



**International Convention on  
the Elimination of All Forms  
of Racial Discrimination**

Distr.: General  
27 July 2020

Original: English  
English, French and Spanish only

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**Committee on the Elimination of Racial Discrimination**

**Combined second to sixteenth periodic reports  
submitted by Afghanistan under article 9 of the  
Convention, due since 1986\***

[Date received: 20 December 2019]

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\* The present document is being issued without formal editing.

GE.20-10091(E)



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## Introduction

1. Afghanistan acceded to the international Convention on Elimination of all Forms of Discrimination (CERD) on January 6, 1983 and submitted its initial report on July 20, 1984 to the treaty body of the convention. The initial report of Afghanistan (CERD/C/111/Add.3) was presented in the meetings number 718 and 719 on March 18, 1985 (CERD/C/SR.718 and SR.719) to the treaty body. But the submission of the subsequent periodic reports has been delayed due to the war and conflict as well as, lack of adequate capacity in the relevant institutions.

2. In accordance with Article 9 of the CERD, states are obliged to submit their initial report within one year of their accession to the convention and submit their periodic report on their legislative, judicial and administrative measures with respect to implementation of this convention, every two years to the treaty body. In accordance with its national and international obligations in terms of respect, promotion and protection of the human rights, The Government of the Islamic Republic of Afghanistan must implement and uphold the values stipulated in international human rights instruments it has acceded to, and regularly reports on the measures undertaken, to the relevant treaty bodies.

3. In 2016, the Government of the Islamic Republic of Afghanistan received a list of issues<sup>1</sup> from the CERD committee. The committee has called upon the Government of the Islamic Republic of Afghanistan to provide information on legislative, judicial and administrative measures it has taken in relation to the implementation of articles 1–7 of the CERD. This report has been provided in accordance with the guideline of CERD/C/2007/1 of 13 June 2008, HRI/GEN/2/Rev.6/3 of June 2009, and in consideration of the contents of the committee’s list of issues. The legislative, judicial and administrative actions of the Government of the Islamic Republic of Afghanistan have been hereby prepared as a response to the list of issues of the CERD committee. The present report consists of the following two sections:

- General information on the progress in the promotion and protection of human rights particularly in the field of legislations, institutions and mechanisms that reinforce and support human rights at the national level.
- Information on the measure taken by the Government of the Islamic Republic of Afghanistan with respect to the implementation of CERD (articles 1–7).

## Method of Developing the Report

4. This report has been prepared by the Directorate of Human Rights and Women’s International Affairs of the Ministry of Foreign Affairs “Islamic Republic of Afghanistan in full coordination with other implementing agencies, participation of the Independent Human Rights Commission and other civil society organizations. The Government of the Islamic Republic of Afghanistan initiated the process of developing the national report after receiving the list issues from the CERD treaty body, in coordination with relevant implementation agencies, participation of representatives of civil society, and based on the list of contents. In the first step, in order to develop and prepare this report, the following structures were established:

- A Coordination Unit.<sup>2</sup>
- A Technical Working Group.<sup>3</sup>

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<sup>1</sup> CERD/AFG/QPR/2-16.

<sup>2</sup> The coordination unit consists of Human Rights Desk of DHRWIA-MoFA mandated with compilation of information and coordination in the preparation of the report.

<sup>3</sup> The technical committee consists of representatives of 25 government and non-government institutions led by the DHRWIA-MoFA established with the mandate of drafting the report in consideration of actions taken.

- A Drafting Committee.<sup>4</sup>
- A Steering Committee.<sup>5</sup>

5. Utilizing the precise tools for information collection, the Coordination Unit collected information on legislative, judicial and administrative actions with respect to implementation of CERD from twenty-five implementing agencies.<sup>6</sup> Once the data and information collection completed, the unit started analysis and drafting of the report. At the same time, multiple consultations have been held on drafting of the report with the technical working group, consisting of the representatives of the implementing agencies in plenary and small groups. In order to further enrich the report and record all actions with regards to this convention, information gathered for the report was shared with the drafting committee. Subsequent to thorough revisions, the drafting committee submitted the draft to the steering committee. The current report was finalized and adopted by the steering committee of the reporting process after review and scrutiny in its meeting on February 20, 2019.

## **I. General Information on Progress in the field of Human Rights**

### **Progress in the Area of Legislation**

6. After years of war and conflict in Afghanistan, the Bonn conference in 2001 laid down the foundation of the new political system in Afghanistan. Ever since, Afghanistan witnessed significant progress in term of development of laws, policies and institutions aimed at supporting and strengthening human rights at the national level.

7. After the Bonn Agreement, on January 4, 2004 the new Constitution was adopted on the basis of democratic values in the Constitutional Loya Jirga by the representatives of the people of Afghanistan. The preamble and the Chapter 2 (Fundamental Rights and responsibilities of Citizens) of the 2004 Constitution provides for the basic rights of the citizens. The constitution well guarantees the fundamental rights and freedoms of the citizens, without any discrimination.

8. More recently, an important achievement for the government of Afghanistan in the area of legislation has been the drafting, adoption and enactment of the new Penal Code (published in the official gazette number 1260 of the year 1396 corresponding to 2017). The new penal code has been developed and adopted in light of the values enshrined in the Constitution, international human rights instruments and the new penal policy. In this code, the crimes of ethnic, racial, religious and geographic based hatred and division as well as war crimes, genocide, crimes against humanity, environmental crimes, cyber-crimes, corruption, terrorism, violence against women and Bachabazi (sexual abuse of boys) have all been covered. This code has brought together penal provisions which were previously scattered along 33 other legislations under one single piece of legislation.

9. Between the years 2002 to 2018, a total of 744 legislations have been developed, adopted and enacted. The following table lists the laws in which discrimination has been criminalized, in order of the year of adoption.<sup>7</sup>

<sup>4</sup> The drafting committee consists of representatives of six relevant and implementing agencies mandated with finalizing the initial draft of the report.

<sup>5</sup> The Steering Committee is was established through the order number 424 of the President in 2018 under the chairmanship of the Minister of Foreign Affairs and membership of 17 deputy ministers and representatives of non-government institutions to lead the process of developing national reports.

<sup>6</sup> Implementing agencies and civil society organizations that have participated and cooperated in the preparation of this report are listed in the annex of this report.

<sup>7</sup> A number of other important laws have also been adopted for supporting and strengthening human rights, such as: Criminal Procedure Code, The law on Elimination of Violence Against Women, Juvenile Offences Law, Mass Media Law, The Law Against Recruitment of Children in Military

<i>No.</i>	<i>Name of the legislation</i>	<i>Number of the Official Gazette and year published</i>	<i>Article in which discrimination has been prohibited</i>
1	Political Parties Law	Official Gazette Number 669 of 1382 <sup>8</sup> (2003)	Part 3, Article 6
2	The Law on the Structure, Duties and Authorities of Afghanistan Independent Human Rights Commission	Official Gazette Number 855 of 1384 (2005)	Article 11
3	The Law on Non-Government Organizations	Official Gazette Number 857 of 1384 (2005)	Article 24
4	Public Health Law	Official Gazette Number 916 of 1385(2005)	Article 1 and 2
5	The Law on Prisons and Detention Centers	Official Gazette Number 923 of 1386 (2007)	Paragraph 1 of Article 3
6	Provincial Councils Law	Official Gazette Number 920 of 1386 (2007)	Paragraph 2 of Article 3
7	Defense Attorneys Law	Official Gazette Number 934 of 1386 (2007)	Articles 2, 3, 6 and 13
8	Civil Servants Law	Official Gazette Number 951 of 1387 (2008)	Part 2, Article 2 Part 8, Article 27, Paragraphs 2 and 6, Article 28
9	Education Law	Official Gazette Number 955 of 1387 (2008)	Article 3
10	Labor Law	Official Gazette Number 966 of 1387 (2008)	Article 9
11	The Law on National Police Force Reforms	Official Gazette Number 1038 of 1389 (2010)	Part 3, Article 7
12	The Law on Rights and Privileges of Persons with Disabilities	Official Gazette Number 1037 of 1389 (2010)	Article 12
13	The Law on Diplomatic and Consular Employees	Official Gazette Number 1105 of 1392 (2013)	Part 1, Article 2
14	Law on Assemblies/associations	Official Gazette Number 1114 of 1392 (2013)	Article 8
15	Elections Law	Official Gazette Number 669 of 1382 (2003)	Article 7
16	The Law on Assembly, Strikes and Demonstrations	Official Gazette Number 1275 of 1396 (2017)	Part 7, Article 8
17	Administrative Procedures Law	Official Gazette Number 1275 of 1396 (2017)	Paragraph 3, Article 7

10. The Government of the Islamic Republic of Afghanistan has also acceded to the core human rights conventions and optional protocols and has submitted numerous reports to the UN treaty bodies and mechanisms:

Units, The Law on Access to Information, The Law Against Trafficking in Persons and Refugees, The Law Against Harassment of Women and Children and the Law Against Torture.

