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Overview

The 13-person delegation for Afghanistan's review under the UPR on 7 May 2009 was headed by Dr Muhammad Qasim Hashimzai, Vice-Minister of Justice. The other delegation members represented the Ministries of Justice, Social Affairs and Labour, Health, Interior, and Foreign Affairs, and the Supreme Court of Justice and the Council of Ministries. The delegation appeared well-prepared and Dr Hashimzai and four other delegation members addressed most issues raised although not all and not always elaborately.

Almost 60 States took part in the review. Particularly the Western European and Others Group (WEOG), the Eastern European States and the Asian States were active, but also Mexico, Argentina and Brazil participated. From the African Group, only South Africa made comments. All States expressed concerns about women's and children's rights. However, comments made by the Asian Group were often more praising and less critical than those made by Western States. In general, the comments and questions, while complimentary of Afghanistan's comprehensive and frank report, its efforts made and its progress achieved in the last seven difficult years after the Taliban regime, offered serious criticism and recommendations, underlining the challenges still being faced. Realistically, it seems that the successful implementation of the recommendations, of which some were specific, will to a certain extent depend on the future situation in the country.

Afghanistan was cooperative during the review. Although it acknowledged the challenges facing human rights, the delegation focused more on the 'important achievements' during its presentation whereas its national report was more self-critical. At the end of the review, Dr Hashimzai reiterated Afghanistan's determination to improve its human rights situation and asked for assistance from the international community in this regard.

General information on Afghanistan

- Afghanistan is not a member of the Human Rights Council.
- The members of the troika for the examination of Afghanistan were Azerbaijan, the Republic of Korea and Cameroon.¹
- According to the national report, a national strategy was drawn up to prepare the report which included involvement of government and civil society stakeholders and consultation activities. There is no information on whether an official national consultation for its preparation was held.

Information submitted to the Working Group

The **national report** of Afghanistan² is balanced, self-critical and comprehensive. It identifies both the important achievements and progress made by the State in the last seven years, as a country in transition, and details the key challenges and problems it is still facing. However, the report is not very reflective of issues raised in the UN or NGO compilations.

The OHCHR **compilation of UN information**,³ although recognising progress made in some areas, focuses on challenges in relation to: discrimination, especially discrimination and (sexual) violence against women and girls⁴ (including forced marriages⁵); a deeply flawed criminal justice system and the carrying out of death sentences;⁶ torture and ill-treatment of detainees and arbitrary detentions (including by international forces);⁷ the impact of the conflict on civilians;⁸ grave abuses against children committed by parties to the conflict (both State and non-State);⁹ prevalence of customary law and lack of functioning formal justice mechanisms; corruption, insecurity and inadequate legal and regulatory frameworks, lack of qualified personnel and physical infrastructure undermining the functioning of executive, judicial and law enforcement institutions and the rule of law;¹⁰ the right to freedom of opinion and expression, and increased levels of violence faced by the media;¹¹ the failure to meet core obligations under ICESCR;¹² access to education (enormous gender gaps and lack of security in accessing education, especially for girls);¹³ reintegration of internally displaced persons (IDPs) and returnees and the return of refugees;¹⁴ and increasingly strong links between terrorism and illicit drugs.¹⁵

Twelve other stakeholders, including 11 non-governmental organisations (NGOs), submitted information for the OHCHR **summary of stakeholders' information**.¹⁶ The majority of points in the compilation of UN

¹ Afghanistan requested that a member of its regional group be among its troika. There were no objections by Afghanistan or by the members of the troika to the selection. For a full summary of the selection of troikas, see ISHR's *Daily Update* of 8 September 2008, available at www.ishr.ch.

² A/HRC/WG.6/5/AFG/1, available at <<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AFSession5.aspx>>

³ A/HRC/WG.6/5/AFG/2, available at <<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AFSession5.aspx>>

⁴ High Commissioner for Human Rights, Secretary-General.

⁵ High Commissioner for Human Rights, Afghanistan Independent Human Rights Commission (AIHRC).

⁶ Special Rapporteur on extrajudicial, summary or arbitrary executions, Secretary-General, High Commissioner for Human Rights.

⁷ High Commissioner for Human Rights, Independent Expert on the situation of human rights in Afghanistan.

⁸ Secretary-General, High Commissioner for Human Rights, Security Council.

⁹ Secretary-General.

¹⁰ High Commissioner for Human Rights.

¹¹ High Commissioner for Human Rights.

¹² Afghanistan Independent Human Rights Commission (AIHRC).

