

## **Report on Afghanistan 5th Round of the Universal Periodic Review – May 2009**

This report is submitted by the **Sexual Rights Initiative** (a coalition including Mulabi – Latin American Space for Sexualities and Rights; Action Canada for Population and Development; Creating Resources for Empowerment and Action-India, the Polish Federation for Women and Family Planning, and others). It was written by Mr. Naimatullah Akbari, MD. EMBA (Health Management), from Afghanistan. It starts by providing an **Overview** on the current institutional situation in Afghanistan, to then focus on issues of **Reproductive Health and Rights, HIV/AIDS and Freedom of Expression**.

### **Introduction**

1. Afghanistan is a mountainous land-locked country located in Central Asia. It has a history and culture that goes back over 5000 years. Afghanistan is a heterogeneous nation, in which there are four major ethnic groups: Pashtoons, Tajiks, Hazaras, and Uzbeks. The majority of Afghans (99%) belong to the Islamic faith. The official languages of the country are Pashto and Dari. Since December 2001, Afghanistan has been engaged in establishing a democratic system of government under the Bonn agreement. With the election of the President and the parliamentary and provincial council elections in September 2005, the people of Afghanistan have demonstrated that they can and want to live in a democratic society. They want to focus on building their state after years of devastation and they want to improve their well-being. The international community is working with the people of Afghanistan and the Government to meet the challenge of security, which still remains huge, and help in the reconstruction of the country, while continuing to meet humanitarian and rehabilitation needs. But it is now time for the people to assess the development challenges that they face and, together with the international community, set a path for overcoming them.

### **International human rights obligations**

2. Afghanistan became a member of the United Nations on November 19, 1946 and agreed to accept the obligations of the UN Charter, an international treaty that sets out basic principles of international relations.
3. Afghanistan is a party to the following international Human Rights Treaties:
  - The International Covenant on Civil and Political Rights (ICCPR), ratified on 24th April 1983.
  - The International covenant on Economics, social and cultural Rights (CESCR), ratified on 24th April 1983.
  - The International Convention on the Elimination of all Forms of Racial Discrimination (CERD), ratified on 5th August 1983.
  - The convention on the Elimination of all Forms of Discrimination against Women (CEDAW), ratified on 5th March 2003.
  - The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT), ratified on 26th June 1987.
  - The Convention on the Rights of the Child (CRC), ratified on 27th April 1994.
  - The Optional Protocol of the Convention of the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography, ratified on 19th October 2002.
  - The Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict, ratified on 24th Sept. 2003

### **Legal framework and national human rights institutions**

4. The present Constitution of the Islamic Republic of Afghanistan was agreed upon by more than 500 delegates representing Afghan men and women from across the country at the Constitutional Loya Jirga (December 13, 2003 - January 4, 2004). The Constitution was formally ratified by President

Hamid Karzai at a ceremony in Kabul on January 26, 2004. According to the Constitution, Afghanistan is an Islamic republic with Islam as its "sacred religion"; followers of other religions are free to perform religious ceremonies in accordance with the provisions of the law; no law shall be contrary to the beliefs and practices of Islam and; men and women have equal rights and duties before the law. The Constitution protects the rights to equal protection under the law, freedom of movement, to choose one's residence, freedom of expression and freedom from cruel and inhuman treatment.

5. The Judiciary in Afghanistan is composed of the Supreme Court, Courts of Appeal and Primary Courts. Travelling courts may be established when needed, on recommendation by the Supreme Court and with approval from the President. The Judiciary is empowered to resolve disputes between and among individuals and legal entities, including the state.
6. Afghanistan Independent Human Rights Commission (AIHRC) was established pursuant to the Bonn Agreement (5 December 2001) and on the basis of the decree of the Chairman of the Interim Administration (June 6, 2002), Resolution 134/48 (United Nations General Assembly, 1993), the Paris Principles and Article 58 of the Constitution of the Islamic Republic of Afghanistan. Now the Commission is performing its activities in the areas of promotion, protection and monitoring of human rights. According to the activity report of the year 2007 of the Commission, 1,079 monitoring missions of prisons and detention centers were conducted in 32 provinces of Afghanistan. As a result of the commission interventions, 130 illegally arrested persons (126 men and 4 women), 126 illegally detained persons (114 men and 12 women), and 87 illegally imprisoned persons (84 men 3 women) were released. A total of 5,259 Afghan civilians (1,081 women) came to the AIHRC seeking assistance and their complaints were either processed, or they were given legal advice and referrals to appropriate authorities or organizations. Of the 1,079 complaints received in 2007 (involving 1,561 human rights violations), 904 complaints were investigated and 458 interventions led to resolutions.