<sup>8</sup> Afghan calendar (Hijri-Solar).

<i>No.</i>	<i>Instrument</i>	<i>Ratification Date</i>	<i>Initial Report</i>	<i>Periodic Report</i>
1	CEDAW	March 5, 2003	Initial Report and Second Periodic Report in 2011	Submitted in 2018
2	CRC	March 28, 1994	Submitted in 2011	2nd to 5th Report Submitted in 2018
3	CAT	April 1, 1987	Submitted in 2015	Submitted in 2015
4	ICESCR	January 1, 1983	Submitted in 1991	Submitted in 2009
5	ICCPR	January 1, 1983	Submitted in 1984	Submitted in 1991
6	CERD	January 6, 1983	Submitted in 1984	Periodic Report (2nd to 16th) currently presented
7	CRPD	September 18, 2012		Drafting under process

11. Government of the Islamic Republic of Afghanistan has also acceded to optional protocols of the international human rights conventions as well as to the Geneva Conventions:

<i>No.</i>	<i>Optional Protocol</i>	<i>Ratification date</i>	<i>Date of Afghanistan's Accession</i>
1	CRC Optional Protocol Against Involvement of Children in Armed Conflict	2003	September 24, 2003
2	CRC Optional Protocol on Child Sale, Prostitution and Pornography	2002	September 19, 2002
3	Optional Protocol to the Convention Against Torture	2018	

## **Development of Supportive Institutions and Mechanisms for Human Rights**

### **A. Afghanistan Independent Human Rights Commission**

12. Afghanistan Independent Human Rights Commission was established in 2002 based on the Article 58 of the constitution and in conformity with the Paris Principles, with a view to monitor the respect, promotion and protection of the human rights in Afghanistan. Objectives, responsibilities, authorities, structure and other affairs of the AIHRC are foreseen in the Law on Structure, Responsibilities and authorities of the Commission. The head and members of the Commission are appointed on the basis of the Law of the Commission and Order Number 905 of the President on the Appointment of Members of the Commission, in full respect to the UN General Assembly resolution 134 of December 20, 1993 (The Paris Principles).

### **B. Human Rights Support Unit**

13. The Government of Afghanistan established the Human Rights Support Unit (HRSU) within the Ministry of Justice as an inter-ministerial mechanism in 2010. The HRSU works to build and improve the capacity of the government agencies to better implement the Government's obligations arising from the international human rights instruments and is mandated with the following:

- Monitoring the implementation of the international human rights instruments and their related protocols by the government agencies;
- Cooperation with relevant government agencies and the AIHRC with respect to the implementation of international human rights instruments and their related protocols;
- Oversight and ensuring the implementation of the UN and other national and international mechanisms recommendations and resolutions in the area of human rights and recommendations received from the AIHRC, by the government institutions;
- Cooperation with the AIHRC and the Ministry of Foreign Affairs in the preparation of relevant reports to the UN treaty bodies;
- Holding training programs aimed at raising awareness of government officials and military personnel on human rights, in coordination with the AIHRC;
- Collecting information on respect of the human rights norms in government institutions and presenting it to the coordination committee and taking necessary decisions in this regard;
- Study and assessment of the legislations, and policies and strategies of the government institutions with a view to ensure the implementation of the international human rights instruments and expressing its opinion accordingly.

### **C. Establishment of Other Human Rights Structures**

14. The Government of the Islamic Republic of Afghanistan has established the following dedicated sections/directorates within the legislative, judicial and executive institutions to support and reinforce the protection of the human rights at the national level.

- Directorate of Human Rights and Women's International Affairs at the Ministry of Foreign Affairs.
- Court and Exclusive Tribunal on Children and Violence against Women within the structure of the Supreme Court and its provincial courts.
- Office of the Deputy Attorney General for ERAW and Addressing the Offences of Children and Support to Human Rights.
- Exclusive ERAW cases Prosecution Offices in provinces.
- The Directorate of Prosecution of International Crimes.
- Office of the Deputy Attorney General for Anti-Corruption.
- Directorate of Women Support in the Civil Service at the IARCSC.
- The Directorate of Gender at the AGO.
- Commission on Women's Affairs, Civil Society and Human Rights at the Wolesi Jirga (lower house of the parliament).
- The Gender Unit at the Supreme Court.
- Directorate of Human Rights, Women's Affairs and Children at the MoI.
- Directorate of Human Rights and Gender Mainstreaming at the MoD.
- The Gender Unit and the Anti-Harassment Committee at the ARCS.
- The High ERAW Commission and Provincial ERAW Commissions.
- The Committee on Addressing Harassment of Women and Children in all government institutions.
- Directorate of Human Rights at the NDS.
- Human Rights Sections at the provincial police headquarters in the 34 provinces throughout the country.

- Human Rights units within the police stations in the Kabul city and districts.
- Human Rights units within the prisons in all provinces.
- The High Council on Rule of Law and Anti-Corruption, that is headed by the President.
- The Council on Refugees headed by the President.
- The Executive Committee on IDPs and Returnees headed by the Chief Executive.

15. The Citizens Charter is a national priority program in the area of poverty reduction and improvement of living conditions of the people, and was inaugurated by the President in 2016. This program is a joint commitment between the government and communities that attempts to increase participation of citizens in governance. This program aims to cover all citizens of Afghanistan in 34 provinces in the coming ten years. The objective of this program is to reduce poverty and upgrade the level of livelihood with provision of service and work on the infrastructure as well as establishing villages and integrated cities.

16. In April 2017 the Anti-Torture Committee was established in accordance with the Anti-Torture Law (2017) aimed at the prevention and prosecution of the cases of torture. Monitoring the detention facilities, prosecution and addressing Torture cases in judicial institutions, designing educational programs aimed at raising awareness of criminal detectives, research on prohibition of torture and recording torture cases including the identity of the perpetrator and the victim, are among the main functions of the commission.<sup>9</sup>

17. As a member state of the United Nations, the Government of the Islamic Republic of Afghanistan is committed to implement the Sustainable Development Goals. Based on the Decision no. 16 (2015) of the Council of Ministers of the Islamic Republic of Afghanistan, the Ministry of Economy is mandated with monitoring and evaluating the work, coordination and effective implementation of the SDGs and to regularly prepare and submit to the Council, the annual reports on the implementation of the SDGs, to be ultimately delivered to the UN General Assembly through the diplomatic channels. With a view to support the realization of the SDGs, the SDGs Executive Committee has been established within the Secretariat of Council of Ministers under the leadership of the Chief Executive of the Islamic Republic of Afghanistan. The Working Groups within this committee work towards the collection and analysis of the information, reporting and monitoring the mechanisms of the SDGs in Afghanistan in areas of Security and Governance, Agriculture and Rural Development, Health, Environment & Social Security, and Economic Growth and Infrastructure.

#### **D. Capacity-building Programs and Raising Awareness on Human Rights**

18. With a view to respect, promote and protect human rights values in the government institutions, the Government of the Islamic Republic of Afghanistan has conducted numerous programs. In the following paragraphs, some of the government's activities in the field of human rights education and awareness-raising are briefly explained.

19. Between 2010 and 2018, the HRSU-MoJ has conducted a total of 130 educational programs on human rights for the employees of 30 different government institutions with the participation of 2452 persons (1822 male, 632 female). Also, from 2014 to 2018, the monitoring and follow up section of the HRSU-MoJ has conducted 13 awareness-raising and consultation programs aimed at implementation of the action plan on the recommendations of the human rights monitoring mechanisms for relevant organizations. In 2018, it also launched an awareness raising campaign through 21 radio channels at the provincial level, which was broadcasted a total number of 9100 times in six months.

20. During the last sixteen years, a total of 671,532 persons have been subject to training and awareness raising by the AIHRC, of whom 40% was women and girls. The educational programs of the Commission cover various segments of the society such as students,

<sup>9</sup> From 2016 to 2018 a total of 783 cases of torture have taken place, among which 643 persons have been detained and sued. Based on the monitoring process, 9 of the police officers in Herat and Nimroz Provinces, have been punished for committing torture.

religious scholars, teachers, the police, the army, NDS personnel, judges, prosecutors, defense attorneys, journalists, civil society activists, human rights defenders and children as well as less literate and illiterate segments of the society, among both men and women.

