



AFGHANISTAN: SEVEN-POINT HUMAN RIGHTS AGENDA FOR PRESIDENT GHANI

28 September 2014

Ahead of the 29 September 2014 inauguration of Dr Ashraf Ghani Ahmadzai as the new president of Afghanistan, Amnesty International reiterates its calls on the new president and his administration to ensure support for the protection and promotion of human rights, particularly in addressing this seven-point agenda. Amnesty International further urges the new president to commit publicly to fulfilling Afghanistan's international human rights obligations.¹

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. 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 new president to improve this human rights situation. Thirteen 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 for 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 believes that promoting and ensuring the enjoyment of human rights is key to bringing security and stability to Afghanistan.

SEVEN-Point Human Rights Agenda

¹ A version of this Human Rights Agenda was first published on 6 March 2014 addressed to the candidates in Afghanistan's presidential election: <http://www.amnesty.org/en/library/info/ASA11/003/2014/en>

1. Fulfil Afghanistan's international human rights law obligations

Although not a party to the Vienna Convention on the Law 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 (UDHR). 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 the new president 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 human rights commissioners must be in line with the Paris Principles and in full consultation with 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 first six months of 2014 alone, the UN Assistance Mission in Afghanistan (UNAMA) documented 4,853 civilian casualties (1,564 civilian deaths and 3,289 injured). This constitutes a 24 percent overall increase in civilian casualties compared to the first six months of 2013².

The first half of 2014 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.

The president should:

- Ensure that all the senior members of the Afghan National Security Forces (ANSF), including the National Security Directorate (NDS), are fully vetted for their human rights record and their engagement in criminal activity or human rights violations;
- 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 a clear chain of command of the ANSF, and are trained and disciplined to comply with their obligations under

² <http://unama.unmissions.org/LinkClick.aspx?fileticket=OhsZ29Dgeyw%3D&tabid=12254&mid=15756&language=en-US>

national regulations and international law and standards;

- Create a credible, independent mechanism to monitor, investigate and report publicly on civilian deaths and injuries caused by the ANSF, and to ensure timely and effective remedies. This mechanism should include detailed procedures for recording casualties, receiving claims, conducting investigations, carrying out disciplinary measures including prosecutions where warranted, and ensuring reparation, including restitution, compensation, and rehabilitation;
- Ensure that accountability for civilian casualties is guaranteed in any future bilateral security agreements signed with NATO and the US, including by requiring that international forces provide a regular accounting of any incidents of civilian casualties, the results of investigations into such incidents, and the progress of any related prosecutions. Such agreements should exclude any provision that might infringe upon Afghanistan's obligations under the Rome Statute of the International Criminal Court;
- Continue to press the US and NATO authorities to take meaningful steps to enhance civilian protection, investigate reports of civilian casualties, and prosecute violations of international humanitarian law that result in civilian casualties.

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 deterioration in the situation of women's human rights 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 sidelined in 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 (EVAW) is limited and there continues to be a low rate of prosecutions and convictions for offences criminalised by the law.³ The AIHRC⁴ registered 4,154 cases of violence against women in the first half of the year alone, a 25 percent rise compared to the first half of 2013.

This year alone saw 4,466 cases of self-poisoning, 2,301 cases of self-immolation and 166 confirmed suicides, according to the Afghan Ministry of Public Health,⁵ owing to gender-based violence and conflict-related trauma and displacement.

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 penal code, which if approved, would have reinstated punishments dating from the Taliban era, including public stoning to death for "adultery" by married people and flogging of up to 100 lashes for "adultery" by unmarried people. A new criminal procedure code passed by both houses of

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

⁴ <http://www.aihrc.org.af/media/files/Research%20Reports/Voience%20Against%20Women-%20first%20half-%20year%201392-%20English.pdf>.

