

Human rights at risk: key challenges in the run-up to 2014 presidential elections in Afghanistan

Less than six months before presidential elections on 5 April 2014 in Afghanistan, and in the context of rapid downsizing of the International Security Assistance Force, FIDH and Armanshahr Foundation / OPEN ASIA call on the Government of Afghanistan and the international community to take urgent measures to guarantee institutional and democratic achievements in Afghanistan for the past twelve years, and prevent further human rights abuses in the country.

FIDH and Armanshahr Foundation / OPEN ASIA are particularly concerned with the high number of civilians casualties, which, as stated by the United Nations High Commissioner for Human Rights during her first visit to Afghanistan in September 2013, has further increased during the first half of 2013. While civilian casualties partly result from operations involving Afghan National Security Forces and international troops, most are attributed to Anti-Government Elements. However, the parallel increase in the number of civilian casualties in areas where the ANSF operate independently demonstrates their continued lack of professionalism and misconduct. The transitioning process from the International Security Assistance Force to the ANSF, expected to be complete by the end of 2014, therefore remains uncertain.

Moreover, there are clear signs that the Afghan government has so far been unable, if not unwilling, to effectively establish the rule of law in the country. This is most notably demonstrated by the persistence of widespread human rights violations that include, apart from the above-mentioned violence targeting civilians, increasing gender-based violence and discrimination, torture in prisons, arbitrary detention as well as persistent impunity and discrimination in the justice system. The Government of Afghanistan, jointly with the international community, have failed to uphold its commitments under the Bonn Agreement, renewed in December 2011, to support human rights in Afghanistan.¹ It therefore must, in the process leading to the presidential elections, bring the following recommendations into action:

1. Place truth, justice and vetting processes at the core of the electoral process
2. Strengthen existing human rights and democratic institutions
3. Protect and promote women's rights
4. Support the independent civil society

1. Place truth, justice and vetting processes at the core of the electoral process

In view of the upcoming presidential elections, the Afghan Electoral Complaints Commission, a branch of the Afghan Independent Electoral Commission, has been tasked with approving and vetting candidates. However, out of the 27 prospective presidential tickets (that each include a candidate and her/his proposed first- and second-vice presidents) registered as of 7 October 2013, many include former military and militia commanders implicated in serious human rights abuses, war crimes, and crimes against humanity. The Government of Afghanistan's failure to prosecute or disqualify those responsible for grave crimes throughout the long period of civil war (1979-2001), underscores the importance of accountability in Afghanistan. The progressive abandon of all transitional justice processes has in this regard been a significant failure jeopardizing peace building, reconciliation and justice in the country:

- In 2004, the Afghan Independent Human Rights Commission (AIHRC) completed a survey based on in-depth interviews and focus groups with thousands of Afghans across the country. The findings made it clear that the vast majority of the population wanted past crimes to be confronted: 94 percent said they considered justice to be either "very important" (75.9 percent) or "important" (18.5 percent). When asked what the effects would be for Afghanistan in bringing war criminals to justice, 76 percent said it would "increase stability and bring security," and only 7.6 percent said it would "decrease stability and threaten security." Almost half of those questioned said war criminals should be brought to justice "now," and another 25 percent said perpetrators should be tried "within two years." However, no step has been taken in this regard.
- Since its adoption in 2005, the Action Plan for Peace, Reconciliation and Justice, which rejected amnesty for rights violators and outlined steps toward accountability to be achieved over the following years, has remained unimplemented and was even undermined by the Government of Afghanistan.
- In 2007, the adoption of the National Reconciliation, General Amnesty and National Stability Law granted amnesty to those accused of human rights violations in armed conflict before the formation of the Interim

¹ Point 6 of the conclusion of the international Afghanistan Conference in Bonn, 5 December 2011: "Afghanistan reaffirms that the future of its political system will continue to reflect its pluralistic society and remain firmly founded on the Afghan Constitution. The Afghan people will continue to build a stable, democratic society, based on the rule of law, where the human rights and fundamental freedoms of its citizens, including the equality of men and women, are guaranteed under the Constitution. Afghanistan recommit to upholding all of its international human rights obligations. Acknowledging that on this path Afghanistan will have its own lessons to learn, the International Community fully endorses this vision and commits to supporting Afghanistan's progress in that direction."

Administration in Afghanistan in December 2001. The only exception to this amnesty applies to individual cases brought forth by victims of the crimes; however, no procedure for investigation has been established, effectively placing responsibility for ensuring accountability for past violations onto the victims themselves. In the absence of any individual complaint, the Afghan authorities are prohibited from prosecuting war criminals on their own. The law became effective in 2010, despite President Hamid Karzai's repeated assurances that he would not approve it.