21. In the last sixteen years; 238,422 minutes of radio programs and 65,271 minutes of television programs have been broadcasted by the AIHRC through national and local media outlets. In addition to that, a total of 4,863,896 copies of the Human Rights monthly magazines, pamphlets, educational material such as brochures, posters and the like have been printed and distributed throughout various parts of the country.

22. With a view to tackle the phenomena of prejudice and bias; the Directorate of Mosques within the MoHRA has implemented specific programs in three following areas:

- Preparing detailed sermons titled as “Call for National Unity and NO to Division and Discrimination” and emphasizing that unity and integrity are serious needs of the society;
- Explaining the Prohibition of discrimination and its negative impacts on the society by the preachers, through audio and visual media;
- Writing articles condemning discrimination and its various dimensions and publishing them in the Payam-e-Haq magazine;
- Based on their religious duty, the Imams and preachers play an important role in the prevention of the evil acts and they invite the people towards unity and solidarity in light of the Quran and Hadith. They tell the people about the sinfulness and obscenity of discrimination in light of the Quranic verses and Hadith (Sayings) of the Prophet Mohammad PBUH during the Friday sermons and other occasions and inform the people, of its harms. In 2016, the MoHRA conducted various workshops, capacity-building programs, and a specialized seminar on human rights, NO to violence against women and women’s rights from an Islamic viewpoint for 153 Imams of the mosques and Teachers of religious schools as well as gender unit heads in the capital and provinces. Additionally, a capacity-building program was held on the protection of children in accordance with the constitution and international laws for 550 Imams of the Mosques and teachers of religious schools in Kabul and provinces.

23. In 2017, the MoHRA conducted a seminar on women’s rights from the Islamic viewpoint for 125 teachers of the religious schools and religious scholars and launched competitions for 3000 ordinary and religious school students on women’s rights in Islam and international law in the capital and provinces. In 2016 and 2017 the MoHRA with support from GIZ, printed and distributed about 2214 copies of a book on rights and responsibilities of a woman in Islam and 2000 copies of a book titled “The harms of undesired traditional practices”.

24. From 2013 onwards, awareness-raising programs were conducted on the EVAW Law, the Penal Code, Criminal Procedures Code and the Management of Gender Based Violence, corruption cases, election offences, and the manner of investigation of crimes and principles of humanitarian law for prosecutors and personnel of the AGO at the capital and provinces aimed at observing human rights laws and values.

## **Composition of the Population (National Demographics)**

25. Afghanistan is an ethnically diverse country. The Afghan nation consists the ethnicities of Pashtun, Tajik, Hazara, Uzbek, Turkmen, Baluch, Pashayee, Nuristani, Aimaq, Arab, Kyrghyz, Goojar, Barahawi and others. Also, so far 179 persons have taken refuge and 195 individuals have sought asylum in Afghanistan, who are mostly from Iran, Pakistan, Tajikistan, Iraq, Turkey and Uzbekistan.

## II. Implementation of Articles 1–7 of the Convention in consideration of the List of Issues

### Definition of Discrimination, Direct and Indirect Discrimination in the National Legislation (Article 1)

#### A. Definition of Discrimination in the National Legislation

26. The 2004 Constitution and other laws, emphasize the prohibition of racial and ethnic discrimination and clearly stresses the equality of everyone before the law. Article 22 of the constitution stipulates: “Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, men and women, have equal rights and obligations before the law.”

27. Equality and prohibition of discrimination in the above quoted article covers discrimination on the basis of race, color, ancestry as well as ethnic origin. This constitutional article is an important source of prohibition of “discrimination” on the basis such as race, ethnicity, clan, ethnic origin and color, and obliges the legislator to enact laws, in full compliance with this article, prohibit discrimination and undertake necessary legislative measures for its implementation. In compliance with the Constitution of Afghanistan, the Elections Law, the Labor Law, the Civil Servants Law, Administrative Procedures Law, Education Law and many other laws stress on the equality between citizens and the prohibition of all forms of discrimination.

28. The Government of the Islamic Republic of Afghanistan has recently developed the draft of the Anti-Discrimination Law which is part of the 2018 legislation plan of the legislative committee of the High Council on Rule of Law. In this draft law, terms such as discrimination and direct and indirect discrimination have been clearly defined:

- Discrimination: “prejudiced treatment (distinction, preference and prioritizing) on the basis of religious, sectarian, ethnic, gender and political affiliation”.
- Direct Discrimination: Differential treatment of people and directly depriving them of accessing economic and social opportunities.
- Indirect Discrimination: Differential treatment and subjecting people to special conditions with regards to their access to economic and social opportunities.<sup>10</sup>

#### B. Direct and Indirect Discrimination in National Legislation

29. There is no specific instance of direct discrimination in the laws of Afghanistan, as mentioned earlier: The constitution<sup>11</sup> and other national legislations<sup>12</sup> all reinforce equality. According to its obligation to respect, promote and protect human rights and considering the principles stipulated in international human rights instruments, the Government of Afghanistan is obliged to design, draft, amend and enact the national legislations in accordance with international human rights norms. Despite that some legislative, practical, administrative and policy actions aimed at tackling discrimination are necessary and will be gradually implemented.

### Legislative Frameworks and the Authority of the AIHRC in Tackling Racial Discrimination (Article 2)

#### A. Frameworks and Legislative Actions for Tackling and Prevention of Racial Discrimination

30. After the collapse of the Taliban regime and the holding of the Bonn Conference, the Islamic Republic of Afghanistan established fundamentals of a democratic government

<sup>10</sup> Article 3 of the draft Anti-Discrimination Law.

<sup>11</sup> Article 22, Article 50, and Article 80 of the Constitution.

<sup>12</sup> Article 22 of the Constitution.

based on respect to human rights values. Among the important provisions of the Bonn Agreement, were emphasis on the social freedoms and human rights of the Afghans.

31. It is stipulated in the Bonn Agreement that “the right of the people of Afghanistan to freely determine the political future of their country based on the principles of Islam, democracy, pluralism, and social justice, shall be guaranteed”.

32. As a democratic constitution, the 2004 Constitution provides for a clear legal and legislative framework for respect, promotion and protection of all human rights values particularly the recognition of the principle of equality and non-discrimination.

33. The preamble of the Constitution states, “to establish a civic society free of oppression, cruelty, discrimination as well as violence, based on the rule of law, social justice, protecting dignity and human rights and realizing peoples’ fundamental freedoms and rights ... we adopt this constitution;” The second chapter of the Constitution titled “Rights and Responsibilities of Citizens” provides for a full list of fundamental rights of the citizens.

34. Article 22 of the Constitution explicitly prohibits “any kind of discrimination” among the citizens of Afghanistan and reinforces the equality of all nationals before the law. “Any kind of discrimination and distinction between the citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, men and women, have equal rights and duties before the law.”<sup>13</sup> Based on the clear instruction of the Constitution, “The citizens of Afghanistan shall be recruited to civil service solely on the basis of merit, without any discrimination, and in accordance with the provisions of the law.”<sup>14</sup>

#### **Elections Law**

35. The Elections law prohibits any direct or indirect limitation for the voters and candidates on the basis of language, religion, ethnicity, sex, tribe, region, residence, and social or professional status or disability.<sup>15</sup> The law also stipulates that the Kochis (nomads), refugees, Hindus and Sikhs,<sup>16</sup> staff of Afghanistan’s diplomatic missions abroad, patients in the hospitals, military personnel, and eligible prisoners have the right to participate in the elections by voting in the separate voting centres established by the Elections Commission.<sup>17</sup>

36. Regarding the stateless persons, refugees, and migrants residing in Afghanistan, according to the Afghan National Laws; the primary requirement for eligibility to vote and to run for the elections is to have Afghan Citizenship.

37. The Elections Law obliges the Election Commission members to take into consideration the national interests and observe the provision of the Afghan Constitution while making decisions and refrain from prejudice and discrimination on the basis of race, ethnicity, region, political views, language, religion, and gender.<sup>18</sup>

#### **Labor Law and Civil Service Law**

38. The Labor Law and Civil Service Law on the basis of the Afghan Constitution also recognizes equality among all citizens and strictly prohibits any form of discrimination. According to the Civil Service Law, one of the most important duties of IARCSC is to prevent racial, ethnic, language, religious, and gender-based discrimination and maintain a permanent gender and ethnic balance in the civil service sectors.

