

Afghanistan Independent Human Rights Commission (AIHRC)
Submission by the AIHRC under the Universal Periodic Review process
August 2013

Introduction

The AIHRC is a national human rights institution with (“A” Status) operating based on the provision of the Constitution (Article 58)¹ and in conformity with the ‘Paris Principles’. The AIHRC has clear mandate, vision and mission on protecting and promoting human rights values enshrined in its Law on the Structure, Duties and Mandate of the AIHRC². In addition, the AIHRC, for the first time, designed the four years Strategic Plan (2010-2013)³; and has been executing for maintaining efficiency and effectiveness to the extent possible. In preparing this submission, the AIHRC has consulted community leaders, civil society, religious leaders, women and child rights institutions, national and international NGOs about key human rights issues and recommendations.

Background

The paragraph C.1.6 of HRC resolution 16/21 cites that the second cycle of the UPR should focus on the implementation of the accepted recommendations and the developments of the human rights situation in the State under review. Therefore, the AIHRC cursorily focuses on the status of the recommendations and changes happened since then. The Working Group reviewed Afghanistan’s UPR report on 7 May 2009, which was adopted by the Plenary of Human Rights Council on 24 September 2009. Out of 143 recommendations, 117 were accepted, 10 rejected and 16 recommendations were left with no clear position. The second review of Afghanistan UPR report will take place in January-February 2014.

Status of the implementation of a number of recommendations

Recommendations No. 1, 2, 3, 4, 5, 6, 7, 8 and 64: To assess domestic laws compliance with international bills, the Human Rights Support Unit (HRSU) of Ministry of Justice (MoJ) reviews domestic laws in consultation with the AIHRC, CSOs, UNICEF, Ministry of Public Work based on Ministerial Council resolution and subsequent instruction by the Minister of Justice. The review outcome indicates that the current domestic laws have not considered the articles 20, 21, 22, 38, 39, 33, 34 and 36 of CRC and its optional protocols. HRSU proposes necessary amendments for submission to the Ministry of Justice. The AIHRC and CSOs have been advocating and working with the Legislative Department of MoJ to ensure that new legislations

¹ The Constitution of Afghanistan can be accessed at: <http://www.aihrc.org.af/en/laws/361/laws.html>

² Law on the Structure, Duties and Mandate of the AIHRC can be accessed at:
<http://www.aihrc.org.af/en/laws/360/laws.html>

³ The Strategic Plan can be accessed at: <http://www.aihrc.org.af/en/laws/359/laws.html>

do not contravene human rights standards. The AIHRC's Senior Legal Advisor is member to the Legislative Review Committee led by the Legislative Department of the MoJ. The AIHRC's representative reviews all draft laws and amendments for complying with human rights conventions.

Recommendation No. 4: In recent years, women rights and gender equality have been considered/incorporated in all levels of legislations, policymaking and adopting measures. Women rights have been considered in the National Action Plan for the Women of Afghanistan (NAPWA)⁴; gender policy units were established in 16 ministries. The new Law on Structure, Mandate and Responsibilities of the Independent Election Commission IEC (approved and enforced in July 2013) grants at least two seats out of nine commissioner's seats to women. Currently, three women have been appointed as IEC commissioners. There are three female ministers in the Cabinet, four women as deputy ministers, one provincial governor, and one district mayor. However, a number of articles of the Law on Elimination of Violence against Women were challenged recently by the conservative MPs perceived as contradictory to the Islamic principles. As result of advocacy efforts by national human rights institutions, international community and UN, the said Law has been taken out of the agenda of the plenary of the Parliament session. The Election Law endorsed by the President on 20 July 2013 has reduced women's participation in provincial councils from 25% stipulated in the former law, to 20%. The Family draft Law that the AIHRC and CSOs drafted still has not been decided for submission to the Council of Ministers for the final approval.

Recommendations No.5, 6, and 7: No step has been taken to review the *Shia* Personal Status Law after the enactment, ensuring conformity with the international commitment of Afghanistan before the international human rights conventions.