- President Karzai also acted personally to block the release by the AIHRC of one of the commission's key projects – an 800-page report that maps war crimes and crimes against humanity committed in Afghanistan since the 1980s. The AIHRC completed the report in December 2011, but the government has indefinitely suspended its public release, subverting the document's value as a foundation for efforts to prosecute those implicated in past abuses. The list of about 5,000 victims of the 1978-1979 period, published last September by 8 Sobh, a national daily newspaper, revealed the thirst of thousands of victims' relatives for their right to truth, despite the elapse of several decades.
- In 2013, the parliament amended a previous electoral law that had barred candidates "who command or are members of military organizations or armed groups" and had provided for a vetting mechanism to assess which candidates could be disqualified. The prohibition and the vetting mechanism were removed, in contradiction with the Constitution of Afghanistan which bars any individuals "convicted of crimes against humanity, a criminal act or deprivation of civil rights by court" from running for elected office.

The existing culture of impunity can only be reinforced by the recent unconditional pardon and release of Taliban prisoners in Afghanistan and Pakistan, including key leaders. The Transitional Justice Coordination Group (TJCG), composed of 27 Afghan and international institutions, expressed in January 2013 its concerns² about the release since November 2012 of 26 Afghan Taliban prisoners by the Government of Pakistan, based on the 'Peace Process Roadmap to 2015'.³ More recently, on 21 September 2013, one of the Taliban's top leaders, Mollah Abdul Ghani Baradar, was released a little more than three years following his arrest in Karachi in February 2010. By adopting the resolution 2082⁴ in December 2012, the UN Security Council validated opaque de-listing procedures, which may lead to granting arbitrary amnesty to Taliban criminals included in UN sanction lists since the late 1990s. Any form of hasty reconciliation with the Taliban without paying necessary attention to human rights, which the Afghanistan government and the international community are currently pursuing, will indeed be unsustainable. It will lead to eradicating truth and justice-seeking efforts, perpetuating impunity and further human rights violations, and will certainly not establish the foundations for a lasting peace.

Recommendations:

The Government of Afghanistan should:

- Reverse the 2013 electoral law change, and empower Afghanistan's Electoral Complaints Commission to allow complaints to be registered against candidates against whom serious allegations of rights abuses have been made, and disqualify candidates who have commanded militias or military units responsible for abuses.
- Repeal, through the Parliament, the 2010 Public Amnesty and National Stability Laws.
- Set up transitional justice mechanisms, in collaboration with the Afghan Independent Human Rights Commission (AIHRC), Afghan civil society, human rights organizations and victims' groups, in compliance with the 2005 Action Plan for Peace and Reconciliation.
- Ensure women's equal and effective (and not just symbolic) participation in all stages of the peace talks, based on UN Security Council Resolution 1325 on women, peace and security.

2. Strengthen existing human rights and democratic institutions

Since 2001, the lack of support to existing human rights and democratic institutions in Afghanistan has been evident, and a major cause of systematic and widespread human rights violations in the country. The Government of Afghanistan has so far failed to strengthen their capacity and, to some extent, undermined them in several ways. The electoral process has raised new concerns; indeed, mixed statements by various presidential candidates brought to light their intent to marginalize, if not abandon, some of the key institutions established since 2001. The following are of prime concern:

- *Justice system:* the Afghan justice system has been characterized by numerous shortfalls, including persistent impunity, discrimination and corruption; many of the judges lack qualifications and commitment towards national laws and international standards. In addition, the justice system remains absent from many parts of

² See: <http://www.bamdad.af/english/story/2105>

³ The 'Peace Process Roadmap to 2015' is a peace plan drafted by the Government of Afghanistan and the High Peace Council in November 2012, envisioning that "by 2015, Taliban and other armed groups will have given up armed opposition, transformed from military entities into political parties...and participated in national elections." The first step of this process includes an end to cross-border shelling, the transfer of Taliban prisoners by Pakistan to Afghanistan or a third country, and pressure on the Taliban to sever ties with al-Qaeda. Step two (slotted for the first half of 2013) includes amongst other issues, agreement on the terms of direct peace talks. The third step slated for the second half of 2013, envisages a ceasefire.

