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# UN Support to the Afghan Independent Human Rights Commission Project

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Final Evaluation

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## 1. Executive Summary

This report assesses the UN inter-agency Project “Support for the Afghan Independent Human Rights Commission” (referred to as “the Project”) implemented from 2002 to 2006. The report includes a brief overview of current United Nations partnership and technical assistance arrangements, and current donor relations with the Afghan Independent Human Rights Commission (AIHRC). The report presents an indicative assessment of the work of the AIHRC, and also briefly outlines priority human rights interventions beyond support to the AIHRC which might be relevant for UNDP to consider.

The Project to Support the AIHRC, implemented by the United Nations Development Programme (UNDP), United Nations Assistance Mission in Afghanistan (UNAMA) and the Office of the United Nations High Commissioner on Human Rights (UNOHCHR) was a broadly appropriate and effective mechanism for supporting the AIHRC to become functional and build capacity.

Lessons for future support to establishing National Human Rights Institutions (NHRIs) can be drawn from the implementation of the Project. A careful strategic planning process, combining national leadership and technical expertise might be facilitated to ensure a **realistic initial plan and objectives**. Decisions about **structure and management arrangements** should sufficiently reflect best practice internationally. Increased support to develop **systems and methodologies** for core areas of work such as monitoring and investigation might be provided from the outset.

**UN technical assistance and partnership** with the AIHRC since the conclusion of the project in 2006 has continued to provide **essential support** and capacity development. This includes UNHCR support to develop improved case documentation and information management, which represents a net gain in capacity. The **mandate and outreach of the AIHRC make it an important partner to the international community**. Uniquely among NHRIs the AIHRC is sometimes asked to meet the needs of external organisations to access information and provide scrutiny. Meeting such demands and receiving technical assistance from diverse sources is not necessarily the best approach to sound organisational development.

The **proposed UN-integrated approach to partnership with the AIHRC** provides the opportunity to work together in a more systematic fashion on strengthening capacity and delivering on the AIHRC’s core mandate. Technical assistance inputs should ideally form part of a **systematic AIHRC-owned and -led process of capacity and organisational development**. Cross-cutting areas and skills such as strategic planning, and monitoring and evaluation might be addressed, along with capacity development needs identified by the AIHRC, such as those in research and data analysis.

**Bilateral donors have invested heavily in the AIHRC**. Donors have provided political support and sufficient funding to the Commission, which handles donor relations and reporting professionally. A **consolidated donor framework** for independent external evaluation of the AIHRC (which could benefit organisational development) might be developed, to be implemented at the most appropriate time in the AIHRC calendar. This might combine a broad annual output-to-purpose review with programme-level impact assessments.

**The strengths of the AIHRC were widely recognized.** The Commission has skilfully charted the course of institutional growth. It has established itself nationally against enormous challenges and in a hostile political and security environment for human rights intervention. It is a visible, committed, productive organisation with a large and dedicated staff and strong administrative procedures. It addresses a wide range of complex issues and manages complex and demanding relationships in an environment where governance is often poor. Outreach to remote areas is significant.

The AIHRC has brought human rights into public debate, and contributed to increased awareness of human rights among the population, including women, who now appear more likely to seek justice and assistance when subject to gender-based violence. Some awareness of human rights and some expectation of scrutiny appear to have developed in parts of government. There are examples of accountability, and access to justice brought about by action on individual complaints made to the AIHRC. The presence of the AIHRC, alongside other organisations, may have been able to curb levels of violations in some parts of the country.

However significant progress—in securing accountability for perpetrators of human rights abuses and taking action to reduce impunity—remains elusive. AIHRC work leading to sustainable impacts and development of structures, practices or capacity in government likely to measurably improve human rights is relatively limited. There is a sense, that despite the immense challenges it faces, the AIHRC as a well-resourced organisation could achieve more.

**As a young and growing organisation, the AIHRC faces formidable constraints.** These include a context of ongoing conflict, weak rule of law and limited state capacity in judicial and law enforcement sectors and the presence of alleged perpetrators of human rights abuses in positions of authority. The Commission faces specific challenges from those who have questioned its role and credibility. This is a critical time for the AIHRC to broaden its support base, and find an appropriate communications and relationship-building approach to negotiate its way through difficult times ahead.

Consultation over a more **transparent, consultative and inclusive appointments process, along with financial contribution from the government**, would further embed the AIHRC as a body perceived as independent, legitimate and responsive to different stakeholders. The AIHRC law might be revised to provide stronger powers, in line with international best practice, to ensure that recommendations for action made by the Commission are mandatory. NHRIs of other countries, for example, have a mandate which involves sanctions for non-compliance. Addressed through the right process, these areas of reform of the AIHRC institutional arrangements provide the opportunity for consultation and consensus-building, and a demonstration that the AIHRC wishes to be accountable to a range of stakeholders.

The **structure and management arrangements** of the AIHRC indicate a gap in day-to-day thematic and programme management. Deciding how to address this might need organisational development expertise, though the AIHRC is developing solutions and ideas for alternative structures. Increased capacity for legal analysis, to support both case intervention strategies and developing recommendations for policy and institutional reform might be suggested. The demand on the National

Programme Manager to address programme management, monitoring and evaluation and capacity-strengthening seems excessive.

AIHRC representatives spoke of the need to **upgrade the capacity of staff, and improve knowledge and skills**. The AIHRC provides a range of trainings to staff, and maximises opportunities for attending external events and trainings. Ensuring a comprehensive basic training on human rights concepts, including the role and responsibility of the state to address abuses by non state actors might be relevant. Increased expertise on some human rights issues, including fair trials and law enforcement and due diligence and the responsibility of the state to address gender based violence might also be beneficial. The regional offices have the greatest need for support in developing skills and knowledge.

Monitoring and investigation of individual cases of human rights abuse was recognized as some of the AIHRC's most high profile work, where results are being achieved in a proportion of cases according to AIHRC statistics. Several issues related to case reporting and handling of complaints were raised which the AIHRC is well placed to address with continuing UN partnership. As Commissioners acknowledged, there is a need for improved case analysis to identify cross cutting solutions and recommendations to the government for policy and institutional reform.

The **policy** and position taken by the AIHRC taken over key human rights issues, including high profile cases of emerging violations needs to be consistent and firmly underpinned by relevant international human rights law and standards.

The AIHRC **strategic approach to bringing about concrete improvements in the human rights situation** might in future map out more clearly the step-by-step sustained process needed to bring about change. The path to measurable reductions in human rights abuses may involve a number of contingent steps, a combination of tools and interventions, and several stakeholders and government institutions. There may be an advantage in exploring new tactics and techniques to address human rights challenges.

In view of the challenging environment, one or two areas might be prioritized and pursued until capacity and sustainable structures needed to protect rights are achieved. The AIHRC is sometimes being expected to overextend and engage in a very wide range of areas and processes. A streamlined strategic plan for post 2008 work might be considered.

**Successful human rights advocacy needs allies and mobilization of support.** There is an increasing recognition that the AIHRC cannot secure significant human rights gains alone. Key partnerships need building, through increased and improved communication, and sustained, well facilitated cooperation, which brings together stakeholders to identify and pursue solutions. Though there are productive relationships with civil society in some regions and on some issues, the margin for improved collaboration between the AIHRC and civil society organisations is clear. There also appears to be an unexploited potential to interact with parliamentarians, and to channel information on issues including transitional justice to parliament. Selecting a limited number of areas to develop cooperation over concrete objectives might be useful.

