



AFGHANISTAN: 7-POINT HUMAN RIGHTS AGENDA FOR PRESIDENTIAL CANDIDATES

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Ahead of the Afghanistan presidential election set for 5 April 2014, Amnesty International calls on all presidential candidates to ensure their manifestoes support the protection and promotion of human rights, particularly the seven point agenda below. Amnesty International calls on the candidates to commit publicly to fulfilling Afghanistan's international human rights obligations including the achievement of national benchmarks on human rights.

Despite the desperate human rights situation in Afghanistan, Amnesty International recognises the human rights advances made since the Taliban regime was ousted in late 2001. Many Afghans now dare to hope for a better future. Millions of Afghan girls and boys are going to school. Many women now have access to education, employment, basic healthcare and other essential services that previously were off limits to them. And a vibrant group of civil society activists and the media have been able to give greater voice to the Afghan people. However, Afghans continue to suffer the effects of insecurity, poverty, impunity, lack of rule of law, endemic corruption, and a weak and corrupt justice system.

Amnesty International strongly urges the candidates to use the opportunity of the upcoming presidential elections to improve the human rights situation in Afghanistan. Twelve years on, millions of Afghans continue to suffer widespread violations of their human rights, in addition to violations of international humanitarian law (the laws of war). Conflict-related violations, including targeted attacks on civilians, have gradually spread to areas which were previously considered relatively peaceful and safe, and increased insecurity has halted access to lifesaving services and humanitarian aid, as well as increased displacement of affected populations. In interviews conducted by Amnesty International, many Afghans have expressed frustration and anger towards the Afghan government's apparent indifference towards human rights, the blatant impunity of those suspected of grave human rights violations and war crimes, and the lack of accountability for some government and parliamentary officials widely believed to be involved in corruption and criminal activity.

Amnesty International is disappointed with the recent decision of the Afghanistan Attorney General's office not to investigate the cases referred by the Elections Complaint Commission against some presidential candidates and the candidate vice presidents, facing allegations of human rights abuses and war crimes, on the pretext of lack of evidence. The organization also calls on those candidates facing credible allegations of serious human rights abuses or war crimes to withdraw their candidacies ahead of the presidential elections in April 2014.

Amnesty International believes that promoting and ensuring the enjoyment of human rights is key to

bringing security and stability to Afghanistan.

7-POINT HUMAN RIGHTS AGENDA

1. Fulfil Afghanistan's international human rights law obligations

Although not a party to the Vienna Convention on the Laws of Treaties, Afghanistan is, as a matter of customary international law, obliged to recognize in all circumstances the supremacy of both conventional international law and customary international law with regard to its national law. This obligation applies to all national law, including the Constitution and legislation. Therefore, Afghanistan should undertake any legislative changes necessary to comply with its obligations under treaties and customary international law. In addition, Afghanistan's Constitution explicitly commits the state, in Article 7, to abide by international conventions that Afghanistan has signed and by the Universal Declaration of Human Rights. Article 58 of the Constitution, which enshrines the establishment of the Afghan Independent Human Rights Commission (AIHRC) expanded its mandate from a focus on transitional justice to having the responsibility to "monitor respect for human rights in Afghanistan as well as to foster and protect it".

Amnesty International urges candidates to pledge to:

- Uphold Article 7 of the Constitution and respect, protect and fulfil human rights, as established in international human rights and humanitarian law treaties to which Afghanistan is a state party;
- Ensure that no legislative documents approved by the President breach international human rights law or standards;
- Uphold Article 58 of the Constitution by safeguarding the independence and capacity of the AIHRC, supporting its work and pledging to implement its recommendations at all levels of government; any appointment of the human rights commissioners must be in line with Paris Principles and in full consultation with the civil society and agreement of the AIHRC board of commissioners.

2. Improve accountability of Afghan and international security forces

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. In 2013 alone, the UN Assistance Mission in Afghanistan (UNAMA) documented "8,615 civilian casualties (2,959 civilian deaths and 5,656 injured), marking a seven percent increase in deaths, 17 percent increase in injured, and a 14 percent increase in total civilian casualties compared to 2012".¹ The year 2013 also saw the highest recorded number of women's and children's deaths and injuries from conflict-related violence since 2009.

Amnesty International is concerned that the International Security Assistance Force (ISAF) is transferring security responsibility to the Afghan government forces, despite Afghan forces not yet having adequate accountability mechanisms in place. Similarly ISAF and US forces urgent need to improve their record of accountability and reparations to civilian victims of military operations carried out by their forces.