¹³ UNESCO, UNICEF, Special Representative of the Secretary-General for Children and Armed Conflict.

¹⁴ UNHCR, Representative of the Secretary-General on the human rights of IDPs.

¹⁵ Security Council.

¹⁶ A/HRC/WG.6/5/AFG/3, available at <<http://www.ohchr.org/EN/HRBodies/UPR/PAGES/AFSession5.aspx>>

information were reflected in the summary. It mentioned some achievements, for example in relation to women's rights and freedom of expression,¹⁷ but noted at the same time the challenges still faced, including high rates of (domestic) violence against women and lack of recourse to legal protection,¹⁸ widespread practices inconsistent with women's rights (for example in relation to marriage),¹⁹ restrictions on freedom of expression for those criticising government officials or powerful local figures,²⁰ and challenges faced by journalists.²¹ Key concerns were raised in relation to: the death penalty;²² increase in civilian casualties;²³ torture, inhuman and degrading treatment;²⁴ child combatants and recruitment of children by both Government forces and the Taliban (as suicide bombers);²⁵ corporal punishment of children;²⁶ trafficking of children and child labour;²⁷ risks faced by human rights defenders;²⁸ impunity and lack of redress for victims as well as the almost complete exclusion of justice from the policy-making agenda;²⁹ religious crime laws incompatible with international obligations;³⁰ no adequate standard of living for most people³¹ and limited access to health care³² and education, especially for girls;³³ return of refugees; and the situation of internally displaced persons³⁴.

Interactive dialogue³⁵

Presentation by the State

In his 30 minute presentation, the Vice-Minister of Justice, Dr Hashimzai, outlined the State's approach to the promotion and protection of human rights. He merely repeated what was in the national report, not adding additional information, and did not explicitly answer the written questions submitted by States in advance.³⁶ He did exhibit Afghanistan's openness to dialogue.

The Vice-Minister of Justice stated that Afghanistan faces many problems following almost three decades of war and disorder and that challenges remain in the area of human rights, causing a 'significant burden on the citizens of Afghanistan'. He underlined that, nevertheless, in direct cooperation with the international community, Afghanistan has managed to make a number of important achievements, such as the adoption of the 2004 Constitution, formation of a democratic government, holding elections, implementation of legal and

¹⁷ AIHRC.

¹⁸ Amnesty International (AI).

¹⁹ The International Center for Human Rights and Democratic Development (Rights and Democracy).

²⁰ Human Rights Watch (HRW).

²¹ AIHRC.

²² AI.

²³ AI.

²⁴ AIHRC.

²⁵ World Vision Afghanistan (WWA), UNICEF.

²⁶ Global Initiative to End All Corporal Punishment of Children (GIEACPC).

²⁷ AIHRC, WWA.

²⁸ Front Line: the International Foundation for the Protection of Human Rights Defenders (FL).

²⁹ International Center for Transitional Justice (ICTJ).

³⁰ European Centre for Law and Justice (ECLJ).

³¹ AIHRC.

³² WWA, AI.

³³ AI, AIHRC, HRW.

³⁴ AI, AIHRC.

³⁵ Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at www.ohchr.org/english/bodies/hrcouncil/form.htm to receive username and password. Audiovisual archives of the meetings of the Working Group 'webcast' are available at www.un.org/webcast/unhrc/index.asp.

³⁶ Argentina, Canada, Czech Republic, Denmark, Germany, Hungary, Latvia, Norway, the Netherlands, Sweden, UK

judicial reforms, securing the independence of the judiciary, creation of mechanisms for supporting and monitoring of human rights and initiating reporting processes on international human rights treaties that were ratified.

At the conclusion of his presentation, Dr Hashimzai noted that the report is clearly reflecting Afghanistan's will 'to seriously deal with human rights failures'. He underscored that it is not possible to implement the reforms for the improvement of human rights without the cooperation of the international community.

Themes and issues

The interactive dialogue did not follow the accepted best-practice set by previously reviewed States of answering after every seven or eight contributions. The delegation chose to respond only after all States had made their statements.

Many States³⁷ asked questions, expressed their concerns, and made recommendations regarding the **situation and rights of women and girls**, especially the continuing widespread discrimination and violence against them. Several States³⁸ expressed particular concern about the adoption of the *Shia Personal Status Law*, restricting the rights of women. They welcomed President Karzai's decision to review this law and recommended to amend it in accordance with international law. In response, Afghanistan stated that it is committed to the protection and promotion of women's rights and that it has established an action plan for women to promote gender equality, the core objective of which is to enforce gender mainstreaming in governmental institutions. It noted that initial steps have been taken to prepare its initial report to the Committee on the Elimination of Discrimination against Women.