⁵ <http://moph.gov.af/en/news/ministry-of-public-health-ministry-of-womens-affairs-and-un-call-for-efforts-to-strengthen-suicide-prevention-in-afghanistan>

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 the prosecution of cases of domestic violence.

Afghan women, particularly defenders of women's human rights and women in public life, continue to face threats, intimidation and attacks from armed groups, conservative religious leaders and power holders, and are without adequate government protection. Women's rights to personal 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.

The president should:

- 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 percent of parliamentary seats for female candidates, and 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 ERAW law, 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 at all levels, in particular for police officers, prosecutors and judges. Further, 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 prosecution 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 without recourse to the death penalty;
- 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 given effective protection from intimidation and attack.

4. Prevent and ameliorate the situation of internal displacement

According to UNHCR, by March 2014 there were more than 600,000 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 them to become displaced again from urban areas where otherwise the population is relatively stable.

A national IDP policy was approved by President Karzai and launched on 11 February 2014. Timely implementation of this policy will bring positive changes to the lives of IDPs in Afghanistan.

The president should:

- Allocate adequate financial and human resources for the timely implementation of the National Policy on Internal Displacement;
- Ensure that the planning and carrying out of military operations takes account of, monitors and assesses their likely and actual impact on displacement, and that all necessary measures are 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 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 individuals with records of committing human rights violations 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 35 years.

The president should:

- 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,⁶ 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. Respect and protect 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.⁷ According to Nai, government officials are reportedly implicated in 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 to report on cases of civilian casualties and other human rights violations committed by Taliban, fearing intimidation, violence and threats by government officials or by armed insurgent groups including the Taliban.

The right to freedom of expression, which includes the right to seek, receive and impart information, must be respected, protected and fulfilled in Afghanistan. The authorities have an obligation to ensure that no restrictions are imposed on the exercise of freedom of expression, including by media workers, unless they are consistent with international law on freedom of expression – that is, provided by law and demonstrably necessary and proportionate for the protection of national security or public order, public health or morals, or protection of the rights of others. This obligation includes taking effective steps to protect the exercise of the right to freedom of expression against threats, violence or other actions by armed groups or other non-state actors.

⁶ International Convention on Protection of all People from Enforced Disappearance
<http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>.

⁷ Nai, Yearly incidence of violence against journalists 2001- 2013 <http://data.nai.org.af/> (accessed 19 February 2014).

The president should:

- Fully investigate and prosecute all those – regardless of their rank, position and influence – suspected of responsibility for threats of violence or violent attacks on media workers and others exercising their right to freedom of expression;
- Ensure that media regulations conform to Afghanistan's international obligations to respect and protect the right to freedom of expression, including the right to seek and receive information.

7. Impose a moratorium on executions and abolish the death penalty, ensure fair trials and abolish torture

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 had been convicted in unfair trials which, like most trial proceedings in Afghanistan, fall short of international law and standards for 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.⁸ The judicial decisions are largely based on confessions from the accused, which are often coerced, including through torture or other ill-treatment. International law explicitly prohibits statements made as a result of torture being used as evidence in proceedings.⁹ Despite the prohibition of torture under national and international human rights law,¹⁰ torture is widely used in most Afghan police stations and detention centres to obtain confession.

The president should:

- 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 charged with criminal offences, and in particular those charged with crimes carrying the death penalty, are tried in accordance with international law and standards for fair trial.
- Demonstrate total opposition to torture and other ill-treatment by condemning these practices unreservedly whenever they occur, and make clear to all members of the police, military and other security forces that torture and other ill-treatment will never be tolerated.

⁸ See, for example, the International Convention on Civil and Political Rights (ICCPR) Article 14 ICCPR, which Afghanistan is a party to.

⁹ See, for example, Article 15 of the Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment, which Afghanistan is a party to.

¹⁰ See Afghanistan Constitution, article 29 and 30 (<http://www.afghanembassy.net/afghanistan/afghanistan-constitution>) and the ICCPR article 7 (<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>).