⁴ Through resolution 2082, the UN Security Council refined resolution 1988 from June 2011 that created a new committee dealing exclusively with sanctions relating to the Taliban. The latest resolution strongly urges Member States to "consult with the Government of Afghanistan on requests for the listing and de-listing of those targeted for the latter measures in order to ensure coordination with Afghan reconciliation efforts." (See: <http://www.un.org/News/Press/docs/2012/sc10859.doc.htm>).

Afghanistan and armed groups such as Taliban have taken advantage of the situation to re-invest in the practice of customary law and parallel justice as a means of reinforcing their power in communities. Tribal *jirga* and *shuras* are in this context skewed towards a harder-line interpretation of Sharia law and their application is arbitrary, leading to numerous abuses including against women, who are systematically excluded from traditional justice processes. Since 2001, efforts to reconstruct and improve the effectiveness of the justice system have failed, partly due to a lack of multi-stakeholder coordination. Moreover, the international community has recently adopted an ambiguous position on the issue of informal justice as an alternative to the official justice system, at the risk of abandoning fundamental human rights standards and putting on the margins Afghanistan's obligations vis-a-vis international human rights law.

- *Women participation in political institutions and in the public sphere:* The few nascent gains and positive achievements in this field are undermined by their shortcomings. For instance, the establishment of a Ministry of Women's Affairs was hailed as a landmark; nevertheless it has lacked executive power and its upkeep is not anymore guaranteed. Besides, the targets of the National Action Plan for the Women of Afghanistan (NAPWA) and Afghanistan National Development Strategy (ANDS) – which have been formulated with a spirit of equality for women and total elimination of sexual discrimination – have not been achieved. Overall, women's participation in political and decision-making processes is under threat. The electoral law is being revised and is currently under examination by the Senate to omit passages setting aside 25 percent of seats on provincial and district councils for women and/or reducing the quota to 15%. Incidents of violence against women remain obstacles to women's participation in public life. There are also frequent acts of aggression against women human rights defenders promoting gender equality and women's rights. Prominent women rights defenders have been directly threatened and obliged to leave the country. Among the many attacks reported in 2012, Ms. Najia Seddiqi, acting Head of the Women's Affairs Department, was the victim of a targeted killing in Laghman province.
- *Lack of support to the Afghanistan Independent Human Rights Commission:* The AIRHC, whose establishment, enshrined in the Constitution, was originally hailed as one of the key achievements of the post-2001 government, and considered to be a landmark in creating conditions for accountability for past abuses, has seen its work surreptitiously hampered by the government itself. The government has attempted to discourage it from documenting and investigating past war crimes and atrocities on the grounds that “a violation of the [amnesty] law is a punishable crime.” The decision of President Karzai to remove three commissioners in December 2011 was seen as an evidence of this trend, as these commissioners were perceived as amongst the most critical of Karzai's regime. President Karzai eventually appointed persons considered by many as not professionally and morally competent or qualified to guarantee the AIHRC's independence. Moreover, the government has kept stalling the release of the AIHRC's comprehensive report mapping war crimes and crimes against humanity committed from 1978 to 2001.
- *Presidential elections:* Free, fair, transparent and credible presidential elections are required to safeguard institutional achievements in Afghanistan. However, in addition to the above-mentioned lack of vetting processes, it is still unsure to what extent the elections will be inclusive, and the capacity of Afghan institutions involved in the electoral process is still lacking, in spite of support by United Nations Assistance Mission in Afghanistan (UNAMA) including through UNDP's ELECT II (Enhancing Legal and Electoral Capacity for Tomorrow II) project which has been providing long-term assistance to the Independent Election Commission in Afghanistan. The passage of the Electoral Law and Independent Election Commission (IEC) Structure Law may provide a robust legislative framework; however strong implementation will be needed. In addition, the independence of the Electoral Complaints Commission, whose members will be selected by President Karzai based of 15 candidates suggested by a selection committee, will be critical.

Recommendations:

The Government of Afghanistan should:

- Appoint women to key positions in the government, the judiciary (attorneys and judges at all levels) and other decision-making bodies, and guarantee their effective protection to ensure the free and independent exercise of their function.
- Guarantee that the minimum 25% quota of seats in Parliament allocated to women will not be modified in electoral law, and ensure that the same quota is returned to women in Provincial Council elections.
- Guarantee the independence and safety of the AIHRC and its commissioners, allowing them to fulfill their mandate, especially in view of its review by a cross-regional body of 16 “A” Status National Institutions, known as the International Coordinating Committee, in November.
- Collaborate closely with the international community to guarantee free, fair, transparent and credible presidential elections.