There were widespread concerns about the **many challenges faced by children**,³⁹ in relation to (the lack of) education,⁴⁰ particularly for girls,⁴¹ their recruitment by (State and non-State) armed groups,⁴² child abuse and trafficking⁴³, and child labour⁴⁴. In its response, the delegation underlined that to enhance the level of education 'Afghanistan's Constitution is committed to provide free and equal access to all public educational institutions, irrespective of gender'. Furthermore, it underlined that attendance up to middle school has been made compulsory. Other concerns regarding the situation of children were not addressed.

Most Western States⁴⁵ expressed their concerns about **limited freedom of expression**, the **lack of media diversity**, and the increase in threats and intimidation against **journalists**. Canada, Norway, the United Kingdom, France, the United States and Denmark recommended to swiftly implement the new press law. In his response, Dr Hashimzai noted that the existing law, which complies with all international commitments, removes all restrictions on freedom of expression. However, at the same time, he stated that the freedom of expression 'has gone to the limit', provided by the law, leading to concerns, 'not of the government, but of some people' that too much freedom is given to the media. He furthermore noted that the implementation of

³⁷ Finland, Iran, Singapore, Netherlands, Philippines, Switzerland, Republic of Korea, France, Indonesia, Mexico, South Africa, Belgium, Bahrain, Egypt, Canada, US, Austria, Brazil, UK, Australia, New Zealand, Tunisia, Iceland, Sweden, Uzbekistan, Ireland, Slovenia, Hungary, Spain, Maldives, Jordan, Japan, Albania.

³⁸ Finland, Australia, France, Ireland, Hungary, New Zealand, Germany, Belgium, the Netherlands, Austria, UK, Iceland, Japan, Argentina.

³⁹ Singapore, Norway, Philippines, Switzerland, Indonesia, South Africa, Austria, Uzbekistan, Slovenia, Slovakia, Hungary, Malaysia, Maldives, Jordan, Iran, Japan, Greece.

⁴⁰ Saudi Arabia, Australia, Greece, Albania, Singapore, Philippines, Egypt, Brazil, Slovakia.

⁴¹ Australia, Greece, Albania, Singapore, Philippines, Slovenia.

⁴² Malaysia, Hungary.

⁴³ Azerbaijan, Philippines, Slovenia, Hungary.

⁴⁴ Slovakia, Hungary.

⁴⁵ Norway, Netherlands, France, Belgium, Germany, Canada, US, UK, Sweden, Denmark, Hungary, Spain.

the new press law has been delayed due to some technicalities, and that this law would not increase the freedom of press that already exists.

France, Canada, Brazil, the UK, Australia, New Zealand, Sweden, Ireland and Argentina recommended the re-establishment of a moratorium on executions as an initial step towards the abolition of the **death penalty**. Egypt, on the contrary, recommended Afghanistan uphold its sovereign right to impose the death penalty. In responding to this issue, the delegation stated that Afghanistan's criminal law recognises the death penalty, but that the penalty is rarely applied and that it can only be applied after three stages of court decisions.

Several States⁴⁶ raised questions or concerns about the **independence of the judiciary** and respect for human rights norms in relation to the right to a fair trial and due process. Turkey recommended reforming and strengthening the judicial system. India, Singapore, the US, Jordan and Japan addressed the fight against **public corruption**. Concerns were also raised about the **independence**⁴⁷ and financing⁴⁸ of the **Afghanistan Independent Human Rights Commission**. In its response, the delegation emphasised that the judicial system is an entirely new system, and is affected by the last decades of conflict and disorder. It added that it has taken considerable steps forward and that, for example, a code of behaviour was developed. Furthermore, it noted Afghanistan's accession to the *Convention against Torture* in 2003 and that the fight against corruption is mainstreamed in the work of the Government.

Other issues covered during the review included: the ratification and implementation of international instruments, and cooperation with international mechanisms;⁴⁹ technical support and overall assistance from the international community;⁵⁰ the security situation and the increase of civilian casualties⁵¹ torture, administrative detention and prison conditions;⁵² transitional justice and the implementation of the Plan of Action for Peace, Justice and Reconciliation;⁵³ elections;⁵⁴ the worsened situation of IDPs;⁵⁵ workers rights;⁵⁶ and challenges with regard to health care,⁵⁷ poverty alleviation,⁵⁸ and food security.⁵⁹

Adoption of the report

Before adoption, the President of the Council said that, if adopted, the report would not be translated because it exceeded the 9,630 word limit (the report would be around 13,000 words). After discussion and objections raised by the UK and Germany⁶⁰ the UPR report on Afghanistan was adopted ad referendum by the

⁴⁶ Qatar, Finland, Switzerland, Canada, US, UK, Turkey, Malaysia, Spain, Argentina, Jordan, Japan.

