



## AFGHANISTAN: 10-POINT HUMAN RIGHTS AGENDA FOR PRESIDENTIAL CANDIDATES

As the Afghan people prepare for presidential and provincial council elections on August 20th, Amnesty International calls on the 38 presidential candidates to commit themselves publicly to fulfilling Afghanistan's international human rights obligations and to work towards achieving national benchmarks on governance, rule of law and human rights.

Amnesty International acknowledges the advances made in rebuilding Afghanistan since the US and its allies ousted the Taliban in 2001. Many Afghans now dare to hope for a better future. Millions of Afghan children can now attend school, many women now have access to basic health care, and a small group of journalists and civil society activists have given voice to the Afghan people for the first time in decades. But improvements in economic, political and security conditions have levelled off. In large parts of the country (particularly the south and southeast) these conditions have seriously deteriorated due to escalating armed conflict with the Taliban and other anti-government armed groups. Afghans continue to suffer from extreme poverty, lawlessness associated with a burgeoning illegal narcotics trade, poor governance, endemic corruption, a weak and inept justice system and a systematic lack of respect for rule of law.

The Afghanistan Compact, a political agreement between Afghanistan and donor countries from early 2006, and the Afghanistan National Development Strategy, the country's "Strategy for Security, Governance, Economic Growth and Poverty Reduction" for 2008-2013, identify "governance, rule of law and human rights" as one of the three pillars of Afghanistan's development and affirm a shared commitment to "work towards a stable and prosperous Afghanistan, with good governance and human rights protection for all under the rule of law".

Amnesty International strongly believes that the upcoming elections provide an opportunity to improve the human rights situation in Afghanistan. Seven years into Afghanistan's reconstruction period, 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 are occurring mostly in the south and east, but are increasing in northern and western Afghanistan, areas previously considered relatively peaceful and safe. In interviews conducted by Amnesty International over the past months, many Afghans have expressed frustration and anger towards the Afghan government's apparent indifference towards human rights, the blatant impunity of those suspected of serious human rights violations and war crimes, and lack of accountability for government and parliamentary officials widely believed to be involved in corruption and criminal activities.

Despite the recent surge of US troops in Afghanistan, many western officials including the new NATO and US forces commander in Afghanistan General Stanley McChrystal have recently said that building good governance and rule of law are key to bringing security and stability to Afghanistan. In a recent media interview McChrystal said, "The real solution here is developing a government that can protect people all the way down to the local level. Provide them an environment in which they can live and work and they can have protection of the law."<sup>1</sup>

Amnesty International calls on all presidential candidates in Afghanistan to commit themselves to ensure that human rights are protected, respected and fulfilled, as provided in international human rights law and standards

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<sup>1</sup> "Interview: McChrystal Says Solution In Afghanistan Is Developing Governance," Radio Free Europe/ Radio Liberty, June 30, 2009, [http://www.rferl.org/content/Interview\\_US\\_Commander\\_In\\_Afghanistan\\_Says\\_Real\\_Solution\\_Is\\_Developing\\_Governance/1765881.html](http://www.rferl.org/content/Interview_US_Commander_In_Afghanistan_Says_Real_Solution_Is_Developing_Governance/1765881.html)

and as reflected in the Constitution of Afghanistan. It is essential for presidential candidates to address Afghanistan's desperate human rights situation in their election campaign meetings and forums with other candidates, communities, and media. Amnesty International appeals to all candidates now competing in the presidential elections to firmly commit themselves to the 10-Point Plan for Human Rights in Afghanistan laid out below, not only in words and in their manifestoes but also in deeds should they assume power after the elections.

The organization also calls on those candidates facing credible allegations of serious human rights abuses or war crimes to withdraw their candidacies.

# HUMAN RIGHTS AGENDA FOR ALL CANDIDATES:

## 1. FULFIL AFGHANISTAN'S HUMAN RIGHTS OBLIGATIONS.

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 enshrined the establishment of the Independent Human Rights Commission of Afghanistan (AIHRC) and expanded its mandate from focus on transitional justice to having the responsibility to "monitor respect for human rights in Afghanistan as well as to foster and protect it".