Afghanistan desperately needs the AIHRC to succeed. However the human rights situation seems unlikely to significantly improve without other stakeholders

improving their capacity and fulfilling their responsibilities. There is a danger that the Commission may come to be seen as primarily responsible for human rights issues. It is the state which bears the primary responsibility to respect, protect and fulfil rights. Increased intervention to support both government and civil society capacity to address human rights issues seems necessary.

The current government and donor planning framework, the Afghan National Development Strategy, does not address the government's human rights responsibilities adequately. Human rights receive only limited mention towards the end of the Governance Strategy. Afghanistan's human rights obligations provide the framework of minimum conditions necessary for human dignity to be protected. The responsibilities of individual government ministries to ensure human rights are realized therefore need to be identified. A government focal point, with sufficient capacity, an appropriate planning forum, and a benchmarked strategy which sets clear, time-bound objectives are needed.

Support for civil society human rights advocacy constitutes a potentially valuable area of engagement for UNDP, subject to further assessment of civil society capacity and existing donor support. Civil society, while active in Kabul and some regional centres, remains relatively weak and fragmented. Strategic support outside Kabul would be a potentially valuable contribution, but needs to provide long term support to organizations including those lacking English language skills. A sustained source of funding for proposals which are focused on concrete impacts, for clearly identified groups, is needed. This can be combined with organizational development support and capacity strengthening, to develop skills which civil society organisations identify as important. Community level organizations which represent, or have a strong constituency in poor, marginalized and vulnerable groups have a role to play in improving the human rights situation.

## 2. Introduction

### 2.1 Background

The AIHRC, established in 2002, has a constitutional and legal mandate to promote and protect human rights in Afghanistan. Three United Nations agencies, the United Nations Development Programme (UNDP), the United Nations Assistance Mission in Afghanistan (UNAMA), and the United Nations Office of the High Commissioner for Human Rights (UNOHCHR) supported the establishment and capacity development of the AIHRC through the Project “Support the Afghan Independent Human Rights Commission (AIHRC)”, implemented 2002 – 2006.

The AIHRC was **established pursuant to the Bonn Agreement**, which set out the framework for transitional governance and institutional arrangements in Afghanistan following protracted conflict. The Bonn Agreement included a specific commitment to the creation of a national human rights institution, with UN assistance.<sup>1</sup> A **sequence of consultations with different stakeholders** identified the four initial priority areas of work for the Commission advancement of the human rights of women, a national programme of human rights education; human rights monitoring and investigation; and transitional justice and addressing the abuses of the past.

The AIHRC was initially established by Presidential Decree. The Commission acquired **constitutional status** under Article 58 of the Afghan Constitution in 2004, and a **statutory basis** in May 2005 with the adoption of the Law on the Structure, Duties and Mandate of the AIHRC. The Law will be subject to approval by the current parliament.

The AIHRC is **accredited** by the main international body for national human rights institutions (NHRIs), the International Coordinating Committee of National Human Rights Institutions (ICC).<sup>2</sup> Accreditation requires compliance with the Paris Principles, which establish standards for national human rights commissions including independence from government, national scope of operations and pluralism of composition.<sup>3</sup> The AIHRC is also a member of the Asia Pacific Foundation.

The **AIHRC now functions nationally** with extensive capacity, and underwent expansion into regional field offices from 2003. It now has a total of 8 regional offices, and 4 provincial offices, which target remote locations. Staffing levels have grown to 570, representing an increase of 60% in staffing capacity since 2004. Regional offices have around 50 staff, and provincial around 20.

Each regional office now has women’s rights, child rights, rights of disabled people, monitoring and investigation, transitional justice and human rights education units. Capacity to address violations of international humanitarian law and human rights in the context of the current conflict has been created, through UNAMA support, by

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<sup>1</sup> Bonn Agreement, Agreement on Provisional Arrangements in Afghanistan Pending Re-establishment of Permanent Government Institutions, Article III. 6. [http://www.aihrc.org.af/bon\\_agr.htm](http://www.aihrc.org.af/bon_agr.htm)

<sup>2</sup> Accreditation restored October 2007

<sup>3</sup> Paris Principles relating to the status of national institutions, defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights, adopted by UN Human Rights Commission Resolution 1992/54 and UN General Assembly Resolution 48/134, 1993.

the establishment of the Special Investigations Team (SIT) in the head office. A merger of human rights field monitoring teams established by UNHCR with AIHRC's monitoring and investigation teams is now under way, leading to an expanded monitoring and investigation presence in regional offices. As discussed later, the monitoring and investigation methodology and case management system have been upgraded and systematized in cooperation with UNHCR.

The **structure of the AIHRC** comprises the nine Commissioners as the policy making body and the secretariat, led by the Executive Director. The Executive Director is supported by two managers, the Administration Finance Manager and the National Programme Manager. The national office of the AIHRC also contains the Research and Policy Unit, media programme, a legal adviser and logical and technical support functions. The AIHRC is somewhat unusual among national human rights institutions (NHRI) in having no national-level operational units or capacity to support the work of commissioners.

The National Programme Manager oversees the operations of programme areas in Kabul - Education, Investigation and Monitoring, Transitional Justice, Women's Rights, Children's Rights, Reporting, Media, Research and Database Officers—as well as the regional offices. Regional Managers oversee all programme activity in addition to administration and financial matters in the regional offices. The National Programme Manager is assisted by a Reporting Officer and assistant.

**The UNDP, UNAMA and UNOHCHR Project “Support to the Afghan Independent Human Rights Commission”** provided assistance to the AIHRC to become operational and fulfil its mandate. The intended outcome of the Project was the “accepted institutionalized presence of human rights infrastructure within the state and across communities in Afghanistan”.<sup>4</sup>

The three UN agencies involved provided different competencies and inputs to the AIHRC. UNDP provided financial and administrative support; UNAMA cooperated closely with the AIHRC on the monitoring of human rights, including civil and political rights in the context of elections, and provided political support; UNOHCHR provided technical expertise on substantive human rights and National Human Rights Institution (NHRI) operational issues.

The project was initially implemented through a DEX (direct implementation) modality, under which UNDP retained responsibility for financial management, with transition in 2004 to NEX(national implementation) modality which allowed AIHRC to assume responsibility and control over financial and administrative processes. In keeping with the “light footprint” approach to international assistance in Afghanistan, AIHRC transition to independent operation, and direct bilateral relations with donors, took place following the conclusion of the Project in 2006. The AIHRC now engages directly with bilateral donors, who provide funding to its current three-year action plan.

Since the end of the project, UNDP has not been engaged in technical support provision to the AIHRC, though it continues to channel some funds. UNAMA and UNOHCHR continue to work with the AIHRC, alongside UNIFEM and UNICEF.

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<sup>4</sup> Project Agreement, October 2002



## External evaluations of the AIHRC to date:<sup>5</sup>

- Mid term evaluation of the Project to Support the AIHRC, 2005;
- A study of AIHRC financial and managerial capacities, to evaluate the readiness of the AIHRC for independent operation and bilateral donor relations;
- Draft Needs Assessment Mission Report: Capacity of the AIHRC, on behalf of the Canadian Foreign Ministry, 2007.

## 2.2 Report structure

**This report covers three separate and somewhat distinct areas, as required by the terms of reference (Annexe B):**

- Section 3 assesses the effectiveness of the Project as a means of providing technical assistance and nurturing the development of the AIHRC as an independent institution. It also briefly overviews current UN technical support and AIHRC donor arrangements;
- Section 4 assesses indicatively the achievements and work of the AIHRC under its current three-year action plan;
- Section 5 identifies possible areas for human rights intervention by UNDP which would be relevant and strategic in the current context.