39. The Law emphasizes that the civil servants’ recruitment shall be conducted on the basis of merit and eligibility, without discrimination and in a transparent manner through

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<sup>13</sup> Article 22, Article 50 and Article 80 of the Constitution.

<sup>14</sup> Paragraph 4 of article 50 of the Constitution.

<sup>15</sup> Para. 2, clause 4, article 5.

<sup>16</sup> The Wolasi Jirga (the Lower House) consists of 250 seats out of which 239 are allocated to the provinces based on the proportion of population, 10 seats for nomads and 1 seat for Hindus.

<sup>17</sup> Clause 5, article 5.

<sup>18</sup> Article 7, Election Law.

competition.<sup>19</sup> No gender, ethnic, religious and physical disability-based discrimination is permitted in the recruitment of the contractual staff.<sup>20</sup>

40. The Labor Law also prohibits discrimination. The law stipulates that any form of discrimination in recruitment, payment of wages and benefits, selection of profession, skills and expertise, right to education and social guarantees, is prohibited.<sup>21</sup>

41. The Civil Service Law and its procedures has taken into account particular measures to prohibit racial, ethnic, language, regional, and gender-based discrimination. The law considers the right to complain about lack of immunity from any form of discrimination by the employers and colleagues in the workplace based on gender; ethnicity; social, religious and political status and marital status, as one of the most important rights of the civil servants.

42. The Civil Service was written as Civil Servants before, which is correct Law stipulates that a job applicant can complain to the relevant entities against discrimination and unfair treatment. A specific board of complaints consists of three independent commissioners has been established in the IARSCS. This board receives and addresses all complaints (including discriminatory treatment) of the civil servants and applicants.

43. The procedure for the appointment of civil servants also stipulates: if the job applicants are not satisfied with the results of the short-list, written examination, and interview, can, after the announcement of the results, register their complaints in the Capital to the Directorate of board for addressing civil service complaints and in provinces to the regional offices of the commission, which in turn are bound to transmit the complaints to the capital within two working days.<sup>22</sup>

44. The board for addressing civil service complaints, established in 2004, has addressed 20,313 complaints by the third quarter of 2018. All of the complaints have been reviewed and addressed in accordance with the article 18 of the Civil Service Law.

#### **Administrative Procedures Law of Afghanistan**

45. According to the Administrative Procedures Law, enacted in 2018, all discriminatory acts in the public institutions are prohibited. The Article 7 of the Law titled; the principle of justice, equality, and prohibition of discrimination stipulates:

- All citizens have equal rights and obligations before the law;
- The public officials are obliged to treat the related individuals in an equal manner;
- Any form of discriminatory conduct in the public institutions is prohibited. The public institutions are obliged to avoid any family, ethnic, religious, partisan, gender, regional and language-based bias in performing administrative duties. This law obligates the public institutions to observe impartiality in fulfilling their functions and in practicing their authorities individuals and refrain from granting advantages and benefits in contradiction of the law to a particular person or group.

#### **Education Law**

46. The Education Law based on the Constitution of Afghanistan also emphasizes the equal right of everyone to education. The Constitution of Afghanistan considers the right to education as a right for all Afghan citizens and obligates the state to provide free education up to bachelor's degree in the public academic institution.<sup>23</sup> The Education Law emphasizes that: "The Afghan citizens equally enjoy, without any discrimination their right to education".<sup>24</sup>

<sup>19</sup> Article 2.

<sup>20</sup> Article 10.

<sup>21</sup> Article 9, Labor Law.

<sup>22</sup> Article 25, Civil Service Recruitment Manual.

<sup>23</sup> Articles 22 and 43, Constitution of Afghanistan.

<sup>24</sup> Article 3, Education Law.

**Draft Law on Anti-Discrimination**

47. The draft law on Anti-discrimination clearly prohibits discrimination. The goals of the law are as follows:

- Having a society free from any form of discrimination, and save guarding equality among all citizens in having access to opportunities;
- Expanding the rule of law in all aspects of life and participation of all citizens in the economic and social structures of the polity;
- Implementing meritocracy in enjoyment of all existing social and economic opportunities in the society;
- Defining and implementing legal measures with respect to dealing with the perpetrators of discrimination.

48. The Section 2 of the law under the title of Anti-discrimination, prohibits discrimination in different areas such as (recruitment, work, education, pension/retirement, promotion and awarding medals and honours, resettlement process and government's support to the repatriates and IDPs, in the provision of public services, distribution of public resources, and also in the area of provision of administrative services and contracts and projects). The Article 6 of the law on prohibition of discrimination stipulates: Any form of discrimination is prohibited among Afghan citizens in all government institutions and in the local and international private institutions.

49. Other policies and mechanisms have also been developed in various ministries to prohibit and prevent discrimination. The Ministry of Interior Affairs implements a policy on countering any form of racial and tribal-based discrimination titled as "Countering Discrimination" developed in 2015.

50. The committee on Monitoring and the respect of human rights headed by the legal advisor of the Ministry of Interior Affairs, and with the membership of representatives of directorate generals of Audit, Intelligence, Anti-crimes, Human Rights, the Police Rights, legal advisor to the RS forces, AIHRC, and attorney general's office has been established in 2016. The committee is authorized to handle cases of any form of discrimination. The committee holds bi-monthly meetings. The committee has so far reviewed and addressed many cases related to human rights, however, no specific cases of discrimination has been referred to this committee.

51. Committed to the Convention on Elimination of All Forms of Racial Discrimination, the Ministry of Interior Affairs has established a department for receiving the complaints in the structure of the Directorate of Human rights, Women, and Children Affairs and has continued its functions in receiving and registering complaints. The department has not yet registered any special report or complaint of discrimination. The department is planning to develop a special database for receiving complaints on violation of human rights from provinces and the capital.

52. The Ministry of Public Health has developed and is implementing the National Strategy on Health and Human Rights. This strategy defines provision of health care with a human rights-based approach. In addition to the health law with respect to the elimination of racial and ethnic discrimination in the provision of health services, the national strategy on human rights also stipulates that health services should be provided in a fair and non-discriminative manner while observing the principle of equality for all layers of the society. Additionally, according to the national health policy (2015–2020), health services for all citizens should be provided without racial, ethnic, citizenship or color-based, discrimination and special attention should be paid to the child and the mother. The Ministry of Public Health is committed to the provision of quality health services for all citizens without discrimination in cities and villages while respecting the principles of justice and equal right of everyone in access to health services and accountability.

53. The Law on the administration of the Afghan Red Crescent Society (under the functions section) stipulates that assistance and cooperation in reducing human suffering from natural and man-made disasters shall be rendered to victims without consideration of

racial, religious, ethnic, sectarian, creed and belief, as well as discrimination based on skin color, social status, wealth, sex, language, and political views.<sup>25</sup>

## **B. Duties and Responsibilities of Independent Human Rights Commissions in Fighting Racial Discrimination**

54. The AIHRC in accordance with the Article 58 of the Constitution and the provision of the law on structure, duties, and responsibilities of the commission and Articles 5, 21, and 23 in particular and based on the provisions of Article 12 of Afghanistan International conventions and treaties Law is authorized to take necessary measures to monitor the execution of the international instruments related to human rights especially the convention on the elimination of all forms of racial discrimination (1965) to which Afghanistan is a party.

55. The commission is authorized to receive individual complains related to racial, ethnic, and language-based discrimination and provide necessary assistance for the victims in coordination with the judicial institutions.

56. The commission is authorized to provide legal assistance to support the victims of discrimination and in addition to continued monitoring of the cases under process, coordinate the work of all institutions which provides support to the victims.

### **The Commission is authorized to:**

- Monitor government's conduct in assuring equality and non-discrimination in general and no racial discrimination at the national level, in particular.
- Monitor and follow-up the process for addressing cases of racial discrimination in the judicial institutions.
- Receive complaints related to racial discrimination and refer them to the judicial institutions and provide necessary assistance in defending the rights of the victims.
- Perform activities related to the improvement of the general conditions of human rights especially, with respect to the equality between citizens.
- Increase public awareness through trainings on racial, ethnic, and language-based discrimination and contribute to the realization of equality and non-discrimination in the individual relations and the relations between government and the citizens.
- Conduct field research and collect information related to the general condition of non-discrimination, especially no racial and ethnic discrimination in the national level, preparing analytical reports, identifying challenges and providing specific recommendations in order to address them.