- Pledge to uphold Article 7 of the Constitution by guaranteeing human rights, as stipulated in international human rights treaties to which Afghanistan is a state party and as reflected in the Afghan Constitution;
- Pledge to respect, protect and fulfil human rights at all times and in all parts of the country without exception and without discrimination;
- Pledge to uphold Article 58 of the Constitution by safeguarding the independence of the AIHRC, supporting its work and pledging to implement its recommendations at all levels of government;
- Commit to meeting all seven indicators of the Human Rights benchmark by the 2010 deadline as outlined in the Afghanistan Compact.

## 2. REFORM THE JUDICIARY AND LAW ENFORCEMENT

Afghan judicial and security sectors lack the personnel, infrastructure, training and political will to respect, protect and promote human rights. The Ministry of Justice (MOJ), which serves as the Government's lead agency for the implementation and mainstreaming of human rights, suffers from systemic corruption and a lack of qualified judges, prosecutors, and public defenders across the country. Judicial personnel remain susceptible to pressure by public office holders and armed groups affiliated with the government. Trials are marked by procedures that fail to meet international standards of fairness, including violations of the right to call and examine witnesses and the denial of defendants' rights to legal counsel and equal access to information. The government in its February 2009 report to the UN Human Rights Council acknowledged weaknesses in the Afghanistan's justice system including lack of access to justice for women, corruption and lack of presumption of innocence.<sup>2</sup> Citizens lack confidence in the formal justice institutions and regard them as slow, ineffective and often corrupt. Most Afghans, and in particular women, have difficulty accessing courts and legal assistance; most could not afford court fees or travel costs. Traditional *jirgas* and *shura* (informal tribal councils), which operate outside the formal justice system, abuse fair trial rights and are often discriminatory against women, continued to handle an estimated 80 per cent of all disputes in Afghanistan, particularly in rural areas.<sup>3</sup>

The Afghan National Police (ANP) is poorly paid and trained and notorious for corrupt and abusive practices. In parts of the country the police are seen as a greater source of insecurity than the Taliban, undermining the authority and legitimacy of the central government. Amnesty International's research has found that some police officials are

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<sup>2</sup> Human Rights Council, National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Afghanistan, UN Doc. A/HRC/WG.6/5/AFG/1, , 24 February 2009: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/AF/A\\_HRC\\_WG6\\_5\\_AFG\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/AF/A_HRC_WG6_5_AFG_1_E.pdf), para. 76.

<sup>3</sup> United Nations Development Program, Afghanistan Human Development Report 2007: Bridging Modernity and Tradition – Rule of Law and the Search for Justice. 2007, pg. 9

linked to criminal gangs and are involved in violent crime, such as kidnapping and armed robberies. Amnesty International has received credible reports that entire police precincts have failed to investigate reported crimes or arrest suspects, and have released suspects despite their clear links to crimes.

- Implement a clear and transparent mechanism to prevent the appointment of candidates with records of human rights abuses to senior levels of the central government and the judiciary, as well as for provincial governors, chiefs of police, district administrators and provincial heads of security;
- Create a permanent Afghan-international body to oversee vetting of police candidates and ensure that no candidates with records of human rights abuses are appointed to senior positions;
- Establish an effective, adequately resourced and independent police ombudsperson. This body must have the authority to investigate complaints against the police, including complaints of human rights violations perpetrated by the police and of police failure to investigate other human rights-related offences;
- Incorporate international human rights and humanitarian law standards as an integral and permanent component of police training. Ensure that training in such standards is practical, including proper procedures for arrest and detention, the appropriate use of force when it is necessary, and the interrogation of criminal suspects without recourse to torture or other ill-treatment in any circumstances;
- Ensure that to the extent that traditional assemblies make quasi-judicial rulings, their procedures and decisions are in accordance with international standards of fairness, including the possibility of appeal to state courts, and full equality for women.