The broad and composite nature of the terms of reference reflects **UNDP's priority to make the evaluation relevant to current circumstances** and to reflect the fact that the evaluation took place some time after the end of the Project. Since UN agencies other than UNDP have significant working relationships with the AIHRC, it was pertinent to address as far as possible the current UN technical assistance provision and technical assistance needs of the AIHRC, and current AIHRC donor relationships, rather than simply focusing on the completed Project.

The Project objectives were essentially the successful establishment of an effective NHRI. Assessing whether the Project was successful therefore entails examining the effectiveness of the AIHRC. This made necessary the indicative assessment of the AIHRC in Section 2.

UNDP does not currently envisage further support to the AIHRC. It is seeking to identify other possible human rights interventions beyond support to the AIHRC and is considering support to advocacy by human rights organisations. Section 3 therefore briefly addresses the human rights environment and priority human rights support needs. While the broad terms of reference made the evaluation mission relevant to current circumstances, they also resulted in the evaluation mission making broad, rather than deep, coverage of the three areas.

## 2.3 Methodology

The evaluation mission took place from 6 November to 1 December, with meetings beginning 13 November. Assessment was conducted in Kabul, including both national and Kabul regional offices, and Mazar-i-Sharif.

The consultants **reviewed documents and conducted semi-structured interviews with a wide range of stakeholders, and a group discussion with civil society organizations in Mazar-i-Sharif.** Interviews were carried out with AIHRC Commissioners and staff; UN agencies involved in partnership or technical

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<sup>5</sup> These are all the external evaluation of which the consultants were made aware

assistance arrangements with the AIHRC; civil society organizations; government and AIHRC donors (Annexe A provides a list of meetings).

Assessing the performance of NHRIs has various dimensions, with a range of frameworks and standards available. The NHRI's own goal and objectives; the Paris Principles, and INGO guidance such as that provided by Amnesty International and the International Human Rights Policy Council standards all provide benchmarks.<sup>6</sup> It is also difficult to disaggregate the contribution of a NHRI from the role of other organisations during assessment.

NHRIs are independent of government, but have legally defined powers and constitutional status. Their establishment in a growing number of countries reflects the perceived need to create national-level capacity to assist in the realisation of states' human rights obligations under international law. Though the state is primarily responsible for the fulfilment of human rights obligations, **NHRIs must ultimately be judged by their effectiveness in improving the human rights situation**. Compliance with the Paris Principles does not necessarily mean an NHRI is effective in promotion or protection.

A practical methodology drawing on the above frameworks was used. This focused on assessing whether AIHRC was **effective in promotion and protection**, and whether its work was leading, or likely to lead, to **clear and sustainable impacts and outcomes**. This addressed the **institutional and legal arrangements, management, structure and strategic approach** of the AIHRC.

#### **2.4 Constraints**

As the Project ended in April 2006, **staff involved were no longer present**. The team found it difficult to understand the modalities and approach of the Project in practice, including the DEX/NEX transition. Project documentation provided relatively limited information on the actual activities for provision of technical assistance. As the Project was finished, there was no initial briefing session with the AIHRC and UNDP to discuss the approach and objectives of the evaluation. Due to UNDP staff handover, there were some difficulties in setting up meetings, and some delays in assembling project documentation. The evaluation team were required to invest time in setting up meetings, which were conducted up to the final working day, curtailing time for analysis.

As noted above, the ToRs in effect required three **separate tasks, each substantial**, and the time allowed was not sufficient to do all of these in great depth. The breadth and complexity of the AIHRC's work and the number of stakeholders it engages with makes assessment challenging. The assessment of the work of the AIHRC is therefore indicative and tentative.

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<sup>6</sup> Amnesty International *National Human Rights Institutions* October 2001, AI Index IOR 40/007/2001; International Council on Human Rights Policy documents *Performance and Legitimacy: National Human Rights Institutions* 2004 and *Assessing the Effectiveness of National Human Rights Institutions* 2005.

### 3. The UN Project to Support the AIHRC 2002 – 2006

Extensive analysis of the Project was made in the 2005 midterm evaluation. Comments made below should be read in conjunction with the findings of that report.

Stakeholders consulted agreed that the Project had been **broadly successful as a mechanism for establishing the AIHRC** and helping it to develop the administrative and substantive capacities needed to function independently. The overall effectiveness of the Project is demonstrated by the current status of the AIHRC as a functional and well-run body active across the country on a wide range of issues. The combination of inputs provided by the three technical assistance partners appeared to combine largely effectively to meet the initial technical assistance needs of the AIHRC.

The team spoke with several AIHRC Commissioners who had been with the Commission from the time of its establishment onwards, including the Chairperson of the Commission. They expressed appreciation for the **flexibility** of the Project, which allowed them the latitude to respond to circumstances. The Project provided **a framework to meet the emerging needs** of the AIHRC as it developed.

The **financial and administrative procedures** introduced by UNDP were seen as providing a sound foundation for the AIHRC, but were however found to be frustrating, slow and burdensome at times for AIHRC staff and Commissioners. The AIHRC still receives some technical support in financial management, but this is expected to end in the near future. Financial audit has been undertaken annually by UNDP.

It was impossible to fully assess the quality of relationships and communication between the UN technical assistance providers and the Commissioners. The partnership appears to have been constructive and pragmatic, with generally sound communication. The role of, and relationship with, the UNOHCHR Chief Technical Adviser was often singled out as positive and highly valued.

The successful transition by the AIHRC to bilateral donor relations and independence reflects the determination of the Commissioners ensure the development and strengthening of the AIHRC.

#### Key **strengths** of the Project:

- Flexibility
- Sufficient autonomy for Commissioners
- A highly valued relationship with the Chief Technical Advisor
- Design phase consulted wide range of stakeholders
- Sound financial and administrative procedures inherited from UNDP

#### Key **limitations** of the Project:

- Initial strategic plan too ambitious and ambiguous
- Challenges in finding staff with appropriate experience underestimated
- Technical expertise not always appropriate
- Project Steering Committee provided insufficient oversight

Several **limitations** of the Project were highlighted. These are outlined here with full recognition that the Project implementing agencies were working in exceptionally challenging circumstances, and trying to establish an effective institution in a context where infrastructure and government institutions had largely ceased to function.

**The initial project design was seen as too ambitious and ambiguous.** It is understood that the initial strategic plan for the work of the Commission, developed by an external expert, was too ambitious. One Commissioner felt that this in part reflected the fact that the available human resources in a country which had experienced such protracted conflict were not understood, and **the challenge in finding staff with human rights knowledge and relevant skills was underestimated.**

Comment was also made on **the technical expertise** provided under the Project. AIHRC members expressed frustration over the fact that experts were initially selected by UN. Some technical expertise provided under the Project was understood not to have delivered as expected by the AIHRC.

Though AIHRC members found the **administrative and financial** procedures largely appropriate, they also highlighted **delays** in release of funds, and in responding to requests from the Chairperson of the AIHRC. The 5% taken by the UNDP as an operating cost was highlighted as an issue by Commissioners.

The composition of the **Project Steering Committee was seen as inappropriate to secure independent oversight of the AIHRC.** The AIHRC had a dominant role which meant that it was essentially overseeing itself.