### **Government's Measures on Prohibition of Racial Separation (Article 3)**

57. The Afghan Government in order to prevent and prohibit racial separation has taken considerable measures with respect to legislation. Based on the articles of chapter 2 of the Constitution, all citizens enjoy all rights and privileges recognized by the constitution equally and without discrimination and distinction, including racial discrimination. The ordinary law inspired by the Constitution also prohibits any form of discrimination in the country.

## **Legislative Measures on the Prohibition and Criminalization of Racial Discrimination (Article 4)**

### **A. Prohibition of Hatred and Stimulating and Encouraging Racial Discrimination**

58. The Penal Code of Afghanistan has been developed and approved in full respect to human rights values and criminalizes and foresees punishment for views, tendencies, and

<sup>25</sup> Article 7, ARCS's Law on Regulation Affairs.

spreading of racial supremacy or hatred and stimulating or encouraging discrimination or discriminatory actions targeting people of certain race, color or tribe.<sup>26</sup>

59. According to the Penal Code, a person is subject to short term imprisonment if he/she use technology or internet to publish audio clips or writings in the cyber space which stimulating ethnic, sectarian, religious, linguistic or region-based intolerance in the society.<sup>27</sup> Additionally, the Code stipulates that the offender is subject to mid-term imprisonment if stimulation and spreading ethnic intolerance and discrimination results in violence or hatred or causes riots among citizens.<sup>28</sup>

## **B. Criminalization of Financial Assistance to Discriminatory Acts**

60. Financial Assistance and cooperation to discriminatory acts and stimulating or spreading, and enforce discrimination is also considered as a crime. The Penal Code of Afghanistan has foreseen punishment for individuals and organizations providing financial assistance for stimulating, spreading, and enforcing racial, ethnic, regional, language and sectarian discrimination.<sup>29</sup>

61. It is worth mentioning that no cases of financing racial discrimination activities have been registered with the relevant institutions.

## **C. Prohibition of Discrimination by Public Authorities and National Public Institutions**

62. The Penal Code prohibits discrimination by the government authorities in the workplace and foresees punishment for the offenders. According to the Penal Code, if the public service authorities or a foreign state's or international governmental or non-government organizations' officials in performance of their functions or provision of services, treat someone on the basis of personal considerations or ethnic, regional, language, sectarian, sex, political views or on the basis of partiality towards specific group of people or sect, are subject to punishment.<sup>30</sup>

63. Chapter 2 of Penal Code of Afghanistan titled Crimes against Humanity considers racial discrimination as part of genocide felony and foresees punishment for the offenders. According to the paragraph 7 of Article 332 of the Penal Code, racial discrimination felony means committing inhuman deeds such as actions mentioned in Article 335 of the code through an institutionalized regime and creating organized domination by a racial group on another racial group or groups and committing such actions with the intention to keep and protect the regime.

64. Chapter 10 of the draft law on prohibition of discrimination, in penalties section; foresees punishment for the perpetrator of discrimination. This chapter considers principal and complementary punishment for public service officials, senior government officials and all those who commit discrimination.

65. The law which law stipulates that anyone committing discrimination, as defined by the law, is subject to mid-term imprisonment or fine from 200,000 to 300,000 AFN. If the

<sup>26</sup> Article 256, Afghanistan's Penal Code on provoking discrimination and division stipulates that: (1) Anyone who provokes others for sectarian, religious, tribal, ethnic, language or area-based discrimination & division is subject to mid-term incarceration. (2) If the crime stated in clause 1 of this article is committed, or entails threat and violence, the perpetrator is subject to long term imprisonment up to seven years.

<sup>27</sup> Clause 1, article 870.

<sup>28</sup> Clause 2, article 870.

<sup>29</sup> Clauses 2, 3, article 257: Providing accommodation or foodstuff for perpetrators of this crime is considered as collaborator and is subject to the punishment of an accomplice.

<sup>30</sup> Article 409, Afghanistan Penal Code on Discrimination in the workplaces states that: (1) If a public servant or foreign government, international or inter-governmental organization, or NGO employee perpetrates discrimination on the basis of personal preferences of ethnicity, area, language, religion, gender, political or ideological views or based supporting a particular group or sect during service delivery or other situations, the perpetrator shall be subject to short term imprisonment or cash penalty of AFN 30–60 thousands. (2) In case the above-mentioned crime is committed by high ranking government officials or high-ranking officials of other entities, the perpetrator shall be subject to mid-term imprisonment or cash penalty of AFN 300,000.

perpetrator of discrimination gains material benefits then he/she is also subject to fine by twice the proportion of what he/she has gained.<sup>31</sup>

66. The law also states that if a public service official commits discrimination by misuse of his/her duty or status, the perpetrator in addition to being subject to punishment mentioned in the abovementioned article, is sentenced to job termination and striped off his/her profession. Additionally, the law asserts that if a discriminatory action is perpetrated by high ranking government officials or high-ranking officials of other institutions, the perpetrator is sentenced to maximum punishment mentioned in Article 23<sup>32</sup> of the law.

67. The method for addressing cases where an individual or a group spreads and encourages supremacy-based views or racial or ethnic hatred or enforce discrimination against others is dealt with according to the Article 56 of the Criminal Procedures Law while observing the Article 9 of the mentioned law on the basis of proof and evidence and full respect to all human rights norms, and principles of fair trial.

68. So far, only one case of racial discrimination and instigation, encouraging or inviting to racial discrimination has been referred to the Attorney General's Office.

69. Institutions, associations, and political parties registered to the Ministry of Justice are evaluated with precision and special mechanism of their statute. A political party is not registered if its statute contains items of division and provisions for discrimination, hatred and ethnic antipathy. The evaluation process of the statute of social institution, and political parties are carried out taking into account the followings:

- The statute of the political party is assessed in accordance with the Law on Political Parties;
- If a statute of a political party is not in compliance with the article 6 of the law on Political Parties or article 35 of the constitution, the party's registration application according to the article 9 of the law on political parties, will be rejected. So far, 72 political parties and 3830 social organisations and associations with participation of various groups and ethnicities of Afghanistan, have been officially registered with the Ministry of Justice and granted operation license.

## **Observing Article 5 of the Convention and Implementation of Article 16 of the Constitution (Article 5)**

### **A. Minority, Women and Ethnic Groups Enjoying their Basic Rights Stipulated in Article 5 of the Convention**

70. As pointed out in the definition and legal frameworks for the purpose of elimination of discrimination, the Chapter 2 of the Constitution of Afghanistan on Rights and Responsibilities of Citizens, besides recognizing the basic rights of individuals, explicitly prohibits discrimination in all areas. The law prohibits any form of discrimination and concession between Afghan citizens and deems all Afghan citizens as to have equal rights and responsibilities before the law.

71. The mentioned law also defines the Afghan citizens. According to the constitution the National Sovereignty in Afghanistan belongs to the Nation, enforced directly or through their representatives. The Nation of Afghanistan means all persons having Afghanistan's nationality. The Nation of Afghanistan is consisting of Pashtun, Tajik, Hazara, Uzbek, Turkmen, Baluch, Pashayee, Nuristani, Aimaq, Arab, Kyrgyz, Qezelbaash, Gojar, Barahawee, and other ethnicities.<sup>33</sup>

72. The section below provides information on dynamics of how members of different ethnicities, speakers of various language, minorities, women, and non-citizens enjoy their civil, political, economic, social, and cultural rights in accordance with the applicable Afghan laws.

<sup>31</sup> Article 20, Draft Law on Anti-Discrimination.

<sup>32</sup> Mid-term incarceration or cash penalty of AFN 200–300 thousand.

<sup>33</sup> Article 4, Constitution of Afghanistan.

### **The Right to the Enjoyment of Equal Treatment before the Courts**

73. The Penal Code on the basis of the Constitution guarantees to all citizens, the equality of individuals before the law and the right to enjoy equal treatment before the courts. The Code stipulates that “a suspect, accused and convicted person is equal before the law regardless of their ethnicity, language, tribal, religious, sectarian, political view, sex, education, profession, family, wealth, social status, and place of origin or residence”.<sup>34</sup> This article stipulates that persons belonging to any ethnic, lingual, and gender enjoy equal rights before the law. In practice, this right is carefully implemented in the relevant institutions, given the explicit focus of the penal code and law on criminal procedures.

