



UPR Submission  
**Afghanistan**  
June 2013

Afghanistan's human rights situation is showing signs of deterioration as international engagement in the country wanes. Expanded Taliban control and violence related to the ongoing conflict are major factors in human rights abuses, but the Afghan government is also failing in many areas to comply with its obligations under international human rights law.

A period of intense international involvement in Afghanistan is now winding down. The international presence has put the Afghan government under heightened scrutiny in terms of its compliance with human rights obligations. The international community has also provided funding for many services and institutions that have played crucial roles to improve the human rights situation in the country, including the Afghanistan Independent Human Rights Commission, Afghan nongovernmental human rights organizations, schools, clinics, hospitals, shelters, and legal services. There is a real risk that as the international engagement continues to decrease, the Afghan government will waver even more in human rights protection.

Women's rights highlight the government's failings. The government has actively undermined the work of its own human rights commission and efforts to advance transitional justice. Corruption within the government is endemic and blocks access to government services for many Afghans. Torture by the police and intelligence services continues to be widespread and systematic, with the government's failure to end the use of torture part of a broader lack of accountability for government and government-supported security forces. President Hamid Karzai supported the adoption of the National Stability and Reconciliation Law, which promises amnesty to all parties involved in the conflict, undermining accountability. The justice system is riddled with corruption and lack of professionalism, which makes Afghanistan's continued use of the death penalty especially problematic.

Preparations for the 2014 and 2015 elections are moving slowly. There are grave concerns that the elections will be marred by fraud and manipulation and warning signs about decreasing government tolerance for free speech and free media. Actions taken by President Karzai have severely hindered the ability of the Afghanistan Independent Human Rights Commission to carry out its functions.

### **Women's Rights**

In the previous UPR, Afghanistan committed to intensifying efforts to promote gender equality, as required by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), "including through the review and elimination of laws, customs and practices that lead to discrimination against women and girls, making available effective legal remedies for the victims of discrimination and violence, and actively promoting the participation of women and girls in different fields such as education, labor and political life."

The situation of women and girls remains of grave concern, however, and the Afghan government has done far too little to comply with its CEDAW obligations. Extreme forms of discrimination remain part of the day-to-day experience of most Afghan women, and violence against women is common and largely unpunished. Half of all girls are still not in school and female literacy remains extremely low. Maternal mortality remains among the highest in the world. Afghan law regarding marriage and divorce explicitly discriminates against women. Women

in public life, or simply women working outside the home, are the subject of frequent threats and all too often assassination.

Family violence is a regular experience for many Afghan women and girls, and women and girls who flee forced marriage and domestic violence are often treated not as victims but as criminals accused of “moral crimes.” In 2009 President Karzai signed into law Afghanistan’s Law on the Elimination of Violence Against Women (EVAW Law). This law imposed tough new penalties for a range of abuses against women, including rape, domestic violence, sale of women, underage marriage, and forced marriage. The law represented an important step but so far it is largely an unfulfilled promise, as the government has done a very poor job of enforcing it. Enforcement of the law is hampered not only by a lack of leadership and political will, but also by practical problems that the government has failed to take adequate measures to address.

The government has created special Family Response Units designed to make it easier for female crime victims to access police assistance, but the effort has been largely defeated by a lack of female police officers. Recruitment and retention of female police officers is undermined by factors ranging from a near-total lack of woman-only toilets and changing facilities in police stations to a failure by the government to respond to multiple allegations of sexual assault and coercion of female police officers by male colleagues. Prosecution units specializing in violence against women cases established in a handful of provinces show some promise, and should be expanded. The number of shelters for women fleeing violence has expanded to 18 country-wide, but this is far too few in a country of 34 provinces and 35 million people. Worse yet, these shelters are entirely funded by foreign contributions, and merely tolerated by the government, which raises the possibility that they could be forced to close as international aid decreases, as it inevitably will in the years ahead.

President Karzai’s own actions and those of his government have sometimes directly harmed effort to comply with obligations. There have been several incidents since the last UPR when the government has undermined women’s rights. Several incidents have focused on shelters, with the Ministry of Women’s Affairs seeking to take control of and impose strict new rules on shelters in 2011 and the Minister of Justice denouncing shelters as the site of immoral behavior and prostitution in 2012. In 2012 President Karzai himself dramatically undermined women’s rights when he publicly endorsed a set of guidelines issued by a religious council that described women as “secondary” to men, called for full segregation of the sexes in public and in education and employment, and implied that violence against women can sometimes be justified.