Presidential candidates should pledge to:

- Ensure that all the senior members of the ANSF, including the National Security Directorate

¹ UNAMA Afghanistan annual report 2013 protection of civilians in armed conflict, p1, para 3
<http://www.unama.unmissions.org/Default.aspx?tabid=13941&language=en-US> (Last seen 19th February 2014)

(NDS), are fully vetted for their human rights record and their engagement in criminal activity or human rights violations, as defined in national and international law, respectively;

- Invest in adequate training in international humanitarian and human rights law (including specific guidance on women's human rights) for all ANSF personnel;
- Ensure the Afghan Local Police, also known as the Arbaki forces, are under the clear chain of command of the ANSF and trained and disciplined to comply with their obligations under national regulations and international law and standards;
- Create a credible independent mechanism to monitor, investigate and report publicly on civilian deaths and injuries or destruction to civilian objects attributed to the ANSF, and to ensure timely and effective remedy. ANSF should have in place detailed procedures for recording casualties, receiving claims, conducting investigations and ensuring reparation, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition;
- Ensure that all allegations of civilian casualties and harm resulting from national and international military operations, including night raids, are fully investigated and, if there is sufficient admissible evidence, prosecuted before ordinary civilian courts without recourse to death penalty.

3. Fulfil the human rights of women and girls

Afghan civil society groups, in particular women's groups, have sounded the alarm to Amnesty International and others about a newly deteriorating women's human rights situation in the country. In areas under Taliban control the human rights of women and girls are severely restricted, including their freedom of movement and political participation. Meanwhile Afghan women including women human rights defenders remain side-lined from key national and international deliberations on ways to advance peace, security, development and human rights in Afghanistan, despite the requirement of Security Council Resolutions 1325 (2000), 2096 (2013), 2122 (2013) and many others which require women's participation in peace-making and peace-building. The nine women appointed to the 70-member High Peace Council, set up to negotiate with elements of the Taliban, are largely excluded from key discussions.

Violence against women and girls is rife across the country. The AIHRC documented 6,823 incidents of violence against women between October 2012 and September 2013 in all 34 of Afghanistan's provinces. UNAMA reported in December 2013 that implementation of the 2009 Law on Elimination of Violence against Women is limited and prosecutions and convictions of offences criminalised by the law remain low.²

Meanwhile, the small steps taken to ensure protection of women have been undermined. In May 2013 after some conservative members of parliament attempted to weaken the EVAW law, its parliamentary endorsement was deferred. In November 2013, Afghanistan's Ministry of Justice and the Ministerial Committee of Shari'a and Traditional Penalty and Investigating Crimes proposed at least 26 amendments to the country's penal code, which if approved, would have reinstated punishments dating to the Taliban era, including public stoning to death for "adultery" by married people and flogging of up to 100 lashes for unmarried people found guilty of "adultery". A new criminal procedure code passed by both houses of the Afghan parliament in January 2014 introduced a provision (Article 26) prohibiting relatives of the accused from testifying in criminal cases, which would effectively make impossible prosecuting cases of domestic violence.

Afghan women, particularly defenders of women's human rights and women in public life, continue to

² UNAMA: A Way to Go an update on implementation of the law on violence against women in Afghanistan, p 3, para 2 and 3. <http://www.unama.unmissions.org/Default.aspx?tabid=12267&language=en-US> (Last seen 19th February 2014)

face serious threats, intimidation and attacks from armed groups, conservative religious leaders and power holders, and without adequate government protection. Women's human rights to physical autonomy, freedom from violence, political participation and justice, must not be traded away, but fully protected during the transition of security responsibility to the ANSF and during reconciliation talks with the Taliban.

Presidential candidates should pledge to:

- Implement UN Security Council Resolutions on Women Peace and Security, including by increasing the proportion of women playing an active role in the ANSF, in particular the Afghan National Police Force, while ensuring their safety and dignity in their place of work;
- Ensure the fulfilment of the constitutional guarantee of at least 25% of parliamentary seats for female candidates, and to extend the same guarantee to other aspects of political participation, including women's appointments to ministerial posts, the High Council of Judiciary, and the High Peace Council;
- Fully implement the 2009 law on Elimination of Violence against Women, including by raising public awareness of the law and by providing adequate training on the contents and proper application of the law for all relevant authorities and at all levels, in particular to police officers, prosecutors and judges. Further, to instruct all officials, in particular at the Supreme Court, the Ministry of Interior and Attorney General's Office, to apply the law consistently and unconditionally;
- Address the low conviction rate of those suspected of criminal responsibility for gender-based violence. Ensure that prompt, impartial and effective investigations are carried out into allegations, and that when there is sufficient admissible evidence they are brought to trial in accordance with international standards of fairness;
- Ensure that defenders of women's and girls' human rights, especially in rural areas, as well as the AIHRC and high-profile women officials, are better protected from intimidation and attack.

4. Prevent and ameliorate internal displacement

According to UNHCR there are around 600,000³ internally displaced persons (IDPs) in the country, largely as a result of the conflict. The drawdown of international combat forces this year, and the accompanying uncertainty over the future political, security, development and human rights situation is likely to trigger further displacement. Many IDPs experience multiple human rights violations including forced evictions, inadequate housing and lack of access to affordable food, water, health and education, sometimes leading to further instability in otherwise relatively stable urban areas.