### **The right to Enjoy Freedom and Human Security**

74. The National Laws of Afghanistan fully guarantees the right to enjoy the right to personal integrity, immunity from torture and freedom for all human beings. Articles 24, 26, and 27 of the Constitution of Afghanistan guarantees and stresses on the enjoyment of those rights and fully recognizes them for all Afghan citizens.

75. The Constitution states that freedom is the birth-right of human beings and has no limitations except, respect for the freedom of others and public welfare, as regulated by the law. Humans dignity and freedom are inviolable and the state is obliged to respect and protect them.

76. The Constitution prohibits arbitrary detention and arrest and its article stresses that “no one shall be persecuted, arrested, or detained without due process of the law”. The article 32 stipulates “The debt shall not curtail or deprive freedom of individual”.

77. The government in cooperation with AIHRC and international organizations has continued monitoring of places of detention/deprivation of liberty. During the last 16 years, AIHRC has conducted a total of 22753 visits to the places of deprivation of liberty (including prisons, detention centres, surveillance centres, and juvenile correction centres). Also 7218 individuals detained illegally and prisoners have been identified and released as a result of continued monitoring of the Commission, of the places of deprivation of liberty. Illegally imprisoned means individuals who are illegally arrested, detained, sentenced, their detention period has been over, or their sentence term has been completed.

### **Political Rights**

78. According to the Constitution of Afghanistan, the National Sovereignty belongs to the Nation. This means that the right to elect and to be elected is recognized for members of all ethnicities, and women without discrimination.

79. The members of the Parliament (lower house), and members of the provincial and district councils are elected on the basis of Articles 61, 83, and 84 of the Constitution through a transparent, secret, universal, and fair election with the votes of the people. The village councils, municipalities, and members of municipality councils are also elective.

80. The Constitution of Afghanistan stipulates that the state is obligated to take necessary measures for the purpose of creating a sound administration and realizing reforms in the administrative system. The administration performs its functions, keeping impartiality and in accordance with the provisions of the law. Afghan citizens have the right to access to information from the government entities within the limits set by the provisions of the law. This law has no limits but to undermine rights of others and national security.

81. Afghanistan’s election law in line with the Constitution recognizes for all citizens without discrimination the political rights, including the rights to participate in elections and vote and to be nominated on the basis of universal voting system. As mentioned earlier, the election law prohibits application of any direct or indirect restrictions on the voters and candidates on such basis as; language, religion, ethnicity, gender, tribe, position, place of residence, and social or professional status or disability.

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<sup>34</sup> Article 6, Afghanistan Penal Code.

82. Nomads, refugees, Hindus and Sikhs, employees of diplomatic missions abroad, admitted patients, military personnel, and eligible prisoners have the right to, participate in the elections and if possible, cast vote in special polling centers established by the Election Commission.

83. After the collapse of the Taliban regime, the government of the Islamic Republic of Afghanistan successfully held three rounds of Presidential Elections: October 10, 2005; August 20, 2009; and April 5 and 13, 2014, three rounds of Parliamentary Elections on: September 18, 2005; September 20, 2009; and October 20, 2018, and three rounds of Provincial Councils Elections on September 18, 2005; ; August 20, 2009; and April 5, 2014 with the participation of people of different ethnicities and minorities and women.

84. Women's political rights have been considered equal with men in respective laws and regulations. Moreover, to compensate for the historical inequalities, special and temporary supportive measures have been put in place in favor of women. According to the Constitution, there must be at least two women representative, on an average, at the Parliament (Lower House) from each province. Similarly, the President must appoint half of the non-elective members (1/3) of the Mishrano Jirga (the Senate), from among women.

85. The amendment to some of the provisions of the Electoral Law (through legislative presidential decree #105), guarantees a comprehensive presence of women in the parliament. The paragraph 5, article 13 of the Electoral Law, foresees the presence of an elected representative from the Women Rights organizations as a member of the electoral committee which identifies the members of the electoral commissions. Moreover, the membership of one woman as provincial commissioner of the Elections Complaints Commission has been added.

86. 83. 68 seats at the parliament, (according to article 51 of the Electoral Law) , 25% of the seats at the provincial councils (based on paragraph 2, article 58 of the Electoral Law), 25% of the seats at the District Councils (based on article 61 of paragraph 2 of the Electoral Law) and 25% of the seats at the district-level councils (based on article 64 of paragraph 2 of the Electoral Law), have been allocated to women. It worth mentioning that one seat has been allocated to Hindu and Sikh citizens of the country based on article 48 of the Electoral Law.

### **Freedom of Movement and Choice of Residence**

Right of movement and residence within the country, has been guaranteed by the Constitution, without any discrimination. Every Afghan has the right to travel to any part of the country and reside there, except areas that have been prohibited by the law. Every Afghan has the right to travel outside the country and to return. (Article 39 of the Constitution).

### **Right to Marriage and Choice of Spouse**

87. Establishing a family and choosing one's spouse has been recognized for all citizens of Afghanistan in the Civil Code and the Constitution. The Constitution considers family as the main pillar of a society and holds the government responsible for supporting it. The government is responsible to undertake relevant measures for ensuring the physical and psychological wellbeing of the families, especially children and mothers; education of children; and eliminating harmful traditions and cultural practices (article 54 of the Constitution).

88. The Civil Code and the Constitution, deem full consent of both sides as requirement of the marriage (According to the Civil Law of Afghanistan the minimum marriage age for girls is completion of 16 years. However, the Family Law which is currently in the process of approval in the parliament foresees the completion of 18 years as the requirement for marriage, both for girls and boys).

### **Right to Property**

89. Right to own property has been guaranteed by relevant laws to all citizens without any discrimination. Property is safe from attack. No one is restricted from attaining

property and ownership, except by law. No one's property is confiscated without a legal order and authorized court's decision. Acquisition of personal property is only allowed if it is for the public interest and if compensated fairly based on the law. Audit and exposure of individual's property can be only carried out based on the provision of the law (article 40 of the Constitution). The Civil Code too emphasizes that no one's property can be extorted, except by law (article 1904 of the Civil Code).

### **Freedom of Thought and Religion**

90. The Constitution grants freedom to followers of all religions to practice their religious rites, within the limits of the law (article 2 of the Constitution). Considering the clarity that exists in the Constitution, followers of all religions are free to practice their religious rites and rituals, and no individual or organization can prevent them from their religious practices. It worth mentioning that the Ministry of Justice has drafted the Religious Minorities' Law, to be ratified soon by the Parliament.

### **Freedom of Speech**

91. Freedom of speech is guaranteed in the Constitution of Afghanistan. Every Afghan has the right to express their thoughts through speaking, writing, pictures, or other means based on the observance of the provisions of the Constitution. Based on articles of the law, every Afghan has the right to publish their articles without previously sharing them with government officials (article 43 of the Constitution). Moreover, the Mass Media Law of Afghanistan too guarantees freedom of speech and thought. The goals have been mentioned in this law in the following manner:

- Promoting and supporting the right to freedom of thought and speech and defending the right of journalists and paving the way for their activities;
- Promoting and developing free, independent, and pluralistic media outlets;
- Paving the way for expression of thoughts and sentiments of citizens through words, writing, drawing, pictures, audio, acting, motion and all other scientific, literary, artistic, and publishing activities;
- Observing the principle of freedom of speech and the mass media, as stipulated in the Universal Declaration of the Human Rights, while observing the sacred religion of Islam.

92. Law on Access to Information provides, "Everyone has the right to freedom of thought and expression." The Islamic Republic of Afghanistan shall take serious steps in ensuring freedom of speech, freedom of media, especially social media, and protecting human rights defenders.

93. According to the Constitution and the Mass Media Law, it is not allowed to censor media. Over 60 television networks and newspapers are functioning without censorship.

### **Freedom of Assembly and Establishing Peaceful Associations**

94. According to the Constitution of Afghanistan peaceful demonstrations, gatherings, and forming associations are allowed for all citizens. All Afghan citizens have the right to peaceful demonstration, without carrying weapons, in order to ensure their legal and peaceful purposes based on the law (article 36 of the Constitution). Besides, the Afghan Constitution allows Afghan citizens to form associations for ensuring their materialistic and moral purposes in accordance with the law.

95. The Law on Assembly, Strikes and Demonstrations (December 6, 2017) guarantees the right for peaceful demonstrations for all citizens. It has been said in this law that citizens of the country have the right to stage peaceful demonstrations without carrying weapons provided that they are not against national unity and the Constitution.