### **3. END ARBITRARY ARRESTS, UNLAWFUL DETENTIONS AND TORTURE**

Arbitrary arrest and detention by the police and other official security agencies, as well as private militias working with Afghan and international security forces, are widespread. The National Directorate of Security (NDS), the intelligence service, continues to arbitrarily arrest and detain suspects without allowing access to defense lawyers, families, courts or other outside bodies. The Afghan government by its own admission, in its February 2009 report to the UN Human Rights Council acknowledges “some criticisms of mistreatment and torture of prisoners” by NDS officials.<sup>4</sup> The NDS faces credible allegations of torturing detainees and operating secret detention facilities. Amnesty International has reported on detainees being subjected to torture and other ill-treatment, including being whipped, exposed to extreme cold and deprived of food.

Afghan prisons are overcrowded and poorly administered. Long delays in reviewing cases and updating prison registers have led to prisoners being held long after their sentences have been served.

More than 600 detainees are being arbitrarily detained, without charge or trial, at the US-run Bagram military airbase and other US military facilities outside the protection of international human rights laws and domestic laws. Some have been detained for several years and denied their due process rights, including access to lawyers and Habeas Corpus review.

- End the widespread practice of arbitrary detention, particularly by the NDS, and ensure that all detainees are lawfully held, are promptly charged or released, and do not suffer torture or other ill-treatment;
- End all arbitrary detention on Afghan soil by foreign forces;
- Introduce and implement legislation criminalizing torture and at least deliberate forms of cruel, inhuman or degrading treatment or punishment, ensuring prosecution of those responsible, including those with command responsibility, and providing reparations to any victims;
- Ensure that all detainees are brought promptly before a judge, and are either charged with a recognizable criminal offence and remanded by an independent, civilian court or else released;

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<sup>4</sup> Human Rights Council, National Report Submitted in Accordance with Paragraph 15 (A) of the Annex to Human Rights Council Resolution 5/1: Afghanistan, UN Doc. A/HRC/WG.6/5/AFG/1, , 24 February 2009: [http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/AF/A\\_HRC\\_WG6\\_5\\_AFG\\_1\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session5/AF/A_HRC_WG6_5_AFG_1_E.pdf), para. 16.

- Release prisoners that have served their sentences. Accurate prison registers would help identify such prisoners. All registers should clearly distinguish between pre-trial detainees and sentenced prisoners;
- Regulate the NDS' powers and activities through legislation that prohibits it from arbitrarily detaining persons, and ensure that personnel undergo human rights training. Legislation should also provide for independent human rights monitoring of all detainees, including by the Afghan Independent Human Rights Commission, with access to all places of detention and all detainees;
- Ratify the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and establish or designate a National Preventive Mechanism to visit all places of detention and all detainees in accordance with the Protocol;
- Develop, in conjunction with the Afghan government's international partners, mechanisms to ensure fair trials, including the option of mixed Afghan-international prisons and tribunals to prosecute and incarcerate those apprehended in counter-insurgency operations by either Afghan or international forces.

#### **4. COMBAT IMPUNITY FOR PAST HUMAN RIGHTS VIOLATIONS**

Despite clear and repeated calls by Afghans for truth and accountability for the country's deplorable record of serious human rights abuses, only a handful of individuals have been prosecuted for serious violations of human rights and the laws of war during three decades of conflict ranging from the time of the Soviet invasion and subsequent Communist rule (1978-1989), through the civil war period (1989-1996) and the Taliban era (1996-2001).

Little headway has been made towards the December 2005 Action Plan on Peace, Justice and Reconciliation, which sought to address past abuses and promote national reconciliation. The Afghan government and its international supporters jointly committed in the 2006 Afghanistan Compact to implement the Action Plan, but have failed to implement many of its concrete proposals, primarily vetting human rights abusers and removing them from positions of power. On the contrary, the Afghan parliament sought to undermine the Action Plan by passing the "National Stability and Reconciliation" bill, aimed at providing immunity from prosecution to suspected war criminals.