## Overview

7. Afghanistan has lost over two decades in war while most countries, particularly in Asia, were making substantial economic and social progress and improving the lives of their people. Though one of the world's poorest countries even before the onset of war, Afghanistan in the 1970s was slowly increasing its governance capacity with support from the international community. In the years of war that followed, hundreds of thousands of people, most of them innocent civilians, were killed, a third of the population was uprooted and forced into exile, villages were devastated, the country's educated class and educational system were destroyed, and the modest advances made by Afghanistan's women were cruelly reversed. The country's food production fell by one half. Narcotics traffickers looking for new sources of supply induced many Afghan cultivators to turn to opium poppy, creating a parallel economy that funds trafficking, warlordism, and corruption. The events of September 11, 2001, demonstrated that the pervasive insecurity of the people of Afghanistan constituted a threat to the whole world. These events led to a change of government through military intervention and the conclusion in December 2001 of the UN-mediated Bonn Agreement, the aim of which was to reconstruct the institutions of self-government in Afghanistan. The legacy of poverty, violence, and war keeps the majority of Afghans insecure.
8. The Afghan Government has articulated its overarching goals for the well-being of its people in the ***Afghanistan Millennium Development Goals Country Report 2005 – Vision 2020***. Consistent with those goals, Afghanistan Compact identifies three critical and interdependent areas or “pillars” of activities: 1. Security, 2. Governance, Rule of Law and Human Rights; and 3. Economic and Social Development. Afghanistan's “Vision 2020” collectively reflects Afghanistan's own aspirations for its people of reducing poverty and hunger, providing universal primary education, reducing child mortality, improving maternal health, combating diseases, promoting gender equality, ensuring environmental sustainability and enhancing personal security. A further vital and cross-cutting area of work is eliminating the narcotics industry, which remains a formidable threat to the people and state of Afghanistan, the region, and beyond.

9. The Afghan Government and the international community reaffirm their commitment to the protection and promotion of rights provided for in the Afghan constitution and under applicable international law, including the international human rights covenants and other instruments to which Afghanistan is party. With a view to rebuilding trust among those whose lives were shattered by war, reinforcing a shared sense of citizenship and a culture of tolerance, pluralism and observance of the rule of law, the Afghan Government with the support of the international community will implement the Action Plan on Peace, Justice and Reconciliation.
10. Increasing insecurity in Afghanistan especially in the Southwest and South provinces is the major concern for deterioration of human rights. The environment makes it difficult for the human right organizations to monitor and protect human rights of the people. Another source of concern is the lack of sufficient commitment and follow up by the Government in the promotion, protection and monitoring of human rights. Increase in the number of civilian casualties by the international and NATO forces is another source of concern in terms of human right protections.

#### **11. Recommendations:**

- The Afghan Government needs to rapidly expand its capacity to provide basic services to the population throughout the country and implement measurable improvements in fighting corruption, upholding justice and the rule of law and promoting respect for the human rights of all Afghans.
- The Afghan Government should give priority to strengthen provincial institutions – including civil administration, police, prisons and judiciary. These institutions need to have appropriate legal frameworks and appointment procedures; trained staff; and adequate remuneration, infrastructure, and auditing capacity.
- Reforming the justice system needs to be a priority for the Afghan Government and the international community. The aim will be to ensure equal, fair and transparent access to justice for all based upon written codes with fair trials and enforceable verdicts. Measures will include completing legislative reforms for the public as well as the private sector; building the capacity of judicial institutions and personnel; promoting human rights and legal awareness; and rehabilitation.
- The government need to take necessary steps to improve coordination between NATO and Afghan National Army during military operations to reduce the civilian casualties to lowest level.

#### **Reproductive and Sexual Health and Rights**

12. The right to reproductive and sexual health is a component of the universally recognized right to health., The full enjoyment of the right to reproductive health includes; *Reproductive decision-making on the basis of equality between women and men, including voluntary choice in marriage and determination of the number, timing and spacing of one's children; Sexual and reproductive security, including freedom from sexual violence and coercion, and the right to privacy.*
13. Afghanistan is culturally and socially a very conservative society in regards to issues of reproductive and sexual rights. Women have not sufficient power to make choices regarding their future, especially with regard to marriage and reproduction.
14. Universal access to quality services is a primary means to reproductive health that the Afghanistan Government is committed to provide through the Ministry of Public Health. The Ministry has the task to ensure the accelerated implementation of quality of health care for all people of Afghanistan, through targeting resources especially to women and children and to under-served areas of the country, and through working effectively with communities and other development partners. For the

reproductive health strategy three areas have been prioritized: a) Maternal and neonatal health; b) Birth spacing and family planning, and c) Gender and reproductive rights. According to the Afghanistan National Development Strategy (ANDS) by 20 March 2011, in line with Afghanistan's MDGs, the Basic Package of Health Services will be extended to cover at least 90% of the population; maternal mortality will be reduced by 15%; and full immunization coverage for infants under-5 for vaccine-preventable diseases will be achieved and their mortality rates reduced by 20%.