⁴⁷ Finland, Argentina.

⁴⁸ Algeria, Argentina.

⁴⁹ India, France, Indonesia, Mexico, Australia, Iceland, Latvia, Spain, Maldives, Argentina, Czech Republic.

⁵⁰ Algeria, Bhutan, Indonesia, Bahrain, Nepal, Morocco, Pakistan, Palestine, Denmark, Bangladesh, Malaysia, Jordan.

⁵¹ Iran, Switzerland, Austria, Turkey, Pakistan.

⁵² Germany, Denmark, Poland, Malaysia, Czech Republic.

⁵³ Algeria, Norway, France, Mexico, Morocco, Czech Republic.

⁵⁴ Turkey, Australia, Czech Republic.

⁵⁵ Republic of Korea, Azerbaijan.

⁵⁶ US.

⁵⁷ Indonesia, Philippines, Azerbaijan, Australia, Egypt, Brazil.

⁵⁸ Iran, Azerbaijan, Saudi Arabia, Egypt.

⁵⁹ Iran, Philippines, Slovakia.

⁶⁰ The UK wanted its statements to be reflected in the report. Germany stated that since the UPR dialogue had evolved and allows more States to speak, the rule of 9,630 words would have to be revisited. Egypt and Pakistan reacted to this, saying that the presidential statement should not be tampered with.

Working Group in the afternoon of 11 May 2009. The report departs from the standard format by only containing the recommendations as a list at the end, and not in the body of the text.⁶¹

Of the 143 recommendation made, Afghanistan accepted 96 recommendations.

Afghanistan kept 37 recommendations pending, stating that these will be examined and that it will provide responses in due time, which will be included in the outcome report to be adopted by the Council at its 12th session in September 2009. These recommendations dealt with, among others: ratification of various international instruments⁶² and acceptance of the competence of the Committee on Enforced Disappearances; involvement of the Ministry for Women's Rights and women's rights organisations in the legislative process; strengthening support to the Afghanistan Independent Human Rights Commission and taking steps to ensure equitable and truly representative appointment of the Commission and protect it from undue political interference; including civil society and human rights defenders in the development of legislation and decision-making processes; considering extending an invitation to all special procedures of the Human Rights Council; taking further steps to protect the human rights of those who live in rural areas where respect for basic human rights, especially with regard to women and children, remains impeded under customary law; ensuring closure of secret and illegal prisons and review conditions in all prison and detention facilities with the aim of ensuring their compliance with the Minimum Standards of Treatment of Prisoners and provide effective procedural safeguards against arbitrary detention; establish mechanisms for the independent appointment and dismissal of judges and for the punishment of corruption among judges, and expand efforts to protect judges from insurgent attacks and to increase salaries for judges, prosecutors and members of the Ministry of Justice; pursuing the implementation of different measures aimed at reforming and strengthening the judicial system; enacting the new press law and taking the necessary measures to protect journalists against intimidation, violence and abusive convictions.

Afghanistan also kept the following recommendations pending, which seem to reflect its existing national and international obligations: submitting its first periodic report without further delay and ensuring full implementation of CEDAW and other ratified international human rights conventions; submitting its delayed reports to the Committee against Torture; taking all possible measures to prevent the recruitment of children and the use of child combatants by the Taliban; and continuing the process of transitional justice and implement the Plan of Action for Peace, Justice and Reconciliation.

Furthermore, while accepting recommendations to continue the review of the *Shia Personal Status Law* and to harmonise it with international treaties signed by Afghanistan and ensure that it conforms to international commitments, Afghanistan kept recommendations pending that refer to amending this Law consistent with its international human rights obligations. This seems rather contradictory.

It rejected all ten recommendations dealing with the death penalty.

⁶¹ A/HRC/WG.6/5/L.8

⁶² Optional Protocol to the *Convention against Torture*; Optional Protocol to the *International Covenant on Civil and Political Rights*; Optional Protocol to the *Convention on the Elimination of All Forms of Discrimination against Women*; the *International Convention on the Protection of the Rights of Migrant Workers*; the *Convention on the Rights of Persons with Disabilities*; the *International Convention for the Protection of All Persons from Enforced Disappearance*.

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