- Commit to a transparent, independent, judicial investigation of any credible allegations against anyone suspected of serious human rights abuses;
- Immediately implement the 2005 Action Plan for Peace, Justice and Reconciliation, in particular its provision for a truth-seeking mechanism to document past human rights in Afghanistan, while ensuring that such a mechanism operates alongside rather than substitutes any judicial proceedings;
- Ensure and support the Special Advisory Board to the President for Senior Appointments to bar those suspected of having committed war crimes, crimes against humanity or serious human rights abuses from holding senior government posts;
- Introduce legislation to repeal the "National Stability and Reconciliation" resolution, known as the Amnesty Law;
- In advance of the parliamentary elections (2010), put in place mechanisms to vet candidates facing credible allegations of serious human rights abuse;
- Enact legislation that implements the Rome Statute of the International Criminal Court and ensures that Afghanistan fully co-operates with the Court.

#### **5. ENSURE THE RIGHT TO FREEDOM OF EXPRESSION INCLUDING MEDIA FREEDOM**

Freedom of expression, which flourished briefly after the fall of the Taliban in 2001, has been seriously eroded by threats and attacks from both state and non-state actors. Government institutions - in particular the NDS have attempted to reduce the media's independence. Criminal proceedings have been initiated against individuals for peacefully exercising their freedom of expression and information. The Taliban and other anti-government armed groups target journalists and block nearly all reporting from areas under their control. A free media is indispensable for providing Afghan voters with sufficient information to judge candidates and monitor the conduct of officials

properly. Journalists must be able to perform their professional duties without fear of harassment or violence.

- Fully and effectively investigate and prosecute all those responsible for attacks on journalists, human rights defenders and others exercising their right to freedom of expression;
- Commit to ensure that no government agencies, and in particular the NDS, violate freedom of expression;
- Introduce legislation to repeal or amend those provisions of the revised media law that restrict freedom of expression in violation of Afghanistan's constitution and international human rights obligations;
- Introduce legislation facilitating public access to information from governmental institutions.

## **6. PROVIDE ASSISTANCE TO INTERNALLY DISPLACED PERSONS AND RETURNEES**

More than 200,000 Afghans are internally displaced as a result of growing conflict, food insecurity, and natural disasters. The situation remains desperate for people displaced in conflict zones as international and local humanitarian agencies face difficulties in reaching them. Those forced to flee their homes inside Afghanistan, along with more than 276,000 recent Afghans who have returned from Iran and Pakistan, face scarce job opportunities, lack of access to land, housing, water and basic services essential for the realization of human rights such as health care and education. Some returnees became internally displaced because their property had been appropriated by local power-holders.

- Provide immediate assistance to the displaced people, including essential food and potable water, basic shelter, appropriate clothing and heating materials as well as essential medical services and sanitation, in line with the UN Guiding Principles on Internal Displacement;
- Ensure free and safe passage of humanitarian assistance to Afghans displaced from their homes in Afghanistan, especially during the difficult winter months;
- Ensure that Afghan refugees returning to their homes have their land and property restituted and implement effective mechanisms for resolving land disputes.

## **7. IMPOSE A MORATORIUM, THEN ABOLISH THE DEATH PENALTY**

Nine people were executed in 2008 with at least 111 others on death row. On 16 April 2008, the Supreme Court of Afghanistan upheld approximately 100 death sentences issued by lower courts against individuals convicted of crimes including murder, rape, kidnapping and armed robbery. The trial proceedings in Afghanistan are marred by irregularities and fall below international standards of fairness, including providing inadequate time for the accused to prepare their defense, lack of legal representation, reliance on insufficient evidence and the denial of the defendants' right to call and examine witnesses.

The Afghan government's February 2009 national report to the UN Human Rights Council noted that, following a review process, 300 prisoners transferred from Guantanamo Bay and Bagram to Pul-e Charki, were subsequently found to be innocent and their release was recommended.<sup>5</sup> Such a high number of detainees being found innocent is yet another reason for the Afghan government to reconsider its position on the death penalty.

- Commit to commute all death sentences in Afghanistan and re-introduce a moratorium on all executions, in line with the 2007 UN General Assembly resolution, with a view to the abolition of the death penalty.