### **The Right of Access to Medical Services**

96. Right of access to medical services has been guaranteed for all citizens in legislative documents of the country without any kind of discrimination. In order to provide better

medical services, the government of Afghanistan has ratified the Public Health Law and has codified the National Health Strategy (16/20/2020); the National Health Policy (15/20/2020); the National Environmental Health strategy; the National Hygiene Improvement Strategy; and the National Health Strategy for Mothers, infants, Children, and the adolescents (2017–2021).

97. In accordance with the Constitution, the government is responsible for providing all citizens with free emergency health services that are as follows: emergency care, medical education; maternity health services; vaccination services; malnutrition prevention; medicines for emergency medical care; prevention from communicable diseases; oral hygiene; and delivering physical services to the disabled like making artificial limbs, supportive moulds, and walking means. The government supports the establishment, development, and delivery of medical services and establishment of private medical centers in accordance with the law.

98. Based on the National Health Policy (15/20/2020) and the National Health and Human Rights Strategy, the Ministry of Public Health is responsible for delivering medical services to all citizens without any discrimination.

99. The Insurance Law has been ratified in 2009 to pave the way for using social insurance. According to this law, all citizens can purchase insurance covers to protect themselves and their belongings/property. According to the national health survey in 2018, 89.9% of the Afghan population has access to medical services within proximity of less than 2 hours from their place residence.

#### **The Right to Form Trade Unions/Syndicates**

100. The right to form trade unions or syndicates and their membership has been guaranteed by the Constitution and other related laws.

101. The Mass Media Law says in article 9: Journalists and other members of the mass media can create associations and syndicates in accordance with the law, in order to defend their interests. Moreover, the Afghan government enacted the Associations' law in 2013 that foresees the formation and membership to trade unions.

#### **The Right to Housing**

102. The Constitution and other related laws guarantee the enjoyment of the right to housing for all citizens. It is stipulated in the Constitution that every Afghan has the right to travel to any part of the country and live there. According to the Constitution the government shall take, within its economic limits and according to the law, necessary measures to providing adequate houses and distributing public property to citizens in need and improving the lives of Kochis (Nomads') (article 14 of the Constitution).

103. The Constitution says that no one including the government can enter a private property or search it without permission or decision of an authorized court, except in instances and in manners foreseen in the law.

#### **The Right to Work**

104. It has been clarified within the legal frameworks, that recruitment of civil service staff shall be based on their efficiency and without any kind of discrimination, through free competitions. The Afghan Labor Law under no condition allows discrimination based on gender, race, nationality, religion, and physical disability.

105. Based on the mentioned laws, women are entitled to some specific privileges in the workplace such as 90 days of paid leave during pregnancy and delivery. Moreover, during their pregnancy, women work only 35 hours a week instead of 40 hours. In addition, women and children shall not be hired for physically harsh, unhealthy and harmful jobs. Furthermore, it is not allowed to hire a pregnant woman, a mother with a child younger than 2 years old, or a juvenile for overtime work or send them on an official trip. It is also not allowed to avoid the recruitment of a woman or to decrease her salary due to pregnancy or breast-feeding.

106. The Afghan government has established a committee on gender and women's affairs within the Cabinet, and there are anti-harassment committees and units in all ministries and government offices. These committees and units defend women's rights and handle discrimination cases very seriously. In all recruitment sections of government offices, there is a representative from the gender committee. It is worth mentioning that to address historical deprivations and promoting gender-equality, women are given 5 extra marks during their competition for getting a job.

107. The Independent Administrative Reform and Civil Service Commission prepared a policy on January 10, 2018 aimed at increasing the number of women in civil service. The purpose of this policy is to increase the number of women up to 2% from all ethnic groups in Afghanistan's civil service during the course of the year 2018.

108. Based on the recent statistics in 2016, the share of women in different sectors is as follows: 21% in provincial councils, 15% in the Cabinet, 10% in the government's decision making level, 33% in the health section, 21,7% in the private sector, 26% in government organizations, 12% in the judiciary, 1% in the security sector, 9,8% in the private sector's decision making level, 6% in the economic sector, 39% as school students, 23% in the public higher education institutions, 14% as professors in government universities, and 34% as school teachers.

109. The percentage of female staff in the General Attorney's Office has increased from 12% in 2017 to 20.7% in 2018. One woman is appointed as the Deputy Attorney General, and at least 10 women are working as directors. The Attorney General's Office started an internship program for 241 newly graduated girls. A result, 153 girls were hired in different positions in the capital and provinces.

110. The Interior Ministry has codified a policy for recruiting female staff based on which 5000 posts were announced for them in 2016 and 2017. For the time being, 3229 female staff have been recruited at these posts out of which 2500 are military staff, and the rest are civilian (taken from the third periodical national report of human rights review (UPR)). In the beginning of 2018, the total number of civil service staff was 400439 out of whom 310045 are male and 90494 are female.

## **B. Rights of Asylum Seekers, Refugees, and Stateless Persons**

111. There are 179 refugees and 195 asylum seekers in Afghanistan. The Refugees Law at the Ministry of Justice is at the level of scrutiny to better organize these affairs and observe the basic needs of foreign refugees, asylum seekers, and stateless persons. This law is going to be processed and enforced soon. With the enforcement of this law, the abovementioned categories' access to basic rights will be completely guaranteed.

## **C. Implementation of Article 16 of the Constitution**

112. In order to implement article 16 of the Constitution, the Afghan government has taken some effective and practicable actions. The drafting commission of the Third Language Law (other than Official languages of Dari and Pashto) has started its practical work on the third languages. With the enforcement of this law, the ground will be paved for the development of the third languages.

113. In accordance with the National Development Strategy and based on articles 6 and 16 of the Constitution, the Ministry of Information and Culture made the "Watandaran" Program (Compatriots' Program) in 2005 to use the third official languages of the country (Turkmen, Uzbek, Balouchi, Nooristani, Pashayee, and gujaree). This administration had programs in Uzbek, Balouchi, Turkmen, Pashayee, and Nooristani. In 2006 each of these five languages had its own independent journals. Based on the request of readers and decision of the Ministry of Information and Culture, the Watandaran Journals were promoted to magazines in 2016, and the Gujaree Magazine also started its publications through this administration.

114. The Watandaran Program Office of the Ministry of Information and Culture prints 4200 copies of the six magazines in Uzbek, Balouchi, Turkmen, Pashayee, Gujaree, and Nooristani languages in 21 provinces every month and distributes them free of charge.

These magazines include important topics like language development, history and culture of different tribes, human rights, rights of women, unity, and coexistence. Moreover, there is a committee recently established for languages development at the Ministry of Information and Culture.

115. According to article 32 and paragraph 2, article 43 of the Education Law of Afghanistan, the government is responsible to provide the population with education in their own languages at the areas where they speak in that language and in expanding education in a balanced manner in all over Afghanistan. The Government has to provide compulsory intermediate education and effective programs. Article 16 of the Constitution explains that in areas where most of the people speak in one of the third official languages (Turkmen, Uzbek, Balouchi, Nooristani, Pashayee, Pamiri, and others), the government has to pave the way for learning that third language besides Dari and Pashto. The Ministry of Education design effective textbooks and materials in order to teach these third official languages.

116. All educational programs and services are implemented in a balanced manner throughout the country. Local and accelerated education, education in emergency situations, and hiring female teachers for the disabled and nomads have been done according to the third strategic plan of the Ministry of Education in a balanced manner in all over the country.

117. In accordance with the articles 6, 7, and 9; the Education Curriculum Development Directorate has to pave the way for education in the languages mentioned in the law without any discrimination. Articles 6, 7, and 9 of the Education Policy guarantee the following points.

118. Article 6: providing all people with elementary and intermediate education (grade 1–9) without any kind of ethnic, religious, language, or racial discrimination. Article 7: Teaching at schools (government and private) shall be in the languages mentioned in the Constitution. Article 9: Teaching of third official languages in related areas as a school subject is according to article 16 of the Constitution.

119. The Ministry of Education has started writing textbooks and teacher's guide in Turkmen, Uzbek, Balouchi, Nooristani, Pashayee, Gujaree, Pamiri (Sheghnani and Wakhani). Textbooks in all these languages have been prepared and published from grade 1–6, except Wakhani which has been prepared up to grade 3. These books are now being taught in related schools. It is to mention that textbooks in Uzbek and Pashayee languages have been prepared up to grade 12, and progress in this regard continues.