### **Crippling the AIHRC and Walking Away from Transitional Justice**

In the previous UPR, three recommendations focused on strengthening the Afghanistan Independent Human Rights Commission (AIHRC). The government accepted the following two:

- Take steps to ensure an equitable and truly representative appointment of members of the Afghanistan Independent Human Rights Commission and to protect the Commission from undue political interference.
- Strengthen its support to the Afghanistan Independent Human Rights Commission and the newly established Human Rights Unit within the Ministry of Justice, especially in the field of mapping past human rights abuses.

The government stated that the AIHRC already “plays a considerable role in the country and the government of Afghanistan is considering the inclusion of the Commission’s budget into the government’s budget.”

Since the last UPR, the Afghan government’s approach to supporting the AIHRC has been openly obstructive. The government has failed to move any portion of the AIHRC’s operating budget onto the government budget. Furthermore, President Karzai’s failure to ensure timely and appropriate appointment of commissioners to the AIHRC has greatly undermined the agency’s effectiveness. The AIHRC from December 2011 to June 2013 had several empty commissioner positions, a situation which left the body in limbo during this period. Three vacancies

occurred when the terms of all nine commissioners expired in December 2011. At that time, Karzai announced plans not to reappoint three of the commissioners. A fourth position had been vacant since the commissioner for children's rights, Hamida Barmaki, her husband, and their four children were killed in a suicide bombing in Kabul in January 2011.

On June 15, 2013, Karzai announced the appointment of five new commissioners to the Afghanistan Independent Human Rights Commission (AIHRC), most of whom appear to have little or no record defending human rights. The United Nations Officer of the High Commissioner for Human Rights responded on June 18, 2013, expressing "deep concern" about the appointments.

Despite these challenges, the AIHRC has proven to be one of the most important and effective institutions created since 2001. It has provided assistance to thousands of individual Afghans, many of them women experiencing abuse. It has documented human rights abuses on a systematic level, played a courageous role in documenting past abuses, and been the leading voice on human rights issues in Afghanistan. However, the government-imposed uncertainty about its leadership has hobbled its effectiveness. The human rights situation in Afghanistan is extremely fragile and the national human rights commission should be at full strength to do its part to protect all Afghans.

The last UPR included five recommendations urging Afghanistan to move forward in pursuing a transitional justice process, including through mainstreaming "human rights and transitional justice issues into any future national reconciliation negotiations." The Afghan government responded to four of these recommendations by stating:

The Government adopted the Plan of Action for Peace, Justice and Reconciliation in 2005 and has principally been committed to its implementation and has so far conducted efforts to this end, however, due to instability, insecurity and lack of required institutional capacity in the country, the Government considers the full implementation of the Action Plan as a long-term process.

The government responded to a fifth recommendation that it should "mainstream human rights and transitional justice issues into any future national reconciliation negotiations" by stating:

The basic principles of human rights and justice are enshrined in the Constitution. Therefore, the Afghan government has announced the acceptance of the Constitution as the main pre-condition for any negotiations or reconciliation programs with the opposition-armed groups.

In fact, the Karzai government has completely halted any efforts to pursue transitional justice and accountability for past crimes. The only part of the 2005 plan to actually be implemented was a comprehensive report completed by the AIHRC that documented serious human rights violations committed in Afghanistan between 1978 and 2001. The 1,000-page report was completed at the end of 2011, at about the same time that President Karzai took action to undermine the commission by leaving AIHRC appointments in limbo. The report has not yet been released and there are no plans for its release; the release of the report has been personally blocked by President Karzai.

There is also a real risk that immunity for past serious crimes in violation of international law will become a feature of any future negotiations between the Afghan government and insurgent groups. The National Stability and Reconciliation Law may offer the promise of amnesty to all combatants and in November 2012, the chairman of Afghanistan's High Peace Council, Salahuddin Rabbani, told journalists that Taliban officials who join peace negotiations with the Afghan government will receive immunity from prosecution and will have their names removed from the United Nations sanctions. There should be no immunity from prosecution for serious violations of international human rights and humanitarian law as part of any peace negotiation process.

## Torture and Ill-Treatment by Security Forces

In the previous UPR, Afghanistan accepted a recommendation to:

Ensure closure of secret and illegal jails and review conditions in all prison and detention facilities with the aim of ensuring their compliance with the Minimum Standard of Treatment of Prisoners [sic] and provide effective procedural safeguards against arbitrary detention.

The government in its national report also stated that “in order to implement reforms in legal and judicial sectors, the GoA has adopted several national programs including ... transfer of the administration of prisons to MoJ [Ministry of Justice].” Prior to this transfer, the prisons were administered by the Ministry of Interior, which also administers the Afghanistan National Police.