**3.1 Lessons learned for supporting new national human rights institutions**  
UNDP specifically asked the consultants to consider what lessons could be learnt from the Project for future work to support the establishment of institutions such as NHRIs. NHRIs remain favoured by the international community as mechanisms for protecting human rights and developing accountability.

The question of whether some form of NHRI is now considered a prerequisite for improving the human rights situation in post conflict contexts, and whether an NHRI is necessarily the most appropriate priority investment of funds and capacity remains. As is increasingly recognized in Afghanistan, other organisational capacities have to be developed in addition to ensure progress on human rights.

The development of the AIHRC was Afghan-led, and the consultation which informed its design and programme engaged stakeholders and developed consensus over priorities. This seems essential for sustainability. The challenge is in **balancing good practice and external expertise from elsewhere with national capacity and knowledge** in a way which *facilitates* the most effective structure, management arrangements, and methodologies for core functions such as monitoring and investigation and human rights education.

Some continuing challenges with the structure and management arrangements in AIHRC (the gap in operational support to commissioners and thematic programme management) indicate that **organisational development expertise** and examples of structure and organization from effective NHRIs elsewhere might be useful.

The transition to independence and bilateral donor relations might have been facilitated if the project had been **evaluated soon after completion**. Lessons learnt could then have been integrated into the AIHRC planning processes.

Case documentation and management systems developed since 2005 by AIHRC and UNHCR have been important in systematizing work on individual complaints and monitoring of the human rights situation. This suggests that **developing such a methodology, and integrating existing formats from other countries at an early stage, might be beneficial**.

Finding **appropriate technical expertise** to work with the AIHRC in building its capacity and knowledge is difficult. This suggests that the strongest possible roster of expertise in a range of human rights and organisational and managerial issues is needed. Involvement of national leadership and management in the identification of technical expertise seems appropriate.

**Strategic planning** was highlighted by AIHRC representatives consulted as a challenging process in a context such as Afghanistan. Carefully facilitated strategic planning processes, which set realistic targets, are clearly a priority in the early stages of institutional development. These should focus on steps towards the ultimate goal of concrete improvements in the human rights situation.

A clear assessment of available national expertise on human rights issues, as well as accurate identification of the training needed to ensure a sound substantive understanding of different human rights issues, are clearly a priority for any new institution.

### **3.2 Current technical assistance to the AIHRC**

AIHRC has partnership and technical assistance arrangements, which have continued and developed since the end of the Project, with a range of UN agencies. An **integrated approach to UN and AIHRC** cooperation and technical assistance had been agreed in principle at the time of the evaluation mission. The AIHRC has also received technical assistance from bilateral donors, with a recent Canadian assessment of AIHRC monitoring and investigation capacity. Significant current technical assistance arrangements highlighted to the consultants are:

- UNAMA, through the Human Rights Unit staffed by UNOHCHR, continues to cooperate with the AIHRC over cases of human rights violations and to provide political support. Human Rights Field Officers in UNAMA regional offices liaise with AIHRC regional office Monitoring and Investigation teams;
- UNAMA has also cooperated with the AIHRC to develop the Special Investigations Team (SIT) focused on the monitoring of IHL and human rights violations in the context of the ongoing conflict in Afghanistan;
- Extensive work with UNHCR to develop monitoring and investigation case documentation and information management systems includes the development of standard formats, a manual on human rights, and extended monitoring on economic social and cultural rights and other issues;
- UNICEF has cooperated on a range of issues, including monitoring of children's rights, and trafficking;
- UNIFEM works on a more ad hoc basis with the AIHRC on women's rights issues;

- Canada plans to provide capacity strengthening support for monitoring and investigation including mentoring, training and provision of equipment to the AIHRC.

The cooperation between AIHRC and UN agencies often appears to have been based on recognition of mutual benefit. UN agencies see the mandate and regional outreach of the AIHRC as key to accessing information and reaching those vulnerable to human rights abuses. UNHCR highlighted how deteriorating security conditions facing returning refugees after 2005 necessitated increased monitoring, best provided through partnership with AIHRC. This partnership has resulted in a strong net gain for the AIHRC in numbers of monitoring and investigation staff, and enhanced case documentation processes.

For the AIHRC, faced with enormous operational and capacity-building challenges, the close cooperation with UN agencies has been significant in terms of political support, operational cooperation—and learning.

Examples of results from AIHRC and UN partnerships:

- UNAMA-supported Special Investigations Team is meeting the need for improved reporting on IHL and conflict-related human rights violations and is strengthening AIHRC staff capacity through the training of a mobile team in investigative and reporting skills.
- UNHCR's work with AIHRC led to creation of Field Monitoring Teams, now being merged with Monitoring and Investigation Unit, which has increased staff numbers; case documentation and information management systems and human rights violation manual have also been produced.
- Collaboration between AIHRC Child Rights Unit and UNICEF led to establishment of a focal point on Child Rights in the Ministry of Labour and Social Welfare and improved monitoring of children's rights.

**Several issues related to technical assistance provision emerged during the evaluation:**

- The AIHRC has faced circumstances in its development perhaps unique among NHRIs. With ongoing conflict and the high level of external political interest in Afghanistan, international and bilateral organisations have to an extent looked to the AIHRC to assist in meeting their interests, in exchange for technical assistance. The AIHRC has clearly done well to chart the course of institutional development in the face of such a high level of external interest from many international actors.
- There has been a tendency for AIHRC to receive **an abundance of technical assistance and training from different sources**, but not always within a clear strategic framework or organisational and capacity development strategy, and not necessarily in ways most appropriate to the AIHRC's own needs.

- Having numerous external technical assistance partners has a number of implications. Different approaches may be used by different partners, leading to diverging practices in AIHRC programmes. The demands on AIHRC time are increased, and lessons learnt may not be disseminated with the Commission.
- Assistance received seems to have been somewhat **unequally distributed**. For example, the Monitoring and Investigation Unit has received considerable support, whereas the human rights education programme, vital to promotion of human rights, appears to have received less.
- It was not clear to the consultancy team that there had been a sustained dialogue and unified planning process where UN partners and AIHRC dealt with the details of implementation, reviewed broadly whether results were emerging and ensured transparent communication. It was also not clear that the interventions carried out had been based on a detailed initial analysis of AIHRC capacity and needs.
- The AIHRC Child Rights Commissioner, while describing a very productive relationship with UNICEF commented that the planning cycle of international agencies sometimes resulted in short-term initiatives which were then replaced by other priorities, making long-term strategic focus for the AIHRC difficult.
- AIHRC units and programmes had clearly benefited from UN agencies' specific expertise. However there appeared not to have been as much support for some **cross-cutting capacities and skills such as strategic planning, management, monitoring and evaluation, and advocacy and research**.
- AIHRC representatives explained how close cooperation with the UN can act as a double-edged sword, with regard to the **ultimate objective of securing full sustainability and independence**. The AIHRC is sometimes seen as the "*UN human rights commission*"—people may not fully understand that it is an Afghan institution.
- UNAMA human rights field officers are currently engaged alongside the AIHRC in investigation of cases of human rights violations. According to the understanding of the evaluation team, this sometimes involves separate investigation processes and approaches to government bodies. There was a sense that communication between UNAMA and AIHRC might not always have been optimal, with different cases perhaps being analyzed and understood differently with regard to the human rights violations involved. However, overall the relationship has clearly been beneficial.
- The AIHRC needs to have full ownership and ultimate responsibility for technical assistance and strategies for strengthening its capacities, and a clear organisational development strategy into which UN partnership and technical assistance can fit.
- The integrated approach now under development seems an appropriate way to continue collaboration. The agreement to be developed with the AIHRC will presumably have both substantive goals for human rights

protection and presumably clear benchmarks for strengthening the capacity of the AIHRC.