Recommendations No. 9, 10, and 11: The Ministry of Finance (MoF) allocated US 500,000\$ in 2012 and US 1,500,000 \$ in 2013 for the construction of the AIHRC headquarters office in Kabul and one of its office building in Nangarhar provinces. Despite the Government's reluctance on AIHRC's findings, recommendations and reports; recently, some instances can be noticed that the Government has been considering some of the recommendations produced by the AIHRC in policymaking measure on human rights issues. The AIHRC's reports on "Access to Justice"⁵, "From *Arbakis* to Local Police"⁶, "The cases of Torture in the Police Custodies", "The National Inquiry Report on Honor Killing and Rape"⁷ are the examples that were hurriedly rejected by the Government following their release. While the AIHRC shares all

⁴ The National Action Plan for the Women of Afghanistan can be accessed at: <http://mowa.gov.af/en/page/6686>

⁵ <http://www.aihrc.org.af/en/research-reports/1399/citizens-access-to-justice.html>

⁶ <http://www.aihrc.org.af/en/research-reports/1073/from-arbaki-to-local-police-today's-challenges-and-tomorrow's-concerns.html>

⁷ <http://www.aihrc.org.af/en/research-reports/1571/national-inquiry-on-rape-and-honor-killing-in-afghanistan-report-summary.html>

reports with respected Governmental institutions prior to release for the purpose of feedback and comments.

Recommendations No. 13 and 14: On the platform establishing and strengthening human rights units within the governmental institutions, the HRSU has been established in 2011 and functioning in the MoJ. Ministries of Foreign Affairs, Interior, Defense and the National Directorate of Security (NDS) possess functioning HRs offices. The UNDP and other donors still fund the HRSU; moreover, the HRSU of MoJ has not been included in the Administrative Structure of the MoJ. The AIHRC urges the Government to fully support HRSUs.

Recommendations No. 15 and 23: The High Office of Oversight and Anti-Corruption (HOO) has started public awareness programs aiming to tackle anti corruption, and established channel of communication with the public for reporting the HOO through telephone or in written on any case of corruption and bribery. The Government has not yet gotten the public trust through prosecution of the perpetrators of serious cases of corruption. For example, the very serious bankrupt case of Kabul Bank that more than an amount of 800 million UD \$ was stolen, still underlines developmental topics at the national and international levels. The HOO mandates to promote transparency and accountability, has not been able so far to record the assets/properties of the MPs.

Recommendations No. 16, 42 and 82: Gender equality topics have been mainstreamed in some of the social services initiatives such as “Education for all” and “Health services for all” designed by the Government, but on practical level, there are some obstacles and shortages achieving these objectives. Girls do not have equal access as boys to schooling because of insecurity; shortage/lack of schools facilities for girls and shortage of female teachers for girls’ schools; and poor facilities of higher education for young girls and women. In remote areas, health services for women, particularly reproductive health service is very weak. The conservative believes hinder implementation of reproductive health programs. Family planning and birth control is very pathetic; only 19% of women have access to contraceptive. The government is not fully capable to provide special education and health care for persons with disabilities. Many children, including girls with disabilities, are deprived of their education right. There are only three schools for blind persons and four schools for children with hear impairment across the country. Continuation of insecurity further effects the situation negatively, hinders provision of education and health services to the public, and ups the number of internally displaced persons (IDPs).

Recommendation 17: The Government’s counter narcotics programs seem to be incapable to achieve its objectives. The rationales for the said failure are included but not limited to insecurity, shortage/lack of job opportunities, high cost of agriculture input and water shortage for other crops and pest outbreaks encourage farmers to grow poppy as a high cash crop that develops illicit drug business.

Recommendations No. 19 and 22: The Government tries to protect and promote human rights through strengthening human rights office within the government. The Government has established human rights offices in the ministries of Justice, Foreign Affairs, Interior, and Defense. In addition, the Government has made a three years National Priority Program (NPP) on Human Rights and Civic Responsibilities, which is led by AIHRC. The challenges that undermine human rights protection and promotion are included but not limited to lack of political will, corruption, impaired judiciary system, nepotism and meritocracy; impunity provide

by interference/influence of powerful government and local authorities to perpetrators, and poor rule of law.

Recommendation No. 20: Regarding to access to justice, the Government and some of the donor agencies unfortunately insist on extending informal justice system, that deals with disputes and criminals cases at village level. Experience shows that, in most cases, resolutions made by informal justice system clearly contradict human rights standards particularly it ignores women rights. AIHRC's opposes informal justice because due to complicated social and political context, informal justice system provides influence to powerful local authorities, including groups of local police, illegal armed commanders and tribal leaders, which in the long run, undermines rule of the law and brings injustice.