15. The Ministry of Public Health in Afghanistan has made some progress to expand the Basic Package of Health Services to around 90 % of the population. To date, the implementation of these Programs has made a demonstrable difference. The recently conducted Afghanistan Health Survey (AHS) in 2006 (1385) shows a 25% reduction in the Under-Five Mortality Rate (U5MR) over 2001 (1380) levels (from 165 to 129 deaths of children under one year of age per 1000 live births) and in child mortality (from 257 to 191 deaths of children before the age of five years old per 1000 live births). These estimates provide evidence that infant and child mortality has decreased in Afghanistan in recent years. Childhood vaccination coverage has also improved, especially for the most dangerous of vaccine-preventable diseases, measles. Impressive increases have also been documented for Reproductive Health, with more women receiving pre-natal care, more deliveries being assisted by professional health care providers, and more families using modern contraceptive methods to determine the number of their children.
16. However, despite the progress that has been made to date in the health and nutrition sector, many problems and challenges remain. These include: inadequate financing for many of the key Programs that should have been, but are not yet, fully implemented. Reliance on external sources of funding will be required for many years to come, but the Government of Afghanistan also needs to be encouraged to prioritize the health and nutrition sector including by investing a higher proportion of the Gross Domestic Product (GDP) in Health Care programs for the population. A serious problem that needs to be urgently addressed is the lack of adequately trained staff –and the lack of female health staff in general- to implement the programs.
17. Abortion is illegal in Afghanistan except in circumstances in which it is being conducted to save the life of the mother. Those cases required certification by two specialists and the approval of relevant health authorities. Due to the strong stigma and restrictions on the issue getting those certifications is also a challenge for the women. Those who procure abortions as well as those who perform them –in circumstances other than those contemplated by the law- are penalised according to Articles 402-406 of the Criminal Code with fines and/or jail sentences ranging from shorter to longer -7 years- terms(if the means to cause the abortion are harmful). Doctors and nurses are sentenced to the maximum punishment applicable.<sup>1</sup> Cases of unsafe abortion exist, but there is no data available on the exact figures. The consequences of unsafe abortions range from reproductive system infection, mental disorder, infertility, reproductive organ injury, fistula to even death.

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<sup>1</sup> **Article 402.**“A person who intentionally causes abortion of a human fetus by beating or any other harmful means shall be sentenced to long imprisonment not exceeding seven years”. **Article 403.** (1) A person who causes abortion by means of drugs or otherwise, even though the act has been accomplished with the consent of the pregnant woman, shall be sentenced to medium imprisonment or shall be fined an amount not less than twelve thousand Afghanis and not exceeding sixty thousand Afghanis. (2) If the drugs have been administered by mistake, the offender shall be sentenced to short imprisonment or shall be fined an amount not exceeding twelve thousand Afghanis. **Article 404.** (1) If the person committing the act of abortion is a medical doctor, surgeon, pharmaceuticals, or a nurse, the offender shall be sentenced to the maximum anticipated punishment for the crime. (2) If the persons, specified under the above paragraph, commit the act of abortion for the purposes of saving the life of the mother, the offender shall not be punished. **Article 405.** A pregnant woman who, cognizant of the repercussions of the act, deliberately uses drugs or other means or allows someone else to apply these means to her, as a result of which abortion takes place, shall be sentenced to short imprisonment or shall be fined an amount not exceeding twelve thousand Afghanis. **Article 406.** Initiating an act of abortion shall not be deemed punishable.

## 18. Recommendations

- To open a dialogue on culture and human rights, to guarantee that no human rights violations will be perpetrated under the name of culture or tradition.
- To take all necessary steps to improve the training and skills of current health workers and to develop and implement a campaign and plan of action to actively involve women in the health care professions, including through special bonuses, incentives and scholarships.
- The Ministry of Public Health and the Health Sector Agencies must take all necessary steps toward improving post abortion care services and encouraging families to use the available family planning services in order to avoid unwanted pregnancies that are mostly ended with unsafe abortions.