- It may be beneficial to think about the eventual horizon for AIHRC operating without UN partnership. This might generate benchmarks for ensuring necessary capacities are developed.

### **3.3 AIHRC bilateral donor relations**

AIHRC now receives funds directly from bilateral donors who fund the current AIHRC project under the three-year action plan. Donors have invested heavily in the AIHRC, providing political support and funding. Donors expressed strong support and general confidence in the work of the AIHRC, while identifying areas in which the AIHRC could improve, as covered by Section 4 below (Indicative Assessment of the AIHRC).

Funding shortfall for 2008 was not highlighted by the AIHRC as an issue. The team therefore understands that the issue of funding shortfall highlighted in the Canadian Draft Needs Assessment Mission Report: Capacity of the AIHRC, has been addressed by new contributions. The AIHRC did however highlight that annual funding commitments create problems for planning, and that there have been delays in disbursement of pledges.

The Project Committee provides the accountability and oversight mechanism for the current AIHRC project. Donors and AIHRC senior management, with three selected donor representatives meet along with UN representatives. Reporting to donors has been integrated with the same quarterly and narrative reports presented to all bilateral donors. The current quarterly and annual reporting to donors clearly puts demands on AIHRC capacity. The reports are of a high professional quality. Certain donors commented on the fact that the AIHRC quarterly reporting is activity-focused, rather than analysing impacts and progress towards improvements in the human rights situation.

The Project Committee meeting attended by the evaluation mission provided a detailed and substantial administrative and operational review by the AIHRC Deputy Chairman and Executive Director. In addition to the Project Committee, AIHRC donors meet on an ad hoc basis. The evaluation mission was not made aware however of a consistent planning forum where AIHRC senior management, donors and technical assistance partners can discuss broad issues of impact and strategy. Donors, while praising the AIHRC, raised issues of concern with its capacity in some areas. It was not clear that there was an opportunity to talk these through with the AIHRC.

Donors and the AIHRC raised the issue of individual donors earmarking funds for specific areas of activity they wished the AIHRC to carry out. The AIHRC prefer funds not to be earmarked – and clearly a widespread adoption of this practice among donors would make the AIHRC administration of funds and planning difficult.

### **3.4 External evaluation of the AIHRC**

Donors have not focused on carrying out independent external evaluation of the results of their contribution to the AIHRC while it has been developing its capacity. Individual donor assessments would have imposed an enormous burden on the AIHRC. The Draft Needs Assessment Mission Report: Capacity of the AIHRC provides analysis of AIHRC monitoring and investigation functions. The team was



not made aware of any other evaluations of the AIHRC conducted by its current donors.

Independent evaluation of the AIHRC has therefore been relatively limited, with the only examples being the current and mid-term evaluation of the Project. This has meant that the core functions such as human rights education and monitoring and investigation have not been subject to a great deal of independent scrutiny.

Consistent external evaluation, where the methodology of the assessment is shared by the organization under review and by donors, can enhance performance and capacity development. It provides the opportunity for concerns recognized by the organization under review to be addressed by requesting particular evaluation expertise. External evaluation, aligned to an organization's internal review procedures, can also build confidence among stakeholders.

The AIHRC and its donors and partners might therefore consider some form of external evaluation and impact assessment framework. This could combine an annual review of the overall performance and strategic direction of the Commission, with selected detailed programme reviews or impacts assessments of AIHRC units.

The annual review could, for example, be along the lines of the output-to-purpose reviews conducted by the UK Department for International Development, which assesses broadly whether projects are meeting their core purpose. Programme impact assessments, could for example assess the training and awareness raising approaches used in human rights education.

### 3.5 Recommendations

#### To UN agencies involved in supporting establishment of new NHRIs:

- The **design process** for establishing an NHRI or independent institution should ensure effective oversight arrangements, and structure and management arrangements which create sufficient capacity for work such as policy analysis and advocacy at national level.
- A **realistic strategic plan** focused on clear steps towards achieving impact in selected areas must be ensured.
- **Standard approaches and methodologies** for core functions such as complaints investigation and human rights education might be available for adaptation to country context.

#### To AIHRC donors and technical assistance partners:

- Donors and technical assistance providers might consider supporting a common independent external evaluation and impact assessment framework developed together with the AIHRC, with evaluation missions in the first quarter of the year.<sup>7</sup>
- Donors should avoid earmarking funds for specific purposes.
- Technical assistance provision might fit best within an AIHRC-owned strategy for capacity strengthening.
- Technical assistance might usefully address some cross-cutting areas such as organisational development, strategic planning, monitoring and evaluation.
- Technical assistance should ideally be long-term, or provided by individuals who work consistently with the AIHRC.

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<sup>7</sup> This is considered the most suitable time by AIHRC

- The UNOHCHR might assist the AIHRC in finding the right people for technical assistance on different issues and developing a roster of appropriate experts or a group of international advisers.

## 4. Indicative Assessment of the AIHRC

The evaluation sought to broadly analyse the strengths and weaknesses of the AIHRC, its effectiveness in achieving its mandate, and indicative impacts and outcomes of its work.

The limited scope of the assessment of the AIHRC's work has already been highlighted. It was not possible to systematically observe work on human rights education or complaints handling and to assess their quality. The mission was not able to assess the efficiency of the AIHRC, relative to other bodies in its use of resources - the AIHRC has an annual budget of around nine million US\$. Recommendations given below are therefore put forward as suggestions and approaches to be considered by the AIHRC.

### Some key achievements

**The AIHRC has established itself nationally against enormous challenges and in a hostile political and security environment for human rights intervention.** It is a visible, committed, productive organisation with a large and dedicated staff and strong administrative procedures. It addresses a range of complex issues and manages complex and demanding relationships in an environment where governance is often poor.

Since the mid-term evaluation of the Project in 2005, the AIHRC has become legally established and undergone continued growth with the opening of new offices, including provincial offices. The case documentation and information management of the Monitoring Investigation Unit has been standardized and upgraded.

### Institutional strengths include:

- Country-wide regional and provincial presence and infrastructure, IT capacity, and outreach to remote areas: provincial offices have been located strategically to reach remote locations, and mobile human rights field monitoring teams provide coverage to provinces beyond regional offices.
- Large and dedicated staff—staffing levels have grown to 570, representing an increase of 60% in staffing capacity since 2004.
- Commitment to build capacity, learn lessons and address organisational and structural challenges and constraints.
- Robust activity planning and internal reporting procedures.
- Moving towards complete independence in financial management.
- ICC accreditation secured.
- Improved and standardized case monitoring, documentation procedures and information management systems.
- Job descriptions and terms of reference now in place for Commissioners.
- The AIHRC printing press enhances communication capacity.
- Professional donor relations and reporting.

The AIHRC **plays an important role in Afghan society.** It has succeeded in introducing the principles of human rights into public debate, and establishing a presence which is responsive to victims of human rights abuses. It is likely that the AIHRC is one of the most recognized institutions in remote and vulnerable areas, though it was beyond the remit of the evaluation mission to assess public perception and views of the AIHRC, and whether its role is understood and if it is protecting people as they expect. However, public recognition and awareness of the

AIHRC is reported **anecdotally** to be high. One interlocutor stated that along with Department of Women's Affairs offices, the AIHRC was the most highly recognized body in hard-to-access areas. The numbers of complaints received by the AIHRC is broadly indicative of public trust and legitimacy being established.

