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Human Rights in Afghanistan: a call for greater commitment by the Afghan government and the UN system

22 March 2013

The deteriorating human rights situation in Afghanistan over recent years has been highlighted in successive reports by the Office of the United Nations High Commissioner for Human Rights (OHCHR) as well as Afghan and international civil society organizations. There are clear signs that the Afghan government has so far been unable to effectively establish the rule of law, secure democratic institutions, ensure the separation of powers and eradicate corruption in Afghanistan.¹ Despite progress in enshrining human rights including women's rights in legislation, human rights abuses remain prevalent. These include the killing of a large number of civilians, increasing gender-based violence, violence against children, torture in prisons, arbitrary detention as well as persistent impunity and discrimination in the justice system. Nevertheless, the Human Rights Council has until now failed to take appropriate action and Council members have not upheld their commitments under the Bonn Agreement, renewed in December 2011², to support human rights in Afghanistan. The Human Rights Council must substantially report on its mandate and its human rights activities and consequently strengthen its involvement in Afghanistan, especially in light of the on-going NATO/ISAF withdrawal. While FIDH and Armanshahr Foundation/OPEN ASIA welcomed the opportunity and the objectives of the international Tokyo Conference for Afghanistan in July 2012, during which ways for the international community and the Government of Afghanistan to secure financial, development and security assistance were discussed, the commitments taken at that occasion must be acted upon.

¹ "Human rights at a crossroads: The need for a rights-centred approach to peace and reconciliation in Afghanistan", FIDH and Armanshahr Foundation/OPEN ASIA, May 2012

² Point 6 of the conclusion of the international Afghanistan Conference in Bonn, 5 December 2011: "Afghanistan reaffirms that the future of its political system will continue to reflect its pluralistic society and remain firmly founded on the Afghan Constitution. The Afghan people will continue to build a stable, democratic society, based on the rule of law, where the human rights and fundamental freedoms of its citizens, including the equality of men and women, are guaranteed under the Constitution. Afghanistan recommits to upholding all of its international human rights obligations. Acknowledging that on this path Afghanistan will have its own lessons to learn, the International Community fully endorses this vision and commits to supporting Afghanistan's progress in that direction."

I. The human rights situation in Afghanistan: Causes for Concern and Recommendations for the Afghan government and the international community

1. Attacks on civilians

Between 1 January and 30 November 2012, UNAMA/OHCHR documented 7,066 civilian casualties (2,610 killed and 4,456 injured) and a higher number of civilian casualties each month from June to November 2012, culminating in a 28% increase in casualties in the third quarter of 2012.³ While civilian casualties have partly resulted from operations involving Afghan forces and international troops – 7% of the total compared to 15% in the same period in 2011 – , 82% of all civilian casualties in 2012 were attributed to Anti-Government Elements (AGEs). AGEs continued to target civilians and indiscriminately launch attacks on civilian locations, increasing the use of improvised explosive devices (IEDs) and suicide attacks, in clear violation of international humanitarian law.

Throughout last year, IEDs and suicide attacks together accounted for 51% of all Afghan civilian deaths and injuries, as exemplified by an incident during Eid al-Adha prayers on 26 October 2012, when a 15-year-old suicide attacker killed 40 civilians and injured 59 others at a mosque in Maymana, Faryab province.

While the Government of Afghanistan has appointed in 2012 a special advisor to the President on the protection of civilians and established a Civilian Casualty Tracking Team as part of the Presidential Information Coordination Centre, further efforts must be undertaken to ensure improved protection of civilians. The training and mentoring of the Afghan National Security Forces (ANSF) has continued over last year, however, an increase in the number of civilian casualties in areas where the Afghan army and police force operate independently, clearly demonstrates their continued lack of professionalism and misconduct and also shows the uncertainty of the transitioning process from international troops to ANSF, expected to be complete by the end of 2014. In addition, the international community has not clearly defined its post-2014 commitment to supporting and training the ANSF and enhancing real mechanisms for vetting and accountability. The only clear proposal put forward by the United States and NATO was the reduction, by the end of 2014, of ANSF troop numbers from 352,000 to 220,000, cutting their cost by about a third (from US\$6 billion to \$4.1 billion per years). This appears in full contradiction with the above-mentioned objectives.

In addition, local residents have regularly raised concerns with UNAMA that human rights abusers are being recruited into the Afghan Local Police. There is also strong evidence that the Taliban are increasingly infiltrating Afghan security forces, resulting in multiplying attacks on international troops and within the Afghan national police and army. On 2 March 2013, the Taliban claimed the kidnapping in the province of Badakhshan of at least 17 Afghan soldiers who were then executed.

Recommendations:

The government of Afghanistan should:

1. Review mechanisms and resources to effectively protect communities from attacks by AGEs'

³ Report of the United Nations High Commissioner for Human Rights on situation of human rights in Afghanistan, 28 January 2013, A/HRC/22/37.

² FIDH, Armanshahr Foundation/OPEN ASIA - human rights in Afghanistan: a call for greater commitment by the Afghan government and the UN system , 22 March 2013

- and the increased use of IEDs to target civilians;
2. Institutionalize vetting and accountability mechanisms in the operations of local and national security forces;
 3. Propose and implement a comprehensive plan to enhance literacy levels and socio-economic conditions of soldiers and police officers, which are at the root of their lack of ability to professionalize.

2. Justice and impunity

Afghan and international stakeholders have failed to coordinate their efforts to reconstruct and improve the effectiveness of the justice sector in Afghanistan, to the point that it is now incapable of addressing increasing impunity in the country. Democracy and peace-building efforts cannot proceed in this context.

Several factors inhibit the fair and transparent administration of justice. One of the most serious issues is the incoherence between the letter of the law and practiced legal norms, characterized by the coexistence of secular statutory law, Islamic Sharia and customary tribal law. The informal justice system overlaps with the formal one, which has continuously lacked resources and is marred by corruption. Moreover, the lack of separation of powers has long prevented the enforcement of checks and balances in the justice system.

This situation of legal ambiguity and haziness has reinforced the systematic impunity that prevails in the country.⁴ Armed groups such as Taliban have re-invested in the practice of customary law and parallel justice as a means of reinforcing their power in communities, notably because of absence of state instruments throughout the country. Many of the judges lack qualifications and commitment towards national laws and international standards. They often reproduce practices and laws established under Taliban rule. The unwritten nature of Afghan customary law makes it vulnerable to arbitrary application and abuse; women are excluded from the traditional justice process and their rights are denied. The Taliban have erected their own justice system in the areas they control, even skewing the tribal *jirga* and *shuras* towards a harder-line interpretation of Sharia law. The international community has more recently adopted an ambiguous position on the issue using the argument of “cultural relativism,” at the risk of abandoning fundamental human rights standards and their obligations vis-a-vis international human rights law.

The 2005 Action Plan for Peace, Reconciliation and Justice remains unimplemented. In 2007, the adoption of the National Reconciliation, General Amnesty and National Stability Law granted amnesty to those accused of past human rights violations.⁵ The only exception to this amnesty applies to individual cases brought forth by victims of the crimes. However, no procedure for investigation has been established, effectively placing responsibility for ensuring accountability for past violations onto the victims themselves. In the absence of any individual complaint, the Afghan authorities are prohibited from prosecuting war criminals on their own. The progressive abandon of all transitional justice processes has been a significant failure jeopardizing peace building, reconciliation and justice in Afghanistan.

The priority given by the international community to an inclusive peace and reconciliation process, beginning with a sustained political dialogue with the Taliban, has contributed to increasing the

⁴Ibid. p. 25.

⁵Ibid, p. 36.

³ FIDH, Armanshahr Foundation/OPEN ASIA - human rights in Afghanistan: a call for greater commitment by the Afghan government and the UN system , 22 March 2013

fragility of the justice system. Most notably, from November 2012 to January 2013, the Government of Pakistan, based on the 'Peace Process Roadmap to 2015'⁶, has freed 26 Afghan Taliban prisoners, including significant figures, to push the reconciliation process forward. The Transitional Justice Coordination Group (TJCG), composed of 27 local and international institutions, expressed in January 2013 its concerns that this may further deepen the culture of impunity and pose serious threats to sustainable peace in the country.⁷

In addition, in December 2012 the United Nations Security Council adopted resolution 2082⁸, refining resolution 1988 from June 2011 that created a new committee dealing exclusively with sanctions relating to the Taliban. The new resolution strongly urges Member States to “consult with the Government of Afghanistan on requests for the listing and de-listing of those targeted for the latter measures in order to ensure coordination with Afghan reconciliation efforts.” While the de-listing criteria remain opaque, Taliban representatives have repeatedly asserted that they would not recognize the Afghan Constitution nor negotiate with the Afghan government.

The Office of the Prosecutor (OTP) of the International Criminal Court (ICC) has received dozens of communications under Article 15 of the Rome Statute and has therefore opened a preliminary examination of the situation in Afghanistan, which became public in 2007. Since then, it has sought and analyzed information from multiple sources and published its preliminary examination on 13 December 2011. While the OTP also explained that “as part of the positive complementarity policy, the OTP has taken steps to encourage key actors to consider and promote accountability mechanisms within areas of their own purview,” its report lacks any further detailed information. It is crucial that the role of the ICC in Afghanistan be strengthened in order to contribute to deterring any further crimes from being perpetrated and going unpunished. Affirmation of the OTP’s mission and a public declaration on national proceedings are needed in order to reassert the ICC’s jurisdiction and take action in Afghanistan. Therefore, the assertion of ICC jurisdiction over the most serious crimes committed since 1 May 2003 would be both timely and useful. The ICC Prosecutor would thereby respond to victims’ desperate need for justice and thus contribute to breaking the vicious circle of impunity.

Recommendations:

The government of Afghanistan should:

1. Effectively and independently investigate human rights violations taking place in Afghanistan, and ensure victims’ access to justice and reparation for these violations.
2. Set up transitional justice mechanisms, in collaboration with the Afghan Independent Human Rights Commission (AIHRC), Afghan civil society, human rights organizations and victims’ groups, in compliance with the 2005 Action Plan for Peace and Reconciliation.
3. Repeal, through the Parliament, of the Public Amnesty and National Stability Laws.

⁶The ‘Peace Process Roadmap to 2015’ is a peace plan drafted by the Government of Afghanistan and the High Peace Council in November 2012, envisioning that “by 2015, Taliban and other armed groups will have given up armed opposition, transformed from military entities into political parties...and participated in national elections.” The first step of this process includes an end to cross-border shelling, the transfer of Taliban prisoners by Pakistan to Afghanistan or a third country, and pressure on the Taliban to sever ties with al-Qaeda. Step two (slotted for the first half of 2013) includes amongst other issues, agreement on the terms of direct peace talks. The third step slated for the second half of 2013, envisages a ceasefire.

⁷<http://www.bamdad.af/english/story/2105>

⁸<http://www.un.org/News/Press/docs/2012/sc10859.doc.htm>

4. Set up effective, transparent and efficient vetting procedures for nominations at the Afghan Local Police, in public posts and for any elections. The vetting commissions should be independent, establish public criteria for vetting, provide vetted persons access to all information used for the vetting, and the practical means to challenge their vetting before an independent court.

The Office of the Prosecutor of the ICC should:

5. Issue regular and detailed reports on the status of its preliminary analysis of the Afghan situation and publicly communicate its activities that aim to implement positive complementarity.
6. Because 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.

3. Women's rights

In the post-Taliban era, progress has undoubtedly been achieved in the field of women's rights. This includes, the establishment of a Ministry of Women's Affairs (which nevertheless lacks executive power), the participation of women in governance institutions, and the accession to the Convention on the Elimination of Discrimination against Women. Lately, the Government of Afghanistan has taken other steps towards the promotion and protection of women's rights, by establishing several provincial-level offices, staffed by the Attorney General's Office, to attempt to enforce the Law on Elimination of Violence against Women.

Nevertheless, more than eight years after the last visit of the UN Special Rapporteur on violence against women to Afghanistan in July 2005, indicators on the ground continue to show significant discrimination against and persecution of women. Violence against women and girls continues to be persistent and widespread. It includes harmful traditional practices such as *ba'ad* (providing women in retribution for murder and other crimes), so-called "honour" killings, early and forced marriages, rape, domestic violence and prosecution of women and girls for running away from home. As of spring 2012, 400 women and girls were in prison and juvenile detention for the "moral crimes" of running away from home or sex outside marriage. In July 2012, a young girl called Najiba was executed by armed men in Parwan province, after three months of detention. Her assassination brought scores of women's rights activists onto Kabul streets. Protesters criticized the judicial authorities, local officials and the Council of Ulama for failing to fulfill their responsibilities. Najiba had been forced to marry and tried to escape.

Although incidents of violence against women remain largely underreported, the latest UNAMA/OHCHR report noted a further increase in harmful practices and violence against them. The Afghanistan independent Human Rights Commission (AIHRC) recorded 4,010 reported cases of violence against women from 21 March to 21 October 2012 throughout Afghanistan, compared to 2,299 cases the previous year.⁹

The widespread nature of gender-based violence is particularly worrisome in light of the

⁹Report of the United Nations High Commissioner for Human Rights on situation of human rights in Afghanistan.

⁵ FIDH, *Armanshahr Foundation/OPEN ASIA - human rights in Afghanistan: a call for greater commitment by the Afghan government and the UN system*, 22 March 2013

discrimination against women in the Afghan justice system and the resulting impunity. In December 2012, a UNAMA report entitled *Still a Long Way to Go: Implementation of the Law on Elimination of Violence against Women in Afghanistan*¹⁰, documented both positive advances and ongoing gaps in the implementation of the law by judicial institutions. According to this report, the Afghan National Police and the prosecutor's offices continue to resort to *jirgas* and *shuras* for advice or resolution of numerous cases, including serious crimes. These parallel legal instruments often undermine the implementation of the Law on Elimination of Violence against Women and reinforce harmful practices.

In addition, incidents of violence against women have long prevented them from participating in public life, excluding them from political and decision-making processes. The frequent acts of aggression against women human rights defenders invested in the promotion of gender equality and women's rights highlight the worrisome situation women continue to face. In the last years, well-known women rights defenders have been directly threatened and obliged to leave the country. Among the many attacks reported in 2012, one of the most noticed was the target killing on 10 December 2012, of Mrs. Najia Seddiqi, acting head of the women's affairs department in Laghman province. Her predecessor, Mrs. Hanifa Safi, was killed last July by a car bomb.¹¹ Even though the promotion and protection of women's civil and political rights have been emphasized in all international conferences (in particular the July 2012 Tokyo Conference), the situation perpetuates impunity and undermines nascent gains made in the promotion of women's role in the public sphere.

Recommendations:

The government of Afghanistan should:

1. Refrain, along with the high Peace Council, from putting women's rights on the bargaining table with the Taliban and other stakeholders in the peace process.
2. Bring to justice all perpetrators of violence against women and try them in accordance with national laws and international obligations.
3. Strengthen the "formal" justice system, notably through the effective participation of women in the judiciary (attorneys and judges at all levels of the judiciary), and their effective protection to ensure the free and independent exercise of their function.
4. Repeal or revise discriminatory laws against women, notably the Shiite Personal Law, the Law on Marriage, as well as of the discriminatory provisions of the Criminal Code and Property law.

4. Children's rights and access to education

In spite of a reported decrease in reported incidents of underage recruitment for conflict-related activities, sexual violence and denial of humanitarian access,¹² children continue to be affected by

¹⁰<http://unama.unmissions.org/Default.aspx?tabid=12254&ctl=Details&mid=15756&ItemID=36086&language=en-US>

¹¹Statement by the Spokesperson of EU High Representative, Catherine Ashton, on the killing of the women's rights activist Nadia Seddiqi in Afghanistan on 10 December 2012. Brussels, 11 December 2012 (http://consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/134232.pdf)

¹² According to the Government of Afghanistan's annual progress report to the Special Representative of the Secretary-General for Children and Armed Conflict on the implementation of the action plan on the prevention of underage recruitment and sexual violence against children.

the ongoing armed conflict in Afghanistan. Reports verified by the UN Country Task Force on Monitoring and Reporting on children affected by armed conflict have documented a high number of children casualties, with more than 20 children killed and injured *per week* throughout the country during 2012. For instance, a 6-year old girl and a 12-year old boy were beheaded last August in two separate incidents in Taliban-controlled areas.

AGEs have continued to launch attacks targeting children and schools (especially girls' schools), directly violating international humanitarian law. Over last year, the Country Task Force received reports of 102 incidents of attacks against schools, 25 of which they were able to verify. One of these occurred in April 2012, when AGEs forcibly closed all schools in Andar and Dih Yak districts of Ghazni province. Acid attacks on girls or young women going to school have continued. Also in April 2012, 150 schoolgirls were poisoned by contaminated drinking water in Takhar province.

Children are still used in forced labor and prevented from education even though the right to education for all Afghans – male and female – is enshrined in the 2004 Afghan Constitution. Since the collapse of the Taliban regime some achievements have been made in terms of education, including a considerable rise in primary school enrollment and the construction of thousands of school buildings. However, the school drop out rate has been on the rise,¹³ many schools lack proper facilities and qualified teachers, and Afghanistan's adult literacy rate still ranks among the lowest in the world (an estimated 11 million Afghans remain illiterate). Only 1% of the 13% of the national budget allocated to the Ministry of Education is spent on combating illiteracy. Moreover, the cultural bias towards the necessity of educating girls and women remains prevalent, resulting in school enrollment rates of only 41.8% for girls against 73.7% for boys.¹⁴

Recommendations:

The government of Afghanistan should:

1. Fully protect the right of all children, especially girls, to access education, and ensure that all schools remain open and safe.
2. Put the fight against illiteracy at the core of all education and development strategies.
3. Reinvigorate national education access for all programs, including proper training for teachers, production of education materials, and an outreach plan for remote insecure areas and dropouts.

UNICEF and other education related international bodies should:

4. Reinforce resources allocation to education in Afghanistan.

5. Arbitrary detentions, torture and death penalty

Torture and arbitrary detention have reportedly been two of the most pressing human rights issues “impeding the establishment of rule of law, transition of lead security responsibilities from international military forces to Afghan National Security Forces and arguably long-term

¹³FIDH and Armanshahr Foundation/OPEN ASIA, “Human Rights at a crossroads: The need for a rights-centred approach to peace and reconciliation in Afghanistan”, May 2012, p. 21.

¹⁴Ibid.

⁷ FIDH, *Armanshahr Foundation/OPEN ASIA - human rights in Afghanistan: a call for greater commitment by the Afghan government and the UN system*, 22 March 2013

reconciliation in Afghanistan.”¹⁵ Since 2001, international forces, working in cooperation with Afghan national forces, have been found responsible for such illegal practices. In February 2010, a group of UN human rights experts published a report documenting cases of arbitrary and secret detention of individuals in Afghanistan without trial or charges, as well as the extraordinary rendition of detainees from, to and via Afghanistan outside the domain of international or national legal procedures.¹⁶

A UNAMA/OHCHR report¹⁷ presenting findings covering the period from October 2010 to August 2011 revealed that Afghan security forces, in particular the National Directorate of Security (NDS), continue to use torture on detainees held for offenses related to the armed conflict. The victims include children under the age of 18 years. According to the report, “detainees described experiencing torture in the form of suspension (being hung by the wrists from chains or other devices attached to the wall, ceiling, iron bars or other fixtures for lengthy periods) and beatings, especially with rubber hoses, electric cables or wires or wooden sticks and most frequently on the soles of the feet. Electric shock, twisting and wrenching of detainees’ genitals, stress positions including forced standing, removal of toenails and threatened sexual abuse were among other forms of torture that detainees reported. Routine blindfolding and hooding and denial of access to medical care in some facilities were also reported.” In March 2012, AIHRC released its own report¹⁸ on the treatment of conflict-related detainees in Afghanistan. Its findings did not contradict those of UNAMA/OHCHR.

International forces have chosen not to scrutinize the practices of Afghanistan’s security forces at these detention centers in spite of the obvious risks resulting from the on-going transfer of responsibility to Afghan authorities. It was reportedly only when the public was made aware of torture in prisons that US officials began acting on ending the practice of transferring detainees to sixteen of the facilities identified as sites where torture or abuse routinely took place. Only then was a plan - supported by NATO and the United Nations - to investigate the sites, provide training and monitor the Afghan government’s practices initiated.

The same UNAMA report stated that “in almost all criminal cases in Afghanistan, including national security prosecutions, the case against the defendant was based on a confession, which the court usually finds both persuasive and conclusive of the defendant’s guilt” and that even in cases where defense lawyers raise the issue of forced confession through torture, courts usually dismiss the application and allow the confession to be used as evidence.”

The death penalty has become another source of concern, to which both FIDH and Armanshahr Foundation/OPEN ASIA oppose, in line with the UN General Assembly latest resolution calling for

¹⁵Treatment of Conflict-Related Detainees in Afghan Custody, UNAMA, October 2011

¹⁶Joint study on global practices in relation to secret detention in the context of countering terrorism by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, the Working Group on Arbitrary Detention (represented by its Vice Chair), and the Working Group on Enforced and Involuntary Disappearances (represented by its Chair), A/HRC/13/42.

¹⁷Treatment of Conflict-Related Detainees in Afghan Custody, UNAMA, October 2011, (http://unama.unmissions.org/Portals/UNAMA/Documents/October10_%202011_UNAMA_Detention_Full-Report_ENG.pdf).

¹⁸See “Torture, Transfers, and Denial of Due Process: The Treatment of Conflict-Related Detainees in Afghanistan” (2012). <http://www.aihrc.org.af/media/files/AIHRC%20OSF%20Detentions%20Report%20English%20Final%2017-3-2012.pdf>.

a universal moratorium on death penalty (December 2012). The Afghan government executed in November 2012 six Taliban prisoners convicted of terrorist acts, including plotting suicide bombings, kidnappings and assassinations. Eight other men were executed on the previous day for criminal offenses like rape and murder. The last government executions in Afghanistan had taken place in June 2011, when two men convicted of a mass attack in Kabul were hung. Earlier on, the Karzai government had executed 15 inmates by firing squad in October 2007 and conducted a single execution in 2004.

Recommendations:

The government of Afghanistan should:

1. Invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Afghanistan to assist in providing a comprehensive response to deter use of ill-treatment in detention facilities.
2. Establish an immediate moratorium of death penalty and take steps toward the abolition of death penalty as a State signatory to the International Covenant on Civil and Political Rights.

International Security Assistance Forces (ISAF) should:

3. Stop transferring individuals under any circumstances where there is a risk that they will be subjected to torture or other forms of ill-treatment.

6. Threats to an independent civil society

In the post-2001 era, Afghan society has been characterized by the expression of its diversity more than ever before. Its political, social and cultural as well as ethno-linguistic diversity shows that Afghanistan cannot be reduced to stereotypes. Factors of change do exist in Afghanistan, as illustrated by the mushrooming of NGOs, the development of education institutions, and the emergence of media outlets in the country, both quantitatively and qualitatively. The number of cultural, human rights and media organizations has grown rapidly. In June 2005, President Karzai approved the Law on NGOs, which became effective immediately upon signature. This law created a new legal framework for NGOs in Afghanistan and replaced the Regulation for the Activities of Domestic and Foreign NGOs in Afghanistan (NGO Regulation), enacted in 2000 by the Taliban regime. All these represent positive factors of democratic change and require renewed support to help combat the challenges outlined in this paper.

In spite of continued gender-based violence and discrimination, women groups have been formed, such as the 50% Campaign of women of Afghanistan, established in 2009 by 70 social and civil activists, supported by various organizations, including the Armanshahr Foundation, National Union of Women of Afghanistan, and the Women's Political Participation Committee.

However, like many other independent figures and institutions, the media have seen serious deterioration in their working conditions in Afghanistan, particularly since 2008. While Afghanistan progressed in Reporters Without Borders 2013 ranking (ranked 128th in the world, up 22 spots from the year before) due to the absence of journalists in detention, numerous cases of assassinations, such as the beheading of Sadim Khan Bhadrzai on 22 February 2012, physical attacks and other threats have been reported throughout 2012.

In addition, while the establishment of the Afghanistan Independent Human Rights Commission (AIHRC), enshrined in the Constitution, was originally hailed as one of the achievements of the post-2001 government, and considered to be a landmark in creating conditions for accountability for past abuses, its progress has been surreptitiously hampered by the government itself. The AIHRC is being sidelined and the government has attempted to discourage the AIHRC from documenting and investigating past war crimes and atrocities on the grounds that “a violation of the [amnesty] law is a punishable crime.” The decision of President Karzai to remove three commissioners in December 2011 has also been seen as an evidence of this trend, as these commissioners were perceived as amongst the most critical of Karzai's regime. Until today, president Karzai has failed to fill five vacant commissioner positions. Moreover, the government keeps stalling the release of the AIHRC's comprehensive report mapping war crimes and crimes against humanity committed from 1978 to 2001.

Recommendations:

The government of Afghanistan should:

1. Support Afghan civil society and the NGO community in Afghanistan, including human rights organizations, ensuring as well that development assistance fully addresses needs defined in consultation with Afghan civil society, including women's organizations, independent media, and human rights organizations.
2. Guarantee the independence and safety of the AIHRC and its commissioners, allowing them to fulfill their mandate.

II. The United Nations approach to human rights in Afghanistan: Need for a more integrated engagement

The renewal of UNAMA's mandate on 19 March 2013 for another year is a welcome sign of the commitment of the United Nations to supporting Afghanistan's peaceful transition. Nevertheless, the ongoing human rights violations, as outlined by UNAMA and OHCHR's own annual reports, are a clear indication that UNAMA's engagement in the country is insufficient to ensure peace and respect for human rights in Afghanistan.

The United Nations system as a whole, including the Human Rights Council and the OHCHR, must take action to support the work of UNAMA and ensure that the international community responds appropriately to ongoing and escalating human rights challenges facing Afghanistan.

The UN system is principally involved in the protection and promotion of human rights in Afghanistan through a human rights component within the mandate of UNAMA. Like its previous mandate, UNAMA's new mandate underscores the mission's role in monitoring the situation of civilians, coordinating efforts to ensure their protection, promoting accountability, and assisting in the full implementation of the fundamental freedoms and human rights provisions of the Afghan Constitution and international treaties to which Afghanistan is a State party.¹⁹ It also includes emphasis on monitoring abuses of international human rights law in Afghanistan, particularly against women and children, and on supporting inclusiveness and respect for human rights in the

¹⁹ United Nations Security Council, Resolution S/RES/2096, 19 March 2013

reconciliation process.

Since 2007, UNAMA has had human rights staff deployed throughout Afghanistan. However, the work undertaken by its human rights section as well as the OHCHR in terms of monitoring the situation, reporting, and undertaking technical assistance and capacity building, have lacked sufficient support and visibility amongst the international community. In addition, significant cuts to the UNAMA's budget over the past year are concerning. FIDH and Armanshahr Foundation/OPEN ASIA welcome calls by the UN Security Council for more resources to be allocated to UNAMA in light of the changes that are likely to take place in Afghanistan in 2014. UNAMA's role in promoting coordination and coherence among UN funds, programmes and agencies should be enhanced and the UN Human Rights Council (HRC), the main body responsible for the promotion and protection of human rights, should discuss reports by UNAMA and respond to them accordingly.

However, the level of attention the HRC has given to Afghanistan in recent years is woefully insufficient considering the gravity of the human rights situation in the country. Pursuant to the HRC decision 2/113 of 27 November 2006, the OHCHR submits a report each year in March to the HRC on the human rights situation in Afghanistan. However, despite the deteriorating human rights situation described in each annual report, the Council has never formally discussed the OHCHR's findings, and has passed only one resolution on Afghanistan in the past seven years.²⁰ The OHCHR's last report, presented in March 2013, serves as a prime example of the Council's inadequate response to the human rights violations taking place in Afghanistan: the report outlined an increase in violent attacks against civilians, more and more children being recruited as suicide bombers and weapons smugglers, and widespread violence against women. Despite these alarming observations, the report was neither presented orally nor discussed formally at the HRC, and the HRC took no action to respond to the situation outlined in the report.

The engagement of Special Procedures in Afghanistan has also been nonexistent for years. The mandate of the last Independent Expert on human rights in Afghanistan expired in 2005, the last report on Afghanistan by a Special Rapporteur (on summary executions) was in 2008, and the last Working Group report (on the use of mercenaries) was presented in 2009. Each mandate issued thorough recommendations, which unfortunately remain far from being implemented. Since 2009, no Special Procedures have been able to visit the country, in spite of repeated requests emanating *inter alia* from the Special Rapporteur on Torture and from the Working Group on Arbitrary Detentions.

In light of NATO's forthcoming withdrawal from Afghanistan, the HRC must act to send a clear message to the international community to remain strongly engaged in Afghanistan. In this respect, the Council should take stock of the evolutions and challenges displayed in OHCHR/UNAMA reports and call upon the High Commissioner for Human rights to formally present her annual report on the work of the OHCHR in Afghanistan before the Human Rights Council.

Furthermore, the HRC should consider the establishment of an independent mechanism monitoring the evolution of the human rights situation and providing technical assistance to the Afghan government to strengthen the rule of law in the country.

²⁰ "Addressing Attacks on Afghan School Children", A/HRC/14/L.7, 11 June 2010.