afghanistan. To date, it has remained the most elusive⁷. The future adherence to the rule of law in Afghanistan is linked to delivering justice and ending impunity in respect to human rights violations carried out in the past: this is essential to instil a culture of accountability and ensure that such acts are not repeated and that justice is delivered to victims and survivors.

Participation by known armed faction leaders and human rights abusers in the 18 September elections has helped to deepen the perception of many Afghans that there is impunity for violators, and that the international community ‘approves’ of their past actions. While factional leaders have been permitted to take an active role in governance in the hope that they would ultimately disarm, it has become clear that many have not done so, and this has called into question whether the authorities are serious about addressing past violations.

Amnesty International is still extremely concerned at the continuing climate of impunity in Afghanistan. To date there have been no convictions against alleged human rights violators. This impunity gap undermines an already weakened justice system and continues to contribute to problems of national insecurity and lawlessness.

Amnesty International is concerned that if perpetrators of war crimes and serious human rights abuses are allowed to escape criminal responsibility and to hold positions of authority, human rights violations are likely to continue to be committed.

In January 2005, the Afghan Independent Human Rights Commission (AIHRC) published *A Call for Justice*, a public consultation process in which the Afghan people expressed their thirst for justice for crimes committed against them over the last quarter of a century⁸. It contains analysis and a number of recommendations that AI urges you to support.

In respect to the work of the AIHRC, Amnesty International urges deputies to:

- Support and implement the key recommendations from AIHRC’s *Call to Justice* report to create a long term strategy to address past crimes; and
- Support the work of the Afghan Independent Human Rights Commission and fully involve them in parliamentary work concerning human rights.

⁷ The Afghan government ratified the Rome Statue of the International Criminal Court (ICC) on 10 February 2003.

⁸ See the website of the Afghanistan Independent Human Rights Commission for details, at: <http://www.aihrc.org.af> . AI drew attention to the important role played by the AIHRC in its 8 December 2003 *Open letter to President Karzai on Human Rights Protection and the draft Constitution* (ASA 11/028/203)

Furthermore, Amnesty International calls on deputies to:

- Ensure that crimes under international law are crimes under Afghan law, and that these are enacted;
- Suspend all officials suspected of having committed war crimes or serious human rights abuses from duty pending investigation;
- Ensure that under no circumstances should amnesties, pardons or similar measures be given for crimes against humanity, war crimes and other serious human rights violations, under national and international law;
- Allocate resources to the courts to ensure that they are able to investigate past violations of human rights in a fair and effective manner;
- With the international community and in full consultation with Afghan civil society and the United Nations (UN), develop and implement a comprehensive, long term plan to end impunity for suspected perpetrators of war crimes, crimes against humanity and other crimes under international law that have been committed in all parts of Afghanistan;
- Urge the judiciary to bring to justice all those alleged to have committed human rights abuses in Afghanistan, regardless of nationality;
- Ensure that anyone suspected of having committed crimes should be brought to justice in proceedings which meet international standards of fairness;
- Enact legislation to facilitate co-operation with the International Criminal Court;
- Establish an independent enquiry into detention and interrogation procedures and allegations of abuse in Afghan facilities and that human rights organisations, such as the AIHRC, are given access; and
- Ratify the Optional Protocol to the UN Convention Against Torture.

Amnesty International recognises that the Afghan authorities face difficulties when addressing deeply rooted problems such as those relating to women and past human rights violations. Amnesty International looks forward to working with deputies, as many candidates have already expressed the view that human rights are inalienable, not to be traded or bargained away; and nor should impunity be extended to alleged human rights abusers.

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