**The AIHRC has established some constructive partnerships:**

- The AIHRC has become a key partner to the international community due to its monitoring and investigation capacities and outreach (UNAMA, UNHCR, detainee monitoring).
- The Mazar-i-Sharif office has excellent communication and cooperation with local civil society organisations.
- The AIHRC is embedded as a contributor to state building and reconstruction, with participation in a range of reform processes and structures.

**4.1 Summary of indicative impacts and outcomes**

The AIHRC's own internal monitoring processes are not strongly focused on capturing impact and assessing how effective the organisation is in securing tangible improvements in the human rights situation. There is therefore not a great deal of systematic analysis of the results it is achieving through its different interventions. Some of the improvements noted below, for example in conditions of detention, *are anecdotal, rather than fully assessed or set against a clear baseline.*

It is also necessary to note that the AIHRC is working in a context where political will in government to address human rights challenges is weak. Even the best advocacy strategies may not bring about change in government accountability, capacity and practice.

**Improvements in the human rights situation resulting from the work of the AIHRC reported by the Commission and other stakeholders:**

- **Impacts for individuals bringing complaints.** These include the release of illegally detained prisoners; cases of prosecution of perpetrators of violence against women and successful resolution of land confiscation cases. AIHRC monitoring and investigation staff gave a range of examples, highlighting for example the case of a woman who came to the Mazar-i-Sharif office with significant burn injuries caused by her husband, who was successfully prosecuted through the intervention of the AIHRC.
- There has been some **reduction in vulnerability** to cruel, inhumane and degrading treatment and torture in prisons due to AIHRC monitoring presence and activities. Improvement in detention conditions due to monitoring activities was also highlighted by the AIHRC—though conditions remain poor overall.
- The AIHRC Mazar-i-Sharif Child Rights staff highlighted reduced incidence of corporal punishment in schools due to monitoring activities.
- Some **accountability for perpetrators of human rights violations** has been achieved. The AIHRC Deputy Chairperson gave the example of dismissal of senior police following AIHRC investigation.
- **A possible restraining effect on perpetrators of human rights abuses**, which is hard to prove without a baseline for the overall incidence of human rights abuses. However, it is likely that some government and non-state

actors may feel constrained to an extent by the presence of AIHRC, and the knowledge that it will pursue cases of human rights violations, resulting in a decreased incidence of violations. This is difficult to disaggregate from the restraining effect of other agencies, in particular UNAMA and should be set against a context where abuses remain widespread. Civil society organisations in Mazar-i-Sharif commented that such a restraining effect was present in the city, but not in outlying rural areas.

- Outputs of the work of the AIHRC include increased awareness of human rights and the idea that perpetrators of abuses should be held accountable. Women are reported to be more aware of their rights and more likely to seek help when experiencing violence;
- Increased awareness extends to members of government. Government representatives whom the evaluation mission met are aware of the possibility of scrutiny and the principle of accountability. They may be less aware of their own role in meeting obligations to act to protect, respect and fulfil rights. Awareness does not in itself mean practices or policies have changed or capacity has increased in a sustainable way. It may however, prevent individuals from committing violations. AIHRC highlighted that this can be the case – describing how police officers reported back after training sessions that they had not beaten detainees, thanks to what they had learnt in training sessions.
- One example of AIHRC lobbying leading to an outcomes of increased government capacity was highlighted: a focal point on Child Rights has been created in Ministry of Labour and Social Welfare due to AIHRC lobbying, though the necessary capacity to take relevant action is lacking in the Ministry.
- The AIHRC has made a contribution to legislative reform and policy change –for example a contribution to the law on eliminating violence against women.

The terms **impact, outcome and output** are used in this report as follows:

**Impact** – sustainable, measurable improvements in human well-being. In the context of human rights interventions, this might involve people becoming less vulnerable to, and protected from abuses; accessing justice; securing and enjoying ESCR rights, including livelihoods, health and education; inclusion and participation in public life, for example women participating in politics. Impact might also be understood to include accountability of perpetrators.

**Outcomes** – positive changes in individual or group attitudes, practices, or sustainable functioning of new systems and structures. Changed power relations, improved service delivery, better functioning of justice systems might constitute outcomes in the context of human rights work.

**Outputs** – tangible products of programme activities – people trained or made aware, community mobilisation, media publications.

Sustainable human rights impacts may require a sequence of steps. Outputs such as awareness may be the first step, leading to pressure for change in government

behaviour, outcomes which in turn concretely improve protection and fulfilment of rights obligations etc.

Thinking about the logical hierarchy of the results of human rights interventions is of course useful only to a certain extent. Some symbolic actions can produce unexpected catalytic effects, and results can emerge unexpectedly. Awareness-raising may lead directly to decreases in non-state, and state actor abuses, for example.

#### **4.2 Challenges and constraints**

Few NHRIs can face greater challenges than the AIHRC. These are both the contextual—the challenges common to all involved in promotion of rights and good governance—and those specific to the current circumstances of the AIHRC. Contextual challenges include:

- Ongoing conflict and insecurity with the involvement in breaches of IHL and human rights commitments by a range of state and non-state/armed group actors, and difficulties in accessing many areas to monitor the human rights situation;
- A culture of impunity for human rights abuses, the presence of alleged perpetrators of human rights abuses in government, and powerful armed groups and non-state actors;
- Resistance to the principles of human rights and accountability by influential actors;
- Lack of political will in both the international community and government to address human rights challenges;
- A complex environment for planning and addressing governance and human rights issues—numerous committees, structures, acronyms and strategies related to reconstruction and development, but no clear strategy or stakeholder forum for taking action on human rights;
- Limited mobilisation and voice to demand accountability and action on human rights—and a fragmented, though developing, civil society;
- Weak state capacity, notably in the justice and law enforcement sectors, and lack of rule of law;
- Traditional and cultural constraints to the protection of human rights—AIHRC Child Rights Commissioner for example explained how culturally children in Afghanistan are not recognized as autonomous, rights-bearing individuals.
- Poverty, lack of development and high levels of illiteracy, in particular among women.

In addition the AIHRC faces a number of specific challenges:

- Diminishing media space to promote the AIHRC message—Commissioners described a media environment where influential illicit power-holders wield increasing control, and where there is a demand to pay for electronic media airtime;
- Difficulties in accessing NDS detention facilities;
- A remit to engage on transitional justice in an extremely difficult context where the international community has not always been fully supportive and alleged perpetrators of human rights violations hold office;
- Difficulties in recruiting and retaining staff with all necessary skills, in part due to a dangerous and tough working environment for some regional office staff;

- Limitations in political support, and difficulties in the relationship with parliament;
- Criticism of the AIHRC from media and some parts of government and from some civil society organisations.

As indicated above, there are impacts and outcomes from the AIHRC's work and these may not be adequately captured by AIHRC internal monitoring processes.

However, expectations of the AIHRC are high. There is a view among many stakeholders that the results could be improved.

On the one hand this may seem unduly demanding; the AIHRC is a young institution working in a challenging context. The AIHRC probably performs as well as or better than many other bodies in Afghanistan. However, it is a well-resourced body, strongly supported by the international community. The demand from different stakeholders that the AIHRC delivers more perhaps reflects how desperately Afghanistan needs the Commission to succeed.