Recommendations No. 5, 24, and 78: In Afghanistan, women do not enjoy of their human rights as men. Statistics show that women's presence in work market is 39 % less than that of men. Women constitute only 20 % of the Government employees. Women-led family constitutes 14.2 % of families in the country. In 2010/11, AIHRC recorded 273 cases of forced marriage. In 2010/11, the AIHRC recorded 2260 cases of violence against women. The AIHRC recorded 297 cases of running away from home by women in 2010/11, which indicates severe violence against women. Despite the legal prohibition on child labor, about 1.9 million children aged 6-17 are engaged in 22 kinds of hard works in Afghanistan. Of all 9065 respondents to the AIHRC's monitors, 10 percent of them stated that their children had married before 16. The AIHRC data of 2009/10 shows that 73.8 % of boys and 65.2 % of girls regularly attend schools, and 25 % of girls and 16 % of boys are not able to attend school. These are due to far distance of school from villages, shortage/lack of girls' school, insecurity and "cultural" barriers. The Government has to address these challenges and shortcoming due to its commitment towards international human rights conventions.

Recommendation No 26: During past 11 years, the Government to address the issue of inequality between women and men, has done significant initiatives such as establishment of the AIHRC, the Ministry of Women Affairs (MoWF), High Commission on Elimination of Violence against Women, gender units inside ministries, HRSU in MoJ, the Parliament and finally establishing civil society institutions. Having said this, still serious problems exist and undermine the equality of men and women. The *Shia* Personal Status Law and a number of articles of the Civil Code are the examples that can be pointed out in this regard. The drafted Family Law that has been jointly proposed to the Government by civil society organizations and AIHRC has not yet been officially adopted. In spite of some achievement taken place in the areas of health service for women, insecurity, lack of qualified health personnel, particularly female health staff, and lack of or poor reproductive health facilities are the most important challenges to be addressed. Women's civil and political presence has been increased since 2001. 27 percent of the Lower House of the Parliament is women. Women nominate themselves as presidential candidates; women take active participation in SCOs and media; women are members of political parties; and direct NGOs.

Recommendation No. 27 and 28: The Government tries to guarantee the rights of women enshrined in the international law, but many challenges hinder Government's efforts. Challenges can be named as misinterpretation of the *Sharia* text that ends up to women rights restriction; traditional and cultural barriers, insecurity, low capacity of judicial departments, lack/poor political will to support women's right and counter corruption.

Recommendation No. 29: The Ministry of Women Affairs, the AIHRC, CSOs, media, advocacy groups, women groups and human rights defenders are disseminating women right at various levels through conducting seminars, workshops, roundtable discussion/debate, conducting thematic research, implementation of outreach program through media organizations. As long as, rationales for women and men inequality are rooted in believes within the society since centuries, therefore, it is difficult to create the required environment in which both men and women enjoy of their human rights equally. However, the Government should not make these barriers as excuse and remain negligent in protecting and promoting women's rights.

Recommendation No. 31: The Ministry of Women Affairs has to encourage push all state and non-state institutions to consider gender equality in all policies and program implementation. However, due to lack of political will and challenges posed by some conservative elements the government seems to be failed implementing the gender equality policy, protection, and promotion of women rights. The AIHRC and CSOs do advocacy for gender equality and monitor the Government program about implementation of gender equality.

Recommendations No.32 and 44: The Ministry of Work and Social Affairs, the High Office of Disaster Preparedness, the Afghan Red Crescent Society, the Ministry of Rural Development and other governmental departments are obliged to address the situation of vulnerable groups such as poor people, disaster effected people and IDPs communities. Due to shortage of fund and low capacity, the mentioned institutions are not capable to implement the necessary measures to meet the basic needs of vulnerable groups. For example, the Government is responsible to collect, beggars (homeless men, women and children) from streets, and addresses their problems. Due to budget issue, the Government has been failed to do so.

Recommendations No. 33, 34 and 40: The Ministry of Women Affairs as focal point is responsible to implement the 10 years National Action Plan for the Women of Afghanistan (NAPWA) and urges other relevant ministries and institutions to do their responsibilities. Evident rationales and challenges such as lack of required budget, complicated financing system, low institutional capacity, insecurity and presence of conservative circles largely hinder smooth implementation of the said plan.