A national IDP policy was approved by President Karzai and launched on 11 February 2014. If implemented swiftly, the policy will bring positive changes to the lives of IDPs in Afghanistan.

Presidential candidates should pledge to:

- To allocate adequate financial and human resources for the swift implementation of the National Policy on Internal Displacement;
- Ensure the impact of military operations on displacement are effectively predicted, monitored and assessed, and all necessary measures taken to minimise displacement in areas affected by military operations;
- Help expand access for humanitarian actors seeking to meet the emergency needs of all IDPs and displacement-affected communities. This includes encouraging all parties to the conflict

³ UNHCR 2014 planning figure for Afghanistan: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e486eb6> (Last seen 16th February 2014)

to respect humanitarian principles and promote safe, unimpeded and timely access for humanitarian actors.

5. Combat impunity for past human rights violations

The 2005 Peace, Reconciliation and Justice Action Plan to address past human rights violations and promote national reconciliation was not fully implemented before its expiry in 2009. While the intended panel to advise the President on senior political appointments was established, it has not emerged as a credible vetting mechanism to prevent unsuitable individuals from holding public office. The spirit and aims of the Action Plan were 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 allegedly 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.

Presidential candidates should pledge to:

- Guarantee prompt, thorough, independent, and impartial judicial investigation, in accordance with international law and standards, into any credible allegation of human rights violations and abuses, as well as of crimes under international law and, if there is sufficient admissible evidence, to prosecute the suspect in a fair trial without the possibility of the death penalty;
- Ensure the Special Advisory Board to the President for Senior Appointments is able to function effectively and bar those suspected of responsibility for war crimes, crimes against humanity or serious human rights violations or abuses from holding senior government posts, until a final pronouncement on the merits is made by a civilian ordinary court in a fair trial;
- Enact legislation to repeal the National Reconciliation, General Amnesty and National Stability law, known as the Amnesty Law;
- Promptly accede to the International Convention for the Protection of All Persons from Enforced Disappearance and implement it into national law,⁴ recognizing the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims.
- Enact legislation that implements the Rome Statute of the International Criminal Court into national law and ensure that Afghanistan fully co-operates with the Court.

6. Protect and respect Freedom of Expression

Since 2001 more than 450 journalists and other media workers in Afghanistan, including 54 in 2013, have been killed, injured, beaten, threatened or detained by state and non-state actors across the country.⁵ According to NAI, government officials are reportedly implicated for the majority of these incidents. Afghan journalists increasingly find it difficult to report on cases of corruption and criminal activity by government officials and members of the Afghan parliament, as well as reporting on cases of civilian casualties and other human rights violations committed by Taliban, fearing intimidation, violence and threats by government or armed insurgent groups including the Taliban.

Freedom of expression must be respected, protected and fulfilled, not only in word but also in practice. Freedom of expression and media should be immune from the intervention of the government and judiciary, unless there is a genuine fear that such freedom can result in known acts of human rights violations recognized under the international law.

Presidential candidates should pledge to:

⁴ International Convention on Protection of all People from Enforced Disappearance
<http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx> (Last seen 3rd March 2014)

⁵ NAI: Yearly incidence of violence against journalists 2001- 2013 <http://data.nai.org.af/> (Last seen 19th February 2014)

- Fully investigate and prosecute all those suspected of criminal responsibility - regardless of their rank, position and influence - for attacks on media workers and other human rights defenders and others exercising their right to freedom of expression;
- Ensure that media regulations conform to Afghanistan's international human rights obligations.

7. Impose a moratorium and abolish death penalty

By the end of 2013 more than 300 people remained on death row, with 174 death sentences issued in 2013 across Afghanistan. Many who were sentenced to death were convicted of crimes such as rape, murder, terrorism and kidnapping.

Most trial proceedings in Afghanistan fall short of international standards of fair trial including the presumption of innocence, access to a defence lawyer, the right to examine witness evidence and testimony, and insufficient time for the accused to prepare the defence. The judicial decisions are largely based on confessions from the accused, which are often coerced including through torture or other ill-treatment. Despite the prohibition under national and international human rights law on the use of torture during questioning of the accused,⁶ torture is widely used in most Afghan police and detention centres.

Presidential candidates should pledge to:

- Commute all death sentences and establish an official moratorium on executions with a view to abolishing the death penalty, in line with UN General Assembly resolutions in 2007, 2008, 2010 and 2012.
- Ensure that all those potentially facing the death penalty are tried in accordance with international standards for fair trial.

⁶ Afghanistan Constitution article 29 and 30: <http://www.afghanembassy.net/afghanistan/afghanistan-constitution>. And International Convention on Civil and Political Rights article 7 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

