



# HUMAN RIGHTS AT A CROSSROADS:

**The need for a rights-centred approach to peace and reconciliation in Afghanistan**

## Executive Summary

Afghanistan has been torn by war for more than 30 years. At least 70% of the population was born after the Soviet invasion in 1979 and has lived under war. Millions have spent many years as refugees in Pakistan and Iran, and hundreds of thousands are still internally displaced. In recent years, thousands of young Afghans have chosen to migrate abroad because of the prevailing insecurity and the absence of livelihood. Since the launch in October 2001 of the US-led intervention to remove the Taliban from power, Afghans have grown disillusioned. The civil war that prevailed until then was before long replaced by a conflict between the mainly Taliban and other similar insurgent groups and the internationally-backed government.

Efforts have been made for more than a decade now to foster democracy, the rule of law and respect for human rights in Afghanistan. Achievements include the adoption of a Constitution with strong references to human rights, an improved legal framework, the establishment of the Afghanistan Independent Human Rights Commission and some progress in the field of access to education and women's rights. In the post-2001 era, Afghan society has been characterised by the expression of its political, social and cultural as well as ethno-linguistic diversity more than ever before. Factors of change do exist in Afghanistan, as illustrated by the mushrooming of NGOs, the development of educational institutions, and the emergence of media outlets in the country, both quantitatively and qualitatively.

The past ten years, however, have also been marked by a number of important failures. Democratic achievements in Afghanistan are extremely fragile. Government institutions remain weak; they are plagued with corruption and have not yet been able to establish the rule of law or effective governance throughout the country. The Afghan government and the international community were not able to effectively strengthen the justice system, to the point that the parallel tribal justice is now presented as part of the solution, in spite of the risks it entails for universal human rights. Important provisions of the Constitution have not been adequately implemented, in particular mechanisms for checks and balances, judicial capacity to determine constitutionality, or the precedence of human rights over other norms. Last but not least, impunity remains widespread, for past crimes as well as for current serious human rights violations. Furthermore, progress in economic development and social welfare in the country has been meagre and has not met the high expectations raised by the

injection of billions of US dollars into the Afghan economy since 2001 by the international community. From 2005 onwards, the level of violence has increased and the spectre of civil war reappeared. The Taliban have been able to muster their forces and grow strong using guerilla tactics and disseminating fear among the population; in some regions they have managed to get in a position to broker power-sharing. By manipulating nationalist feelings and appealing to ideological and regional solidarity, the Taliban have succeeded in securing support, notably in the conflict zones where civilians have suffered from the presence of international troops.

The US-led intervention's failure to secure stability for Afghanistan and donor-fatigue have shaped an exit-strategy based on a scenario which seemed shocking just a few years ago – negotiations with the Taliban for a political settlement. The Government of Afghanistan and its international partners are now differentiating the so-called “moderate” from “hardline” Taliban. The former have progressively come to be considered legitimate interlocutors in negotiations; thus, the Taliban have been given access to national and international platforms.

The deteriorating security situation, human rights violations and daily acts of terror and intimidation against civilians in different regions are alarming the Afghan people, whose memories of systematic and generalised human rights violations, atrocities and oppression under Taliban rule remain vivid. These active anti-democratic forces at play in Afghanistan present clear threats to the process of transition towards peace and reconciliation. They could seriously undermine the hard-won democratic processes, and create conditions conducive to civil strife, if adequate measures are not implemented.

The prospect of the forthcoming NATO military disengagement from Afghanistan with the withdrawal of international troops by the end of 2014, combined with Taliban's increasing presence in important positions and institutions, make the adoption of urgent measures crucial to safeguarding and consolidating important institutional and democratic achievements since 2001, as well as ensuring that Afghanistan does not revert back to a situation of widespread and systematic human rights violations, and once again become a haven for acts of terror. A hasty reconciliation with the Taliban without due regard for human rights, as currently pursued by the Government of Afghanistan and its international partners, will be unsustainable and ultimately self-defeating. Such an approach will obliterate truth-seeking efforts and obviate justice, promote continued impunity and lead to further human rights violations. As such, it *cannot* lay the foundations for sustained peace. Experience in post-conflict countries has proven that reconciliation before truth-seeking and justice only leads to rehabilitation of those responsible for grave human rights violations.

The following recommendations summarise the various measures which the Government of Afghanistan and its international partners should adopt to build democracy and the rule of law, and prevent further human rights violations in Afghanistan. The transition process to 2014 and beyond must embody a strong commitment from both the Government of Afghanistan and the international community to fully endorse justice and human rights, especially women rights, as core, non-negotiable principles in all institutional and strategic arrangements.

## 1. Recommendations to the Government of Afghanistan

On the administration of justice and the fight against impunity, the Government of Afghanistan should:

- Investigate human rights violations taking place in Afghanistan, bring those responsible to justice and ensure that effective remedies are provided. These include violations against human rights defenders, journalists and political opponents, such as assassinations, torture, threats and attacks. Acid-throwing against women and girls and gender-based violence should not remain unpunished.
- Propose and implement a solid framework for the establishment of transitional justice mechanisms, in collaboration with the Afghanistan Independent Human Rights Commission (AIHRC), Afghan civil society, human rights organisations and victims' group, to complement criminal justice mechanisms. As part of that commitment, the Government should revive and implement the victim-oriented Action Plan for Peace and Reconciliation, as originally drafted in 2005.
- Abolish, through the Parliament the Public Amnesty and National Stability Law as it clearly violates Afghanistan's Constitution and the country's international treaty obligations, and is an obstacle to a just and lasting peace.
- Strengthen the Afghanistan Independent Human Rights Commission (AIHRC); guarantee its independence; ensure that the AIHRC is fully involved in all processes related to peace and reconciliation, and immediately release the AIHRC mapping report on human rights violations in Afghanistan during the conflict.
- Invite the United Nations to investigate and document crimes under international law committed by the Taliban and other armed groups in Afghanistan.