Despite the many challenges, it is possible that the AIHRC, supported by its partners, could achieve more with the resources it has, if skills and knowledge of human rights issues were upgraded; if some aspects of the legal and institutional framework and structure and management arrangements were addressed; strategic approach and planning somewhat reconsidered; and relationships and communication with some key stakeholders improved. Areas where there is a possible margin to improve results are included in the assessment of specific areas below.

### **4.3 Institutional issues**

Several issues related to the institutional and legal framework for the AIHRC emerged during the evaluation mission. These may be considered critical to ensuring **a sustainable institution**. Chief among those mentioned was the need to receive funds from the government. A commitment has been made, but funds have not been delivered.<sup>8</sup>

**AIHRC accreditation by the International Coordinating Committee of National Human Rights Institutions (ICC)** was restored on Oct 31, 2007. It had been suspended over issues related to the system for appointment of commissioners, and lack of funding from the government. Membership was restored on the condition that adequate government funding is provided, and compliance with the Paris Principles over the appointments procedure and amendment of AIHRC law is addressed.<sup>9</sup>

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<sup>8</sup> AIHRC Commissioners, Chair and Deputy Chair explained that President Karzai had made a clear commitment, but funds had not been received from the Ministry of Finance.

<sup>9</sup> Communication to the AIHRC Chairperson from the ICC addresses the need for pending amendments to the AIHRC law to be in conformity with international standards and the Paris Principles and that they not be applied retroactively, to ensure the AIHRC's independence and effectiveness are preserved. Four points are suggested to ensure conformity with the Paris Principles; a) members of the governing body represent different segments of society as referred to in the Paris Principles; b) Pluralism through the appointment procedures of the governing body of the national institution, for example, where diverse societal groups suggest or recommend candidates; c) Pluralism through procedures enabling effective cooperation with diverse societal groups, for example advisory committees, networks, consultations or public forums; or d) Pluralism through diverse staff representing the different societal groups within the society.

#### **4.3.1 Appointments procedure**

The current process for selecting AIHRC Commissioners is by Presidential appointment. The International Council on Human Rights Policy states: "Appointment mechanisms are one of the most important ways to guarantee the independence, diversity, and accessibility of NHRIs. Direct appointment by the executive branch of government is undesirable."<sup>10</sup>

Concern over the AIHRC appointments procedure was raised by a range of stakeholders. It was felt that a more transparent and consultative system and clearer mechanisms for initial nominations and for final selection would build credibility and support. A range of stakeholders are involved in the process of appointing Commissioners for NHRIs of other countries. Such involvement is challenging in Afghanistan in view of the limited capacity of some stakeholders who are typically involved in other countries in the process of selection. The AIHRC has a difficult relationship with some members of Parliament, and there are limitations to civil society capacity. The standard alternatives to executive appointment may not work – a hybrid model, suitable to context, may be needed.

It seems useful for the AIHRC to embrace the potential benefits of a different system, and take initiative to seek ideas from other stakeholders on alternative mechanisms reform of the appointments procedure. Deciding on an appropriate procedure, and making changes to the current Law on the Structure, Duties and Mandate of the AIHRC as suggested below is not something to be rushed, but an area where consultation and consideration of different practices among other NHRIs might be useful. Such a process of consultation might help to improve some relationships, for example between the AIHRC and civil society.

Additional ways to develop the accountability of the AIHRC to stakeholders other than donors might also be considered. In the longer term, if the AIHRC moves away from international funding and receives increasing levels of financial support from government, an arrangement for accountability, or adaptation of the Project Committee, possibly involving civil society and other stakeholders, might need to be considered.

#### **4.3.2 Building political support to ensure sustainability**

From the view point of institutional capacity, infrastructure and available logistic support AIHRC is developing sustainability and benefits from political support from the international community. However, it was highlighted to the evaluation mission that the AIHRC has a relatively narrow support base. Many of those consulted spoke at length about the current political difficulties of the AIHRC and the criticism it has sustained from certain parts of parliament, civil society and media. The hostility to the AIHRC shown by certain members of parliament, issues related to the passing of the Amnesty bill, and parliament's pending review of the AIHRC law have presented challenges.

However, support and financial contribution from the government are essential, alongside continued international support and capacity strengthening inputs. Government support for operational costs would signal political commitment for the protection and promotion of human rights in Afghanistan. Receiving funds from

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<sup>10</sup> International Council on Human Rights Policy, *Assessing the Effectiveness of National Human Rights Institutions*, page 14.



government—even a small proportion initially—would therefore potentially build legitimacy and the perception of the AIHRC as a truly Afghan institution.

Securing government funding, commitment to a more consultative and transparent appointments procedure, and building relationships and communication with parliament, including over transitional justice may go some way to address current challenges.

**Legitimacy** in the eyes of the public, and the ability to inspire the confidence of different groups in society is hard to assess. The AIHRC National Programme Manager spoke of plans to commission an independent public opinion survey of the AIHRC. Ultimately, public perception of the AIHRC will be determined by its effectiveness in taking action on when human rights are violated, a point which applies to all NHRIs as the International Council on Human Rights Policy points out.

**Accessibility to the most vulnerable and marginalised groups** is a key issue for NHRIs. The dimensions of poverty and vulnerability in the Afghan context were not understood in depth by the evaluation team. There may be some groups – for example some urban poor people, and certain ethnic minorities who might find it particularly difficult to approach the AIHRC, which works hard to reach communities through its mobile field teams.

#### *4.3.3 Mandate and Powers of the AIHRC*

AIHRC has a legal and constitutional mandate for the protection, promotion and monitoring of the human rights of Afghan people.

The Law of the AIHRC states the main objectives of the AIHRC as:

- 1. Monitoring the situation of human rights in the country;*
- 2. Promoting and protecting human rights;*
- 3. Monitoring the situation of and people's access to their fundamental rights and freedoms;*
- 4. Investigating and verifying cases of human rights violations and*
- 5. Taking measures for the improvement and promotion of the human rights situation in the country.<sup>11</sup>*

Article 21 of the AIHRC Law provides 35 categories of mandate and duties. This is a demanding and lengthy list of activities to be undertaken by the AIHRC. The current mandate and powers of the AIHRC to address complaints and cases of human rights violations raise some issues. Articles 21.9, and 23 of the current law deal with investigation of complaints. As far as the evaluation mission understands, under the current law, the recommendations of the AIHRC to the government are not mandatory. In the current law, there is no mention of any sanction (departmental or criminal offence) against governmental authorities who do not implement recommendations or referral of cases by the Commission.

It should be noted that other country Commissions have more teeth when it comes to ensuring that governments implement recommendations. There are two categories of sanction which are present in the case of other NHRIs: sanction for violation of human rights by the governmental authorities and sanction for not implementing recommendations or referrals from an NHRI. In Nepal, India and Bangladesh, if a recommendation for action made by the Commission is not implemented, authorities are liable to punishment by higher authorities or by the

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<sup>11</sup> Law on the Structure, Mandate and Duties and Mandate of the AIHRC, Article 5.

government. Therefore, the recommendations and case referral actions of such Commissions have been implemented in most cases. Non-compliance can only be excused for legitimate reasons, and if fully explained.

In Afghanistan, if human rights are violated by the authorities and recommendations of the AIHRC are not implemented, there are no consequences for the authorities.

In Nepal, the Commission is also able to blacklist individuals who will then not be allowed to hold office for a set amount of time. Government authorities must check the record of the Commission before agreeing to appointments or promotions.