## **8. EFFECTIVELY PROTECT THE RIGHTS OF CHILDREN.**

Afghan children are some of the most vulnerable in the world. Lack of or limited access to quality healthcare, basic immunizations, clean water, and adequate food supply contribute to Afghanistan having the second highest mortality rates for infants (165 deaths per 1,000 births) and children under five (257 deaths per 1,000 births).<sup>6</sup> As fighting increases in various areas, children are being caught in the conflict. In May 2009, an airstrike in the

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<sup>5</sup> *ibid*, para. 26.

<sup>6</sup> UNICEF Afghanistan - [http://www.unicef.org/infobycountry/afghanistan\\_statistics.html](http://www.unicef.org/infobycountry/afghanistan_statistics.html)

western province of Farah caused one of the largest civilian casualty incidents in the conflict; 65 of the 97 victims were reportedly children. Attacks on schools by insurgents have increased, making it unsafe in many areas for children to go to school. Early marriage and child labour are rampant and contribute to the high levels of violence towards Afghan children. According to recent estimates, one in four Afghan children aged seven to 14 is engaged in some form of work.<sup>7</sup> Despite legislation forbidding underage marriage it is believed that more than 55 percent of Afghan girls are married before the age of sixteen.

Despite the enactment of the Juvenile Code in 2005, which clearly stipulates that cases involving juveniles should be processed in specialized juvenile courts, fewer than five of the 34 provinces in Afghanistan have functioning Juvenile Primary Courts. Additionally, most police and judicial authorities are unaware of the rules stipulated in the law.

- Review and upgrade the Juvenile Code, develop rules and regulations for juvenile rehabilitation programs and guidelines for social service providers of juvenile rehabilitation programs;
- Establish Juvenile Prosecution Offices and Juvenile Special Courts in all Provinces;
- Develop and implement clear internal procedures for police units working with children;
- Amend Article 70 of the Afghan Civil Code to make the minimum marriage age for girls/women 18, to bring it into line with that for boys/men. The marrying age for girls is currently 16 and 18 for boys;
- Repeal Article 71(1) of the Afghan Civil Code, which provides that *“where the girl does not complete the age provided under Article 70 of this law, the marriage may be concluded only through her father and the competent court.”*
- Uphold Article 71(2) of the Afghan Civil Code, which provides that *“the marriage of a minor girl whose age is less than 15 shall never be permissible.”*
- Ratify the ILO Convention on Worst Forms of Child Labour and the ILO Convention on Minimum Age of Employment;
- Incorporate provisions of relevant ILO Conventions into national legislation to ensure consistency among Afghan labour laws and international child labour norms.

## **9. ENSURE THE RIGHTS OF WOMEN IN LAW AND PRACTICE.**

There have been some positive measures to advance women's rights and gender equality, however, Afghan women and girls continue to encounter discriminatory laws, policies and practices, which include physical attacks on them as women. Women and girls face endemic domestic violence, trafficking, forced marriages, including ever-younger child marriages, and being traded in settlement of disputes. The police, the courts and other justice sector officials seldom address women's complaints of abuses, including beatings, rape and other sexual violence. Women victims and defendants have little recourse to justice and are discriminated against in both the formal and informal justice systems. Women who sought to flee abusive marriages have often been detained and prosecuted for alleged offenses such as “home escape” or “moral” crimes that are not provided for in the Penal Code and are at variance with international human rights law.

Women and girls also face serious obstacles to social progress, notably in education and health. According to the United Nations, only 35 per cent of girls attend school and only an estimated 12.6% of women are literate, compared to 32.4% of men. In the south and south east, lack of access to education for women and girls is compounded by the security situation – many girls and women face risk of serious injury and death for attending a school or teaching in one. With hundreds of schools closed in the southern provinces owing to the security situation, many are denied their right to education. According to the UN Development Program's 2007 Afghanistan Human Development Report, Afghanistan also has one of highest maternal mortality rates in the world, with an

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<sup>7</sup> Islamic Republic of Afghanistan and UNICEF, “Best Estimates of Social Indicators for Children in Afghanistan 1990-2005” (Kabul: UNICEF, 2006).

estimated 1,600 deaths per 100,000 live births.