On women's rights, the Government of Afghanistan should:

- Ensure equal representation of women at all stages of any peace negotiation, in line with UN Security Council Resolution 1325 on women and armed conflicts; appoint women at key government posts, in the judiciary and on decision-making bodies.
- Repeal all discriminatory laws against women, notably the Shiite Personal Status Law, the law on marriage, discriminatory provisions in the Criminal Code and property law, and discriminatory customary laws. Steps should be taken, with the support of the international community, to end recourse to informal parallel customary courts and to ensure that women have full and effective access to the formal justice system.

- Strengthen, in coordination with the Supreme Court and the Office of the Attorney General, the implementation of the Elimination of Violence against Women (EVAW) Act.
- Keep improving women's access to social rights, such as healthcare and education, throughout the country.
- Continuously and broadly consult with civil society organisations and the AIHRC in the preparation of State reports to UN Committees, especially CEDAW and in the implementation of concluding observations and recommendations made by the Special Rapporteur on violence against women, its causes and consequences.

On capacity-building of State institutions, the Government of Afghanistan should:

- Refrain from interfering with the judiciary, and make sure that the control of constitutionality can be exercised fully and independently by relevant bodies composed of competent legal experts.
- Grant full powers to the Elections Commission and ensure, through the Commission for Electoral Complaints, healthy vetting processes in collaboration with the AIHRC. Independent monitors should be mandated by the international community to reinforce vetting processes and prevent election fraud in the future.
- Fight, in cooperation with the international community, endemic corruption that prevents democratic institutions from functioning adequately.
- Make sure that a new process of disarmament of the population is implemented throughout the entire country, and that borders are sufficiently manned in order to prevent arms trafficking.

On cooperation with UN human rights mechanisms, the Government of Afghanistan should:

- Consult and work with human rights NGOs, civil society organisations and the AIHRC in implementing the recommendations issued by the UN OHCHR, Special Procedures, treaty bodies and the Universal Periodic Review.
- Extend a standing invitation to the Special Procedures of the UN Human Rights Council, respond promptly to their requests for visits, such as the one made by the Special Rapporteur on torture and respond to any request for information on individual cases or general trends, such as those of the Special Rapporteur on extrajudicial executions.

## **2. Recommendations to the United Nations**

- The United Nations should appoint a Special Rapporteur on the human rights situation in Afghanistan with a mandate to examine, monitor, advise and publicly report on the human rights situation in the country, to respond to complaints of individual victims, and to streamline, in cooperation with the Afghan authorities, a roadmap for the implementation of the UN human rights recommendations.
- The UN Security Council should review Resolution 1988 on the Taliban so as to:
  - Modify the delisting criteria to ensure that all individuals suspected of being responsible for, or complicit in, international crimes as defined by the Rome Statute, may stand before an independent tribunal for their alleged crimes before being delisted, if found non-guilty.
  - Re-extend the mandate of the Delisting Ombudsperson, introduced through Resolution 1904 (2009), to receive individuals' or entities' requests for delisting.
  - Provide the Delisting Ombudsperson access to all information used for listing.
  - Ensure delisting recommendations by the Ombudsperson are in practice respected, so that they are not overturned through consensus decision by the 1267 Committee or referred to the Security Council.
- The United Nations must ensure that respect for human rights is at the core of any cooperation agreement between the Government of Afghanistan, its neighbouring countries and the international community to promote regional security and fight international terrorism.

## **3. Recommendations to NATO Member States and donor countries**

- As recommended in the 2011 annual report of the United Nations High Commissioner for Human Rights, NATO and other international military forces as well as the Afghan National Security Forces must ensure that systems are in place so that incidents causing civilian harm and the misconduct of international troops are properly documented and followed up with credible and transparent investigations. All those affected must be offered appropriate redress, including guarantees of non-repetition, compensation, apologies, investigations, and other tangible gestures of recognition. Compensation should be provided promptly, uniformly and systematically to all civilian victims of conflict-related casualties and of human rights violations.
- NATO member States and donor countries must ensure that the progressive withdrawal of international troops is accompanied with a serious commitment to support the strengthening of democratic institutions countrywide (including the formal justice system) and capacity-building within the Afghan National Security Forces. The recommendations made by the United Nations High Commissioner for

Human Rights in her 2011 annual report to support and strengthen institutional capacity through the United Nations Assistance Mission in Afghanistan, must be implemented. The Afghanistan Independent Human Rights Commission must receive appropriate support, and their independence must be guaranteed.

- Donor countries should support the still fragile civil society and NGOs community in Afghanistan, including human rights organisations, and it should ensure that development assistance fully addresses needs defined in consultation with the Afghan civil society, including women, and contributes to the strengthening of democratic institutions and the rule of law.

#### 4. Recommendations to the International Criminal Court

- The Office of the Prosecutor of the ICC should issue regular and detailed reports on the status of its preliminary analysis of the situation in Afghanistan.
- The Office of the Prosecutor of the ICC should publicly communicate its activities that aim to implement positive complementarity.
- Whereas the national justice mechanisms have demonstrated their inability or unwillingness to genuinely investigate and prosecute the main perpetrators of international crimes, the Office of the Prosecutor should open an investigation into crimes under ICC jurisdiction committed in Afghanistan since 2003, and respond to victims' needs for redress.

The full report can be downloaded at: <http://www.fidh.org/IMG/pdf/af0512589a.pdf>

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