120. Curriculum Development Directorate of the Ministry of Education has started working to establish the Kerano Munjan Language Department whose textbooks and teacher's guidebooks are developed. One of the biggest challenges in this area is lack of authors for the third official languages and lack of sufficient numbers of teachers of these languages.

121. The National Radio and Television Department prepares specific programs for promoting and improving the abovementioned languages. Since 2003, the Hamwatan Program has had programs in Uzbek, Turkmen, Pashayee, Balouchi, and Nooristani during specific hours. These programs are broadcasted everyday from 11:00 to 12:00 and from 14:00 to 15:00 in the afternoon. There are economic, recreational, cultural, and informative programs and news. The Sadaa-ye-Hamwatan (Voice of Compatriots) programs are scheduled and broadcasted in the following manner:

- Uzbek Program: 30 minutes per day;
- Turkmen Program: 25 minutes per day;
- Pashayee Program: 25 minutes per day;
- Baluchi Program: 25 minutes per day;
- Nooristani Program: 25 minutes per day;
- News in Uzbek: 10 minutes per day at 19:00.

122. The Afghan National Radio too has programs in Nooristani, Turkmen, Uzbek, Balouchi, and Pashayee for 150 minutes each day. These programs are social, political, economic, cultural, and agricultural. This administration has a plan to broadcast provincial reports in five local languages. Music festivals, introduction of different tribe's culture and history, and recreational programs will be broadcasted.

#### **Trial and Compensation for Racial Discrimination (Article 6)**

123. In order to prevent discrimination against all citizens within its jurisdiction, the Islamic Republic of Afghanistan has clearly prohibited discrimination in the Constitution and other relevant law, including in the penal code and has foreseen proportionate punishments for the perpetrators. Article 256 of the Afghan Penal Code under the title "Provoking discrimination or division" stipulates the following:

1. A person who provokes or invites people to language, ethnic, racial, or religious discrimination shall be sentenced to mid-term imprisonment;
2. If the crime mentioned in paragraph 1 of this article results in violence or is accompanied by threat, the perpetrator is sentenced to long-term imprisonment of up to seven years.

124. It is worth mentioning that so far, no cases of racial, ethnic, color-based or other types of discrimination has been brought to the attorney offices or courts, except for one case which is mentioned in the next paragraph.

125. The Judicial Sector of Afghanistan has investigated and punished a senior government official related to the crime of ethnic discrimination. The perpetrator was sentenced to 2 years of suspended imprisonment, in accordance with the Article 870 and 17 of the penal code of Afghanistan by the Court in 2018.

126. The right to compensation in all cases has been stipulated in the Constitution and other related laws. According to article 51 of the Constitution, any person affected by an organization without a reason has the right to compensation and can take it to the court. Article 3 of the Afghan Penal Code too mentions crimes-related compensations.

127. Moreover, article 14 of the Penal Code mentions return of the asset or compensation: (1) If a person is sentenced to punishment for a crime, and this person has gained something by committing the crime, he/she has to return the same things to the owner, and in case the things are not available, its similar or cost. (2) If a person has inflicted loss upon someone as a result of a crime, they have to be sentenced to compensate it (financially and morally) beside the punishment they receive by the law. It is also applicable to cases in which compensation has not been mentioned clearly by law. (3) The amount of inflicted loss and its compensation is determined by related experts appointed by the authorized court.

128. There is a specific chapter (chapter 4) for compensation of discrimination-related crimes in the Anti-Discrimination Draft Law. It has been foreseen in this law that the perpetrator of discrimination (including the government, individuals, and others) has to compensate all direct or indirect losses inflicted upon the victim due to the related discriminatory acts (article 29, draft anti-discrimination law).

129. If the discrimination results from the decisions made by senior government officials or private organizations, government or these private organizations have to compensate it as legal persons. After compensating, they can go to the persons who have directly been involved in the discrimination and can claim it. All administrative and executive measures and decisions on hiring people, scholarships, retirement, returning to work, medals, titles, contracts, projects, and etc. that are based on discrimination will be cancelled. The victim of such discrimination will not only be compensated for losses they have suffered, but are also entitled to the benefits they have been deprived of, due to the discrimination (articles 30 and 31 of the Draft Anti-Discrimination Law).

## **Educational System and the Role of Media in Eliminating Discrimination (Article 7)**

130. To bring fundamental change within the country for the respect of human rights, the Ministry of Education has established a committee which has included different topics (human dignity, anti-discrimination, justice, national culture, history and the original culture of Afghanistan, gender equality, freedom of expression, prohibition of torture, justice, peace and democracy, elections, freedom of movement, right of marriage, rights of children, environmental rights, and rights of the disabled and drug addicts) to school curriculum, considering students' age and level of education. This committee also tries to remove negative and inhumane contents from textbooks. There are two representatives from the Independent Human Rights Commission within this committee. So far, 116 textbooks have been reviewed with the cooperation of this committee.

131. The Ministry of Education has developed and implement codes of conduct to bring discipline within schools, through which discrimination is also prevented and addressed. The Ministry has also prepared brochures for this purpose and has distributed them.

132. Human rights and anti-discriminatory subjects have been included in the university curriculum. Anti-discriminatory topics are being taught in faculties of law, Islamic Law, Psychology, and public policy and administration. The ministry of Higher Education has started reviewing the curriculum and wants to add principles of human rights contained in human rights conventions to the curriculum.

133. Based on the agreement signed between Marshal Fahim Military Academy and the Independent Human Rights Commission in 2016, a subject called human rights has been included to the curriculum. Up to now around 200 police officers have received education on human rights related issues and observance of articles of international human rights conventions. Besides, the Ministry of Defence has signed a memorandum of understanding in 2014 with the Independent Human Rights Commission based on which the National Army Staff get information about values of human rights and international humanitarian law. Based on this memorandum of understanding, by August 2018; 886 people received training; out of whom 150 are women.

134. In accordance with the relevant laws, the Ministry of Information and Culture has taken measures to promote justice, coexistence, social tolerance, and national unity through audio and visual media, newspapers, and cultural journals. The Mass Media Law published on 30/June/2009 has been enforced based on articles of the Constitution and the International Human Rights Declaration. A new draft of this law is under process to encompass the developments and actual conditions of the Afghan society. Provisions on the prevention of discrimination and the role of media in this regard, are to be added to this new draft.

135. Media policies have also been developed based on the Mass Media Law. The paragraphs 2,3,4,5, and 7 of article 43 of the Mass Media Law, ratified in June of 2009, states that "broadcast of any kind of program that causes insult to language, gender, and religion is prohibited. Broadcast of any kind of programs which incite to violence or contains graphic pictures of victims of war and conflict, have also been prohibited. According to the publications policy of state-newspapers, Bakhtar News Agency, and Directorate of Publication Monitoring, programs and articles have to adhere to the professional standards and the contents should be balanced.

136. Press Directorate of the Ministry of Information and Culture has always tried, based on the Constitution of Afghanistan, to prevent discrimination and promote justice, equality, tolerance, coexistence, national unity, and friendship among people. Articles that are related to the prohibition of discrimination are continuously being published through *Islah*, *Anees*, *Hewad*, and *Kabul Times*.

137. All state newspapers have to inform people about the prohibition of discrimination and publish articles about the negative outcomes of discrimination and the necessity to fight against it, through different interesting media contents.

138. The Ministry of Information and Culture has a publication policy in which it has been very clearly mentioned that the media has to prevent all kinds of discrimination. The Ministry of Information and Culture has always tried to prevent all kinds of discrimination through the mass media. If any of the media outlets is involved in discrimination, the Media Complaint and Violation Commission will directly take measures. If the commission finds something discriminatory, it will introduce the related media outlet to the judicial organs. Nonetheless, since 11/Nov/2018 no complaint that is based on ethnic or language discrimination has been registered.

## **Challenges**

### **Insecurity**

139. Security is one the essential and basic needs of a society. Lack of security has hindered full implementation and realization of values and provisions encompassed in the international human rights instruments.

### **Lack of sufficient financial resources**

140. Another challenge stands as the lack of necessary financial resources for the Implementation of human rights conventions and the national law which incorporates those provisions. This has also been the case with the implementation of CERD and the relevant laws.

### **Lack of public awareness on fundamental rights, especially about discrimination**

141. Lack of awareness among rights holders about their fundamental freedoms and rights meanwhile, lack of awareness on the ways and manners that discrimination may happen, constitutes another serious challenge. This is the reason behind the lack of judicial referrals of cases of discrimination as victims don't bring their claims to the judicial institutions.

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