- Urge the ministry of interior to ensure prompt, impartial and effective investigation of all reports of violence against women and ensure that those responsible are brought to justice in fair trials without recourse to the death penalty and that victims are granted reparations;
- Modify or abolish existing laws (such as in the Penal Code), regulations, customs and practices which discriminate against women in family matters. In particular ensure that women are given unqualified legal equality with men in law and in practice in respect of: the right to freely choose a spouse; to enter into marriage only with full and free consent; and equal rights and responsibilities during marriage and its dissolution;
- Explicitly define the following forms of violence as criminal acts: violence occurring in the family against women and girls, including sexual violence; the giving of girls and women in marriage as a means of dispute resolution; forcing men or women to marry against their will; or otherwise without informed consent, with particular provision in this regard in relation to boys and girls below the legal minimum marriage age: rape, including marital rape and rape of children; and other sexual assaults;
- Ensure that 'honour' crimes and violence in the family are treated as serious criminal offences;
- End the detention, imprisonment or any other official action against women for the so-called crime of 'running away'. Instead, ensure that where women escape abusive relationships, they are protected, and that police investigations are carried out into any reports of threats, intimidation or violence against women;
- Develop programs to recruit women police officers and train other staff to enable women to access administrative and judicial assistance;
- Build more safe shelters for women fleeing domestic violence;
- Ensure that laws protecting women and girls are not circumvented through parallel legal systems and traditional practices;
- Provide adequate funding and resources to increase the capacity of the Ministry of Women's Affairs and its provincial offices to ensure that it is able to implement, co-ordinate and monitor the National Action Plan for Women across the country;
- Increase women's access to health services and seek to eliminate the social and cultural factors, including poverty, illiteracy, discriminatory attitudes and lack of female health professionals, to reduce maternal and infant mortality in Afghanistan.

## **10. PROTECT CIVILIANS CAUGHT IN THE ARMED CONFLICT**

Civilian casualties have been increasing every year since 2001; 2008 has proved to be the bloodiest year yet with more than 2,100 Afghan civilians dying as a direct result of the armed conflict. So far, 2009 has seen no respite. Most civilians were killed or injured as a result of insurgent attacks, primarily suicide bombings or use of improvised explosive devices. Some 40 percent of civilian casualties are due to operations by Afghan and international security forces. Airstrikes alone killed 552 civilians in 2008.<sup>8</sup> Civilian deaths have increased, despite NATO efforts to revise its rules of engagement to decrease the threat to civilians.

- The Afghan forces, alongside US-led Coalition forces and the NATO-led International Security Assistance Forces (ISAF), must immediately impose rules of engagement that ensure full compliance with international humanitarian law, and steps must be taken, including training of soldiers at all levels in the practical implementation of international humanitarian law, to ensure compliance with these rules;

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<sup>8</sup> United Nations Assistance Mission in Afghanistan, Afghanistan - Annual Report on Protection of Civilians in Armed Conflict, 2008 – January 2009, [http://unama.unmissions.org/Portals/UNAMA/human%20rights/UNAMA\\_09february-Annual%20Report\\_PoC%202008\\_FINAL\\_11Feb09.pdf](http://unama.unmissions.org/Portals/UNAMA/human%20rights/UNAMA_09february-Annual%20Report_PoC%202008_FINAL_11Feb09.pdf)

- Ensure that every case of civilian death, injury and property damage occurring as a result of operations by military personnel, their civilian contractors, or members of other government agencies, is investigated promptly, thoroughly, independently and impartially;
- The Afghan government must ensure that the investigation units of the Coalition Forces and NATO cooperate closely with the Afghan Independent Human Rights Commission (AIHRC) on cases of civilian injuries or casualties;
- Urge NATO/ISAF and US Forces to create a permanent investigative unit, in cooperation with Afghan institutions including the AIHRC.