Since the last UPR, the government has done a poor job of ensuring humane treatment of prisoners. In January 2012, the government reversed the reform it boasted of in the previous UPR, transferring administration of the prisons from the Ministry of Justice *back* to the Ministry of Interior, disregarding warnings from across the international community that management of the prisons by the Ministry of Interior was likely to increase torture and abusive interrogation.

Torture and ill-treatment in Afghan detention facilities have been documented for many years by numerous organizations, including Human Rights Watch. In 2011 and 2013, however, the United Nations was able to gain access to Afghan detention facilities and conduct research that produced reports providing a more comprehensive and detailed picture of abuse than had previously been available.

The January 2013 UN report found that more than half of the 635 pre-trial detainees and prisoners convicted on national security grounds had been tortured or ill-treated while in Afghan government custody. One quarter of torture victims were children. Almost a third of the 79 interviewees who had been handed over to Afghan authorities by international military forces reported torture or ill-treatment in Afghan custody.

Detainees told the UN investigators that torture was typically used to try to elicit confessions. Fourteen different forms of torture were reported, including suspension from ceilings, prolonged and severe beating including on the soles of the feet, twisting of the genitals of male detainees, electric shock, prolonged standing or forced exercise, prolonged exposure to cold weather, and threats of execution and rape. Many detainees described being subjected to varied and escalating torture if they refused to confess or answer questions in a way that satisfied interrogators.

President Karzai ordered a delegation to investigate the findings of the report. The delegation conducted its own interviews with prisoners and found that out of 284 prisoners interviewed, 136 had been tortured or abused. This is the first time the Afghan government has acknowledged widespread torture – although the task force unconvincingly suggested that torture was not “systematic”. The task force recommended prosecution of officials involved in torture and this recommendation was echoed in a subsequent decree by President Karzai. With a long history of impunity for torture in Afghanistan, however, it will take more than just a decree to ensure genuine accountability.

There are other problems with security force accountability beyond the use of torture. The Afghan Local Police, a network of local defense forces established in 2010 and designed to supplement the army and police, are particularly lacking in oversight and accountability mechanisms and have repeatedly been implicated in human rights violations. Accountability mechanisms for the police and army are very weak and rarely succeed in providing accountability for abuses. The Afghan government has made some efforts to provide oversight regarding civilian casualties, but these efforts remain largely focused on civilian casualties caused by foreign military forces, and lack sufficient structure to detect, investigate, punish and compensate for civilian casualties

caused by Afghan forces. Government partnerships with independent militias continue to be problematic in terms of human rights and lack of accountability. All of the security forces should be subject to oversight by an external body with adequate authority and resources, ideally the AIHRC, but the current dismantled state of the AIHRC and lack of resources earmarked for this purpose would make it currently difficult for the AIHRC to fully perform this function.

## **Recommendations**

### ***Women's Rights***

- All Afghan laws that discriminate against women, including in relation to marriage and divorce, should be amended to remove discriminatory provisions.
- President Karzai should order the Minister of Interior and the Attorney General to ensure that the EVAW Law is fully enforced in all provinces of the country and hold accountable provincial and district police and prosecution supervisors who are not ensuring the enforcement of the law.
- The Ministry of Interior should develop and implement a plan to increase the percentage of the police force that is female, including measures to combat sexual harassment of female police officers.
- The government should publicly support shelters for women fleeing violence and work to ensure the establishment of at least one shelter per province.
- The government should abolish the practice of prosecuting women for "moral crimes."

### ***AIHRC, Transitional Justice***

- President Karzai should immediately appoint independent and experienced human rights experts to fill empty seats on the AIHRC.
- President Karzai should immediately order the release of the AIHRC conflict mapping report and ensure that AIHRC staff receives adequate security assistance as needed.
- President Karzai should order immediate steps to implement the 2005 Plan of Action for Peace, Justice and Reconciliation.
- Afghanistan should repeal the National Stability and Reconciliation Law and make it clear that there can be no impunity for serious human rights abuses as part of a peace negotiation process.
- Afghanistan should complete the process of fully aligning its national legislation with all obligations under the Rome Statute of the International Criminal Court (ICC), including by incorporating provisions to cooperate promptly and fully with the ICC and to investigate and prosecute genocide, crimes against humanity and war crimes fairly and effectively by its national courts.

### ***Security Force Accountability and Torture***

- The Attorney General's Office should take immediate steps to identify and investigate perpetrators of torture and other ill-treatment, and fairly prosecute them to the full extent of the law.
- President Karzai should establish a fully independent and permanent anti-torture body staffed by experienced human rights advocates with the resources and authority to conduct long-term monitoring and reform.
- President Karzai should empower the AIHRC and provide it the resources necessary to conduct external oversight for all government-backed security forces.