Recommendations No. 35, 38, 41, 51, 52 and 59: The Law on Elimination of Violence against Women has been enacted by the President, which is being executed by the law enforcement departments. The Attorney General Office and National Police have made some arrangements, which facilitate the implementation of the Law. However, the conservative MPs in the Lower House of the Parliament have recently challenged the Law. While the AIHRC, CSOs and international community broadly responded to these challenges, but the Government still is silent, and the Law might be amended in contradiction to international human rights bills. The AIHRC strongly urges and asks the Government to prevent any possible amendments that contravene CEDAW and other international human rights treaties that Afghanistan is a party.

Recommendation No. 36: The AIHRC has built close cooperation with the Ministry of *Hajj* and Endowment to disseminate human rights topics, including women right through Mosques. The AIHRC regularly holds awareness raising workshop on human rights for Mosques' *Mullahs*. Some developments have been taken place, as example, even a number of *Mullahs* contact the AIHRC staff whenever cases of human rights violation occur in their areas. Unfortunately, a number of very conservative *Mullahs* disseminate women rights according to their own

interpretations; they explicitly address public, saying women are not allowed to work, movement of women without male adherent is non-Islamic. Vendors in crowded bazaar in Kabul sell DVD and CDs of those *Mullahs*, preaching that the rights of women to work, social and political engagement...are so-called Western culture and are in contradiction to Islamic Principles. Unfortunately, in July 2013 a group of *Mullahs* in Baghlan province released a religious order (*Fetawa*) that prohibits women to work in offices, while, the officially legitimate authority to release Religious *Fetawa* is the Supreme Court of Afghanistan.

Recommendation No. 37: Well-known and influential figures and media have fundamental role on enhancing public awareness about human rights and women rights. However, media workers have been threatened, even killed by insurgents and warned by conservative elements. One of the MPs in the plenary session of the Lower House recently commented as such “it is proper time to announce *Jihad* against media” further he blamed media about dissemination of Western and non-Islamic culture. CSOs seriously reacted and rejected his comments.

Recommendation No. 43 and 45: The Government has taken decisive measures to prevent civilian casualty. Unnecessary air operation in residential areas has been prohibited and strict order has been given to the Afghan National Security Forces (ANSF) to refrain of attaching civilian during house searching operations. The AIHRC and UNAMA regularly publicize reports about civilian casualty and suggest appropriate recommendations to the parties to the conflict. Anti Government Elements (AGEs) are responsible for bigger portion of the civilian casualty; using indiscriminate tactics such as road side bombs, attacks markets, banks, mosques, kidnapping and killing humanitarian aid workers and civilians. The Government is able to prosecute members of ANSF while they harm civilians. On the hand, the Government lacks of capacity or jurisdiction to make accountable those members of International Military Forces (IMFs) or AGEs who violate rule of war. During 2012, the AIHRC's offices in three provinces held advocacy meetings on armed conflicts and reduction of civilian casualties. The meetings were participated by the officials and representatives of provinces, provincial councils, security police headquarters, officials of the Security Forces Coordination Center, ANA, public health, Red Crescent, CSOs, representatives of IOM, PRT, and UNAMA. The AIHRC presented its specific recommendations for reduction of civilian casualties.

Recommendation No. 46: Afghanistan is still in the list of those countries that permits death penalty. There is a list of more than 100 persons who have been sentenced to death by the High Court, but the President has not yet approved (as per the law, the President approves the death sentence announced by the High Court). However, as a result of public pressure, about 15 people who have been accused for very brutal or mass/indiscriminate killing, such as the case of shooting of 30 people that happened in Kabul Bank branch in Jalalabad city, were executed.

Recommendation No. 47 and 57: Article 29 and 30 of the Afghanistan's constitutions prohibit torture, inhuman treatment and cruel punishment and dismiss any confess obtained as a result of torture. The AIHRC's findings in 2012 indicate, police committed 42 cases of torture and the staff of the National Directorate of Security (NDS) committed 67 cases of torture. However, as a result of monitoring missions by the AIHRC the number of torture cases has been decreased comparing to the past. The President also has ordered the prohibition of torture during interrogation, and the Attorney General Office, has been legally mandated to prosecute the perpetrators of torture.

Recommendations No. 48, 49, and 58: During 2012, the AIHRC carried out 1742 monitoring missions to detention centers all over the country. Out of this, 378 monitoring mission was carried out to female detention centers (prisons 305 times, detention centers 43 times and custodies 30 times) as well as 1364 monitoring missions were conducted in male detention centers (prisons 262 times, detention centers 480 times, and custodies 622 times) in different provinces of the country. Inmates were interviewed and their complaints and needs were followed up. During 2012, 263 individuals (72 female and 191 male) who were illegally detained, were released after AIHRC's monitors identified them.