Political realities in Afghanistan mean that the strongest NHRI mandate may not ensure implementation of recommendations for action made by the AIHRC. However, reviewing and strengthening the mandate and powers of the AIHRC, and looking at options for making recommendations binding on government might be considered. In view of the difficulties in accessing the NDS facilities, the law might emphasize the jurisdiction of the AIHRC to address all duty-holders and have access to all institutions.

Reports by the International Council on Human Rights Policy and Amnesty International give other suggestions for ensuring institutional independence and effectiveness.

#### **4.4 Policy and position on human rights issues**

Representatives of different institutions had different views on the question of **how strongly the AIHRC should speak out against certain perpetrators of human rights violations**, and on the issue of past violations. Some felt that it had not given a sufficiently clear message regarding transitional justice issues including the presence of alleged war-crimes perpetrators in government. Others supported the idea that a less confrontational approach is preferable. This is a dilemma for human rights bodies, and one where long established organisations can be seen to have got it wrong. What seems essential is that the position of the AIHRC on key human rights issues is consistent, and forms part of a considered communications strategy.

The policy taken by the AIHRC over specific human rights issues, including high profile cases of emerging violations needs to be firmly underpinned by relevant international human rights law and standards. The Commission might draw not only on ratified international human rights law, but resources such as treaty body general comment, output from UN Special Rapporteurs and UN principles and standards.

There may be areas where international law may not be explicit or definitive. Here the position of other human rights organisations may be worth looking at. International standards are progressively evolving and strengthening – and there may be tactical advantage in going beyond black-letter international law to draw on emerging standards. This requires sufficient time and capacity for legal analysis which may not be currently available.

Policy needs to be considered for a range of issues, including those raised by cases of violence against women. These may be culturally sensitive and involve a high degree of risk to complainants. One example is the arrest of women (and to a lesser extent men) for adultery. While women arrested for “running away”, rather than adultery, have clearly been detained without a foundation in Afghan law, those

detained for adultery may be subject to discrimination or to cruel, inhumane and degrading treatment.

#### 4.5 Research

The AIHRC acknowledges **limitations in research capacity, which is it seeking to address through identification of an appropriately experienced international expert**. Research does not always seem to be strategically targeted towards identifying changes needed in law, policy, institutional capacity and practices, and strategies for action to address human rights abuses, and may not be of sufficient quality to form a basis for strong advocacy work. There is a need to develop research methodology. The position of the research unit is difficult, since they are expected to meet the demands of different units for research outputs. The research unit is therefore faced with many requests to carry out research on different topics. *It might therefore be better to prioritize and limit the number of research reports while capacity is developed. In addition to bringing in international expertise to develop research capacity, the AIHRC might seek out examples of research methodology and policy used by other human rights organisations including major international NGOs such as Amnesty International or Human Rights Watch, or considering seconding research staff to missions by other organisations.*

AIHRC monitoring and investigation activities can generate findings on how sustainable changes might be made in the human rights situation. There are therefore potential linkages with research work. AIHRC commissioners and staff identified that case analysis is currently insufficient to ensure root causes, and cross-cutting reform issues are picked up and used as a basis for advocacy.

#### 4.6 Strategic approach and planning

The AIHRC has robust activity-planning procedures which give strong direction to staff. It has articulated a wide range of objectives to improve the human rights situation in Afghanistan, as outlined in the log frame for the current three-year action plan which is revised on an annual basis. However, some issues related to the strategic approach and planning of the AIHRC's intervention were noted.

There are numerous objectives included in the log frame, with activities sometimes included as objectives. It may be difficult to fully realize all the objectives included in the log frame.

There might be a somewhat clearer sense of the step-by-step process towards achieving improvements in the human rights situation, including the necessary changes in government institutions, practices, policy and capacity. There are a range of strategic planning tools which different human rights organisations use which might be relevant to the AIHRC strategic planning process, such as stakeholder analysis, critical path approaches, and analysis of power relations between different stakeholders. There is also a need to factor into the planning process the time needed by AIHRC leadership to address crises and emerging human rights issues.

The AIHRC is **active in many areas**, and faces demand for participation in many processes, working groups and events. This reflects in part the unfortunate situation where the government is not fulfilling its responsibility to ensure that human rights are protected.

It might be worth reviewing whether the **AIHRC is not overextending**, and is focusing on areas where it can add value. Impact may come from choosing a

limited number of very concrete objectives and working on these step by step until there are results. In view of challenging context, AIHRC needs to prioritize and focus on key objectives, and pursue them consistently and to the point of impact.

There are **different interventions and tactics** for taking action on human rights issues, which the AIHRC might consider. For NHRIs these can include, for example, holding public inquiries and using *suo moto* petitions.

#### **4.7 Advocacy, mobilizing support, building key relationships and communication**

NHRIs have a key role to play in opening up political space for discussion between different stakeholders, and enabling them to work together on improving the human rights situation (International Human Rights Policy Council). The capacity to facilitate such interaction and constructive relationships is therefore important.

It is unclear whether the AIHRC is pursuing improvements in the human rights situation with sustained and carefully planned advocacy strategies. There are relatively few areas that were highlighted where AIHRC advocacy had led to sustainable changes in government capacity, policy or practice. This in part reflects limitations in research capacity highlighted above. Research has a key role to play in identifying the necessary steps to address human rights abuses. There appears to margin for improvement in **policy and advocacy work designed to secure increased government accountability and institutional capacity to meet human rights obligations.**

The AIHRC needs allies if it is going to significantly change the human rights situation in Afghanistan. Effective advocacy requires clear objectives; the right evidence and research base; identification of allies and exactly which stakeholders will have to be persuaded of the need for change; and the right combination of tools and tactics.

**A limitation in constructive working partnerships between civil society and the AIHRC** was noted by a range of stakeholders. This reflects in part the fragmented nature in civil society and some limitations in its capacity. The following issues were highlighted.

- The AIHRC's role and purpose appears not to have been effectively communicated to civil society organisations who do not understand exactly what the mandate and remit of a NHRI is.
- Some of the AIHRC's activities may not have been clearly communicated to civil society organisations, including the current transitional justice unit work to map human rights abuses during conflict;
- There have been relatively few opportunities to develop joint action and partnership between civil society and the AIHRC;
- There are insufficient opportunities for regular and strategic coordination between civil society organisations and the AIHRC.

It also appeared that the AIHRC could give greater emphasis to **communicating with parliament**, and building a constructive relationship with those MPs who wish to engage with it on human rights issues. The AIHRC could do more to meet consistently with interested MPs, and to channel information to parliament on human rights issues. Explaining the different approaches and models used for transitional justice in other countries might open up new possibilities.

It was also felt that in some cases the AIHRC could say more about more constructive solutions when speaking out on human rights abuses.

#### **4.8 Management and organizational issues**

##### **A gap between policy making and regional programme activity**

The AIHRC Commissioners constitute the policy making body of the AIHRC, with the executive structure of the Commission headed by the Executive director, consisting of regional programmes, finance and administration and research and database units. The individual commissioners, each of whom has both a substantial and an activity-based responsibility (e.g. Child rights and research), have no administrative support staff or operational team. To some extent the Kabul regional office provides national level capacity and support, for example advising on more challenging human rights cases. However, this puts the Kabul office under considerable pressure. Though it has more staff, it is responsible for a larger number of provinces (seven as opposed to four for the Mazar office).

The National Programme Manager is responsible for line management of the regional and provincial offices, with additional responsibility for M & E and assessing performance, and coordinating capacity strