

Questionnaire on National Human Rights Institution and Human Rights Defenders

Answered by: Afghanistan Independent Human Rights Commission

Answer to question 1

- a) The Afghanistan Independent Human Rights Commission (AIHRC), based on a decree issued by the Head of the Interim Government of Afghanistan, was established on 6th June 2002 for the period of two years, then the permanent establishment of the Afghanistan Independent Human Rights Commission enshrined in the Article 58th of the new Afghanistan National Constitution stipulated, adopted by the Loya Jirga (Grand National Assembly) on 3rd January 2005.

Following to the adoption of the National Constitution, the Law on Structure, Duties and Mandate of the Afghanistan Independent human Rights Commission (AIHRC Law) was adopted by the Afghan Cabinet Ministers on 1st May 2005 which was enacted by the President on 11th May 2005.

- b)
- The AIHRC Law has been adopted in pursuance to the provision of the Afghanistan Constitution, the international bill of human rights and the Paris Principles.
 - In pursuance of the provision of the Paris Principle, the AIHRC is an independent national human rights institution which is not part of the Afghanistan Government structure (Legislation, executive and judicial bodies), but is a national state institution which that reports directly to the President either to public.
 - The nine AIHRC's commissioners, including the chairperson, are appointed by the President for five years term of duty. During their tenure of duty term, no one of the authorities including the President, are not legally authorized to remove or suspend the membership. A commissioner is removed from the Commission if he is given another senior position by the President, or temporary assigned for another job for not more than six months.
 - The Commission's governing body is consisted of nine members (Commissioners), female and male, who may represent different groups of Afghan communities of different ethnic, linguistic, religious schools and other social background.
 - AIHRC is mandated to cooperate with different departments of the state organs, CSO/NGOs, the UN offices and other national human rights institutions at regional and international level, and joint to any regional and international efforts for promotion and protection of human rights.
 - According to the AIHRC Law, human rights shall mean the fundamental rights and freedoms of Afghan citizens which are enshrined in the Afghan Constitution, declarations, covenants, treaties, protocols, and other international human rights instruments ratified and acceded to by Afghanistan and to which Afghanistan is a party. Equal and fair access to social welfare and other services provided by the State are also considered human rights of the citizens.
 - Members and all staff of the AIHRC, while carrying out their activities under their legal mandate, are immune from prosecution.

- The AIHRC prepare its annual budget and present it to the Cabinet Ministers as a part of the National Budget, and the Commission shall implement its budget independently according to pertinent regulations.
- c)
- The Sub Committee on Accreditation (SCA) of the ICC has given the AIHRC “A” accreditation in October 2007, and confirmed it in November 2008.
 - The SCA, considering the efforts made by the AIHRC for carrying out its mandate in a difficult and volatile political and security related context and referring to the General observation 5.1 “NHRIs during the situation of a coup d’etat or a state of emergency”, recognized the need for the international community to continue to engage and support the AIHRC in order to ensure it receives adequate funding, until such time that the State will be able to cover the AIHRC’s adequate funding. The Government of Afghanistan, in this respect, has provided the AIHRC with US 500,000\$ in 2011 and US 1,000,000\$ in 2012, and negotiation has been kept going with the Ministry of Finance to allocate a portion of the annual budget of the AIHRC for 2013 and increase it in the years beyond.
 - The present term of the AIHRC Commissioners has terminated in December 2011, but the President has not yet come to the decision for either extending the term of the present Commissioners or appointing new commissioners. Networks of Afghan CSOs have already presented their list of competent nominees to the president for appointment of new commissioners, who may represent different groups of people.

Answer to question No. 2

- a) The Law on the AIHRC’s Structure, Duties and Mandates have given considerable authority to AIHRC to protect and promote human rights of Afghan citizens, as we read in the Article 21 of the Law as follow:

Duties and Power

Article 21:

The Commission shall have the following duties and power to achieve the following objectives set-up by this law:

1. Monitoring the human rights situation;
2. Monitoring the implementation of the provisions of the Constitution, other laws, bills and regulations, and Afghanistan’s commitment to human rights standards;
3. Monitoring the performance of those administrative systems, legal and judicial institutions, and national and international profitable and non-profitable organizations in the country that effect human rights.
4. Monitoring the performance of state authorities and Non- Governmental organizations concerning the fair and accessible distribution of services and welfare.
5. Monitoring the situation of citizens’ access to their human rights and freedoms;
6. Visiting detention centers to monitor the implementation laws on the treatment of prisoners;
7. Investigation of cases of human rights violations;
8. Collecting documents, evidence and testimonies of witnesses on cases of human rights

violations;

9. Referring the results of investigations of the cases of human rights violation to relevant authorities and following up on cases in order to address violations and prevent future violations;
10. Formulating and implementing of a national human rights education plan and public awareness programs;
11. Cooperating with relevant institutions on improving human rights awareness in educational curriculum;
12. Planning and implementing programs that include the investigation of crimes and human rights abuses as part of the transitional process;
13. Providing advice to the National Assembly/Parliament and the government to legislate, adopt, and amend laws in support of human rights promotion and protection, and to abolish laws that are not in compliance with international human rights standards;
14. Providing advice to the National Assembly and the government regarding signing and acceding to international human rights conventions and treaties;
15. Providing advice to the government for better implementation of Afghanistan's commitments to international human rights conventions;
16. Carrying out research to find effective ways of harmonizing principles and mechanisms of international human rights instruments with Afghan culture and national traditions and making suggestions in this respect;
17. Providing advice and necessary information to the government to prepare Afghanistan's reports which fulfill its treaty obligations;
18. Cooperating with government and non-governmental authorities and other organisations to improve the implementation of human rights standards and raise the level of human rights observance in relevant areas;
19. Cooperation for implementation of administration reforms to ensure, support and improve human rights in Afghanistan;
20. Cooperating with the United Nations, and regional and international organizations within the scope of its mandate and power;
21. Conducting public consultations and surveys to find practical ways of promoting and protecting human rights and develop relevant programmes;
22. Providing advice and submitting recommendations to the national, provincial and district councils and other relevant authorities for promotion and protection of human rights;
23. Building the capacity of civil society groups and local human rights organizations and supporting their activities;
24. Releasing and publishing of public declarations and official statements on important issues of human rights;
25. Demanding officials to explain the causes of non-observance of human rights principles;
26. Dissemination and promotion of human rights for public awareness;
27. Submitting annual reports to the President on the human rights situation;
28. Releasing and publishing reports and statements on human rights situation in Afghanistan;
29. Providing guidance and advise to the President on how to address human rights violations and abuses;

30. Managing and administering headquarters, regional and provincial offices and monitoring the performance, activities and the behavior of the staff members;
31. Building relations at the national and international level in the field of human rights activities and better implementation of the provisions of this Law;
32. Securing necessary facilities and opportunities to promote the activities of the Commission;
33. Regulating the reporting on the human rights situation for scientific and practical use;
34. Adopting bills and regulations to regulate the affairs relating to the rights, responsibilities, privileges and insurance for the staff members of the Commission;
35. Having responsibility to implement the present Law.

b and c)

The AIHRC has mandated to protect the rights of citizens through registering and investigation of their complaints either directly from victims, victims' family members/relatives, or indirectly from individual and group of human rights defenders, and also investigating those cases of human rights abuses reported by media and community groups. AIHRC normally process those complaints which have not been taken up by the government authorities for remedial action, or those cases that a civil servant has violated the rights of a citizen and the Government authorities has not prosecuted him/her. In addition, AIHRC monitors the implementation of the International Humanitarian Laws, and investigate those cases violated by the officers and staff members of the national army, international security forces and the Anti-Government elements.

- d) The AIHRC, in accordance with its law, to protect a victim of human rights violation or witnesses, never discloses the identity and information provided by him/her without his/her consent. Those victims and witnesses who are at risk, if necessary, the AIHRC officially requests the police departments to protect them and followed up by regular AIHRC monitoring. The AIHRC regularly monitors the police custodies, detention centers, jails, child correction centers and women protection shelters at the absence of the government agents, and record the living conditions in these places, based on the UN Minimum standard of living conditions for detention centers. AIHRC has the mandate to receive complaints of detainees and refereed/ followed up with the related government authorities. In relation to remedy, the government is responsible for any remedial provision to victims of human rights violation, and the AIHRC recommends the Government for any compensation required for victims of human rights violation.

Answer to question No. 3

- a) AIHRC receives complaints of human rights defenders if they are intimidated or threatened by the government agents or powerful/influential individuals (warlords, illegal armed groups). In such cases, after verification of the complaint, the AIHRC's officers directly contact the high police and security authorities or, if required, the AIHRC's Chairperson directly contact the Attorney General, the Chief Justice, the Minister of Interior or the President for immediate protection of those human rights defenders who are at risk. In cases where those human rights defenders have been detained by Police or Attorney General Office, the AIHRC gets in touch with the defenders, visit them in the

detention center, provide them legal aid through the Afghanistan Bar Association for free and fair trial.

- b) The AIHRC rarely faces problem to protect human rights defenders. AIHRC in close cooperation with different domestic unions such as, National Association of Journalists, Media Watch, Writer Association, Lawyers Association, Bar Association, solves the problems of human rights defenders. AIHRC also has encouraged CSOs for the establishment of advocacy committees for human rights of women, children and persons with disabilities that AIHRC has vital role in making synergy with them and raising voices on various issues and cases related to human rights protection and promotion. AIHRC through these advocacy committees, and also using its power, always pushes the Government authorities to protect human rights defenders.

One of the obstacles in these days in Afghanistan is that the Media Draft Law has no clear definition of the terms such as, “national integrity”, “national identity”, “principles of Islamic Sheria” “offending personalities”, “freedom of speech”, etc. The Government due to the ambiguous meaning of these terms, can easily accused the media organizations, human rights defenders and political analysts for violation of the media law. Therefore, media workers, human rights defenders and social and political analysts are under the pressure of the Government and fundamentalist segments. Therefore, they cannot exercise their right to freedom of speech and access to information.

Answer to question No.4

- a) The item 23 of the Article 21 of the AIHRC Law mandates the AIHRC to build up the capacity of civil society groups and local human rights organizations and support their activities. The AIHRC, therefore, has included the empowerment of CSOs into its strategic plan, aiming to raise the advocacy capacity of Afghan CSOs, support their efforts and making synergy with them in the areas of human rights protection and promotion, improvement of legislation, strengthening democracy and, as a whole, advocating for good governance. In this respect, AIHRC has encouraged, at national and provincial level, the establishment of advocacy committees for the rights of women, children and persons with disabilities. These advocacy committees of CSOs, including a number of media organizations, that AIHRC is also member of these committee, have been recognized by the Government. Representatives of Afghan CSOs, as a result of the AIHRC’s cooperation, so far have participated in several international conferences on issues of Afghanistan, such as conferences held in the last two years in Bonne, Kabul, Chicago and Tokyo.
- b) There is no serious challenge for cooperation between the AIHRC and CSOs at national and international level. The AIHRC had some joint cooperation with international NGOs for monitoring human rights and capacity building of the AIHC and CSOs in Afghanistan and also cooperated in the areas of human rights promotion.

Answer to question No. 5

- a) There are a number of cases recorded that the AIHRC’s Commissioners or staff members have been threatened.

- In 2007 when the Government ordered to execute 15 dangerous criminals, one of the AIHRC's Commissioners raised the AIHRC's concern on the free and fair trial of these criminals, the Supreme Court summoned him for so-called wrong comment on Court verdict.
- In a similar case the same Commissioner, who was commenting and raising the AIHRC's concern on the problematic process of the 2009 Presidential Election, was suspended by the Attorney General Office, but later on when the Chairperson of the AIHRC made the Attorney General noticed for not being authorized to suspend the AIHRC's Commissioner, the file was closed.
- The Deputy Chairperson of the AIHRC, who was appointed by the President as temporary member of the Election Complain Commission for Presidential Election in 2009, was intimidated by several senior members of the Government and senior election campaigners, and blamed for attempt to distort the result of the election for the benefit of Opposition's candidate
- The AIHRC's Spokesperson, who is also unpaid Chairman of an Afghan NGO, Free and Fair Election Foundation of Afghanistan, was also blamed for attempt of jeopardizing the legitimacy of the Presidential election of 2009.
- The AIHRC's Commissioner for Promotion of Women's Rights was summoned by the Supreme Court in 2010 for her interview she made with media on the existence of corruption in the judicial departments of Afghanistan, which was based on the outcome result of the AIHRC's assessment conducted on the situation of justice in Afghanistan.
- In January 2012, the Spokesperson of the President office announced through the media that the President will not extend the duty terms of the Deputy Chairperson, Spokesperson and one of the AIHRC's commissioners. The reason was not explained publicly, but based on the news leaked from the meeting of the President with his vice presidents and Chief of Staff, they were blamed for the attempt to distort the result of the 2009 Presidential Election.

b) In cases of threatening the AIHRC 's Commissioners and staff members, these measures are taken:

- For immediate stopping and prevention of threat/intimidation, the Chairperson of the AIHRC immediately contact the high authorities such as the Minister of Interior, Attorney General, Chief Justice, and if the threat it serious, she get in touch with the President Office.
- If all efforts are failed to protect a staff member at local level, who is threatened by Anti-Government elements (insurgents). the AIHRC will change her/his duty station.
- If it is considered very necessary in some cases, the AIHRC requests the help of the international human rights organizations, including the UN office, for immediate step to protect the AIHRC's Commissioner or staff member who are under serious threat.
- Due to conflict situation, the AIHRC has recruited one security officer in each of its offices to care for the security of the commissioners, staff members, office premises, office equipment and vehicles. All commissioners and staff members, travelling from one place to another place, should get security clearance.

- c) AIHRC has not been faced to any unannounced visit or inspection neither by the police nor by the government authorities

Answer to question No. 6

- a) In the last two years, the Government of Afghanistan has funded about 5% of the annual expenses of the AIHRC, and the rest of the funding is provided by donor countries/agencies. About 17 donor countries/agencies, including the UN agencies, have contributed to the core or earmark funding of the AIHRC since 2002.
- b) Non- government off-budget funding by donors has no effect on the autonomy and the works of the AIHRC. AIHRC has developed very transparent financial management system. The financial affairs of the AIHRC are regularly audited by international audit companies and it is reported by the AIHRC to the donors and public.

Answer to question No. 7

- a) According to the Article 7 of the AIHR Law, the Commission shall be consist of nine members (governing body) female and male, who are appointed by the President for a period of five years.
According to the Article 11 of the AIHR Law, members of the Commission and the Board of Professional Advisors shall have the following qualifications:

1. Afghan Citizenship;
2. Twenty five years of age;
3. Not being deprived of political and civil rights by a competent court;
4. Higher educational background in law, human rights law Islamic Jurisprudence or an academic background in other fields of study with practical experiences in the field of human rights;
5. Not being accused of national treason or crimes against humanity;
6. Shall have a good reputation, be independent, hold popular trust and a commitment to human rights;
7. Shall not be a member of any political party during their term of office at the Commission.

There is no documented procedure for appointment the members of the governing body, but the present practice in this respect is that the President office has assigned his two vice presidents, his Chief of Staff, his Spokesperson and a number of cabinet ministers to, in consultation with the present Chairperson of the AIHRC, should seek qualified and competent nominees among civil society members for appointment of new commissioners. In this regards, networks of civil society organizations has submitted a list of about 30 nominees to the President, who are men, women and represent different groups of Afghan society.

- b) The members of the governing body are not removed from his/her tenure of duty even by the Present until the completion of their terms, but are suspended under the following circumstances:

1. Resignation or retirement;
 2. Convicted of treason or crimes against humanity by a competent court;
 3. Suffering from a refractory bodily or mental disease that hinders the performance of duties;
 4. Assignment of the members to other duties by the President for a period of more than 6 months;
 5. Removal by the Commission
2. The Commission can, under the conditions described in the first paragraph of the article 13 of the AIHRC Law, propose to the President a new competent person within one month to fill the vacant post.

Conditions for Removal of the Members

Article 14 of the AIHRC Law

1. Members of the Commission shall, based on sufficient documents available and clear reasons, be removed from the membership of the Commission for any of the following reasons:
 - a. Lack of competency in performing assigned duties;
 - b. Violating the confidentiality of the commission;
 - c. Violating the provisions of this law;
2. Removal of a member of the Commission, as set out in the paragraph 1 of the present Article 14, shall happen based on the existence of clear, documented reasons and upon the proposal of two thirds of the members of the Commission and the approval of the President.

Resignation

Article 15:

Members of the commission shall submit their letter of resignation to the Commission. The resignation shall be subject to approval by the President.

Immunity of the governing body

In accordance with the Article 16 of the AIHRC Law, members and all staff members of the Commission, while carrying out their activities under their legal mandate, are immune from prosecution.

Conditions for Legal Prosecution of Commission Members

Article 17 of the AIHRC Law:

1. If a member of the Commission is accused of a crime, the responsible authority shall inform the Commission and the suspect shall be prosecuted.
2. If a crime is witnessed, the responsible authority may arrest and prosecute the accused without the permission of the Commission.
3. In both cases, if the judicial prosecution requires legal detention, the responsible authority, shall immediately inform the Commission of the matter and obtain its consent.