3. Protect and promote women's rights

In spite of Afghanistan's accession to the Convention on the Elimination of Discrimination against Women (CEDAW) in 2002, and more than eight years after the last visit of the UN Special Rapporteur on violence against women to Afghanistan in July 2005, discrimination against Afghan women remains entrenched in law and practice, and gender-based violence continues to be perpetrated on a massive scale, with almost complete impunity. Incidents of violence include harmful traditional practices such as *ba'ad* (providing women in retribution for murder and other crimes), so-called “honour” killings, early and forced marriages, rape, domestic violence and prosecution of women and girls for running

away from home. While these remain largely unreported, UNAMA/OHCHR regularly report further increases in the perpetration of harmful practices and violence against women. The AIHRC recorded 4,010 reported cases of violence against women from 21 March to 21 October 2012 throughout Afghanistan, compared to 2,299 cases the previous year. Meanwhile, the number of women and girls in detention on the grounds of "loose morals" is as of today the highest since the ouster of the Taliban. Most of those detained are victims of abuse and have committed no crime under Afghan law.

The Government of Afghanistan has taken steps towards the promotion and protection of women's rights, by establishing several provincial-level offices, staffed by the Attorney General's Office, to attempt to enforce the Law on Elimination of Violence against Women. However, in May 2013, attempts by several parliamentarians to strengthen the Law on Elimination of Violence against Women, adopted by presidential decree in 2009, were blocked by conservative lawmakers. They opposed articles criminalizing child marriage and forced marriage, banning the traditional *ba'ad* practice of exchanging girls and women to settle disputes between families, making domestic violence punishable up to three years in prison, protecting rape victims from prosecution for adultery or fornication, limiting the number of wives a man can have to two, and establishing shelters for battered women, considering them as violating Islamic law. In addition, a December 2012 UNAMA report entitled *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*, highlighted that the Afghan National Police and the prosecutors' offices continue to resort to *jirgas* and *shuras* for advice or resolution of cases, including serious crimes, undermining the implementation of the law.

Last but not least, the widespread illiteracy of 90% of women and their continued lack of access to education and health illustrate, and contribute to worsen, the increasingly acute conditions of women in Afghanistan.

Recommendations:

The Government of Afghanistan should:

- Repeal or revise discriminatory laws against women, including the Shiite Personal Law, the Law on Marriage and discriminatory provisions of the Criminal Code and Property law.
- Ensure the effective implementation of the Law on the Elimination of Violence Against Women, including the investigation and prosecution of perpetrators of violence against women, in accordance with national laws and international obligations.
- Implement an ambitious and effective plan of action to fight women illiteracy and improve their access to health and education.

5. Support the independent civil society

In the post-2001 era, the Afghan society has been characterized by the expression of its diversity more than ever before. Its political, social and cultural as well as ethno-linguistic diversity shows that Afghanistan cannot be reduced to stereotypes. Factors of change do exist in Afghanistan, as illustrated by the mushrooming of NGOs, the development of education institutions, and the emergence of media outlets in the country, both quantitatively and qualitatively. The number of cultural, human rights and media organizations has grown rapidly. In June 2005, President Karzai approved the Law on NGOs, which became effective immediately upon signature. This law created a new legal framework for NGOs in Afghanistan and replaced the Regulation for the Activities of Domestic and Foreign NGOs in Afghanistan (NGO Regulation), enacted in 2000 by the Taliban. All these represent positive factors of democratic change and require renewed support to help combat the challenges outlined in this paper. In spite of continued violence and discrimination, women groups have been formed, such as the 50% Campaign of women of Afghanistan, established in 2009 by 70 social and civil activists, supported by various organizations, including Armanshahr Foundation, National Union of Women of Afghanistan, and the Women's Political Participation Committee.

However, independent figures and institutions are facing growing threats and persecution by non-State actors. Media organizations have in particular seen serious deterioration in their working conditions in Afghanistan, particularly since 2008. While Afghanistan progressed in Reporters Without Borders 2013 ranking (ranked 128th in the world, up 22 spots from the year before) due to the absence of journalists in detention, numerous cases of assassinations, such as the beheading of Sadim Khan Bhadrzai on 22 February 2012, physical attacks and other threats have been reported throughout 2012.

Recommendation:

The Government of Afghanistan should:

- Support and protect Afghan civil society and the NGO community in Afghanistan, including human rights organizations, ensuring as well that development assistance fully addresses needs defined in consultation with Afghan civil society, including women's organizations, independent media, and human rights organizations.

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