Recommendation No. 54: The official statistics show that about 1.9 million children aged 6-17 are engaged in 22 kinds of hard work in Afghanistan. According to the Ministry of Labor and Social Affairs, 6.5 million children are at risk and 16,000-orphaned children live in 70 orphanages. Pertaining to children with mentally retarding, neither the government nor NGOs has provided any accommodation cum training center for these children. On the other hand, handling such children is very hampering to their parent, particularly to women who are traditionally child caretakers. Moreover, this forces women to set at home and become deprived of any development opportunities and enjoying human rights as others.

Recommendation 56: According to the new Media Law, the High Council of Media should investigate cases of violating the laws and miss-conducts that a media organization or a journalist is blamed for, and then, if any violation is identified as a criminal case, the case can be referred to the Attorney General Office for prosecution. Unfortunately, despite enforcement of Media Law, still the High Council of Media is not functioning well. In June and July 2013, there were three cases that the Government agents have harassed and severely beaten journalists but the Government did not take steps to investigate these cases. In 2013, one news reporter, based on the petition made by the Minister of Mine, was brought to the Attorney General Office for questioning, who published a report and underscored the transparency of mining contracts in Afghanistan. In this respect, AIHRC recommends the government of Afghanistan to pass the Draft Law on Access to information.

Recommendation No. 60: In Afghanistan, still, impunity provides safe heavens for those who are in power and violate laws. Rationales and causes for continued impunity are included but not limited to corruption, bribery in the judicial organs, the influence/interference of powerful government and local authorities. The bankrupt case of Kabul Bank in which more than 800 million US Dollars missed away, still is underscoring by the public. In addition, violators of women rights also enjoy the ground provided impunity. The AIHRC record shows that those who committed severe violence such as humiliation and amputation of women are free and have not been accountable due to pervasive cultural of impunity.

Recommendation No. 61: The MoJ has developed and been implementing a national priority program namely "access to justice for all". The Law of Prisons, the Law of Prosecution of Security Agents, and other necessary rules and regulations are being executed. The AIHRC has established Ombudsman Office for Police to monitor police conducts.

Recommendation No. 62: The AIHRC and HRSU are active in raising awareness on human rights among government employees. The Supreme Court has the mandate of monitoring the administration of Justice. AIHRC independently monitor the administration of justice across the country and publicizes its reports.

Recommendation No. 63: The Ministry of Interior regularly monitors the performance of the private security companies and so far has shut down many illegal/unregistered private security companies across the country.

Recommendation No. 66: The AIHRC has been largely engaged in providing trainings for ANSF members including Afghan National Army, Afghan National Police and National Directorate of Security. International human rights law and international humanitarian law have been incorporated into their educational curriculum.

Recommendation No.71, 72 and 73: Freedom of expression, as a basic human right is in a fragile state, despite enforcement of the Media Law. In some instances, journalists are not capable to enjoy of the right to freedom of expression. Unfortunately, in June and July 2013, several cases of offending journalists by high governmental authorities have been reported. The MoJ has not submitted the draft law on access to information to the Council of Ministers for discussion and final approval.

Recommendations No. 83 and 84: The AIHRC has been included human rights messages in the textbooks of primary and high schools. The AIHRC signed MoUs with more than 16 higher education institutes, including teacher-training institutes for inclusion of human rights into their curriculum. AIHRC has seconded two curriculum experts to the Ministry of Education for regularly review of the school's textbooks from the viewpoint of human rights.

Recommendation No. 89: The Government established the HRSU in the MoJ to serve as inter-ministerial human rights office. The mandate of this office is to collect information from relevant ministries for using in the UPR and treaty reports and make the action plans for the implementation of the recommendations given by the UN human rights mechanism.

Recommendation No. 91: The AIHRC has been actively engaged with the education and capacity building programs of the Asia Pacific Forum (APF) for NHRIs. The AIHRC commissioners and staff members have participated in many training, annual and biennial conferences/workshops organized by APF and ICC. To raise the capacity of the AIHRC, the joint APF, UNDP and OHCHR team conducted Capacity Assessment of the AIHRC. According to the AIHRC's request, independent international organizations have evaluated the AIHRC performance and its impact on promotion of human rights in the country. The AIHRC is advocating now together with NHRIs in the South Asia region to push the SARC member countries to establish a regional human right mechanism to promote and protect human rights in the region.