## HIV/AIDS

19. The challenge for HIV prevention is to achieve universal access of Afghans to HIV prevention, treatment, care, and support services. But HIV-related stigma and discrimination undermine Afghanistan's responses to the epidemic, because they prevent people from accessing information and important HIV prevention and treatment services. The take-up of HIV counselling and testing services, for example, is low. Discrimination against people living with HIV affects their access to information and knowledge, employment, housing, insurance, social services, education, health, and inheritance rights for women and men. Strong prejudice against people living with HIV has been found in health services. Furthermore, those groups that are most at risk of HIV infection are already discriminated against and marginalized. The highest risk groups in Afghanistan are Injecting Drug Users (IDUs), Sex Workers, Men who have Sex with Men (MSM), and prisoners. Vulnerable groups include long-distance truck and bus drivers, refugees, Internally Displaced Population (IDPs), Youth, Women and Children. The stigma and discrimination is mostly manifested as reluctance for disclosure, deterioration of family relationship, exclusion from religious events and fear to seek the services. Anti-retroviral treatment (ART) is not available yet in Afghanistan. The reported number of people currently living with HIV in Afghanistan is 266 (National AIDS Control Program, September 2007); with estimates ranging from 1,000 to 2,000 according to UNAIDS (Global Report, 2006). No systematic data on the prevalence of HIV is available, due to absence of surveillance in Afghanistan. There are 6 Voluntary Counselling and Testing Units (VCT) operating in Afghanistan (2 in Kabul, 1 each in Mazar, Jalalabad, Herat, and Faizabad in Badakhshan).
20. The Ministry of Public Health drafted a Strategic Plan on HIV/ AIDS and Sexually Transmitted Infections (STI) in Afghanistan for the period 2003-2007. Following the approval of the Strategic Plan in 2003 the Ministry of Public Health established the National AIDS Control Programme (NACP) with one Manager and 3 technical experts and new office space in the Ministry campus. A Harm Reduction and HIV/ AIDS Strategy developed with the Ministry of Counter Narcotics have been approved. An HIV and AIDS Task Force were established with key partners and stakeholders and chaired by the NACP Manager. The National AIDS Control Programme (NACP) through a comprehensive process with a wide range of stakeholders and development partners have developed an HIV/AIDS National Strategic Framework (2006 – 2010) as Afghanistan's broad vision and strategic objectives to address and mitigate the impact of HIV and AIDS on Afghanistan National Development Strategy (ANDS). The goal of the strategic plan is that beyond 2010, a low prevalence of HIV positive cases (<0.5%) in the population will be maintained in order to reduce mortality and morbidity associated with HIV and AIDS. The main achievement of the NACP so far are the following;
- National HIV/AIDS Strategic Framework revised from 2006 to 2010 and endorsed.
  - Prevention, care and awareness on HIV and AIDS recently included in the Basic Package of health services (BPHS).
  - Program Operation Plan (POP) is finalized and has been costed for implementation of National HIV and AIDS strategic plan.
  - Provision of funds by World Bank, Global Fund and Asian Development Bank for POP.
  - National Harm Reduction and HIV Strategy approved by the ministry of Public Health.
  - VCT guidelines have been developed and distributed to the related organization.
  - TB/HIV Strategy is in developing process.

- STI Guideline adaptation in progress.
- Sensitization of religious leaders at national and provincial level on HIV and AIDS has been carried out.
- Inclusion of HIV education into School curriculum and School teachers trained
- Focal points in each line ministries have been selected to coordinate HIV and AIDS related awareness interventions.
- Information Education and Communication (IEC) and training materials on HIV and AIDS developed and disseminated.

21. In spite of the remarkable achievement, some of the major challenges to address the issue are: (1) insecurity,(2) stigma and discrimination , (3) lack of surveillance system, (4) insufficient public sector response on HIV and AIDS and to mainstream HIV and AIDS into development projects .

## **22. Recommendations:**

- To create a legal framework to safeguard the rights of people living with HIV/AIDS, including access to testing, confidentiality measures and non-discriminatory treatment by the health services.
- The challenges of Oral Substitute Therapy (OST), as well as Anti Retroviral Therapy( ART), and other HIV services needs to be overcome by building a multispectral, enabling environment through better policy, surveillance, advocacy, and communication.
- Reducing and overcoming stigma as the greatest challenge for universal access to HIV prevention, treatment, care and services need to be addressed through culturally appropriate Behaviour Change Communication interventions. (Universal Access Protocol, MOPH, 2008).
- To educate and sensitize all public officers, particularly those in the health and law-enforcement sectors on their obligations in terms of non-discriminatory treatment towards women, and persons living with HIV and AIDS.
- To investigate and, when needed, punish, discriminatory and abusive behaviour on the part of public officers, particularly those in the health and law-enforcement sectors towards women, and persons living with HIV and AIDS.

## **Freedom of Expression:**

23. After the fall of the Taliban regime in Afghanistan, as President Hamid Karzai came to power, one of the promising things he did was to declare freedom of the media. Soon a Media Law was ratified ensuring more freedom of the media under which individuals could run independent papers, publications, radios and TV stations. But some of the articles in the Media Law were controversial and could bring all other articles of the law under question. Under such articles, no one has the right to write or say anything that is considered against "national interests." But there is no clear definition of which national interests are those that journalists must not touch. In the Media Law it is also stated that no one can write or say anything that affronts Islam. Such articles can easily be misused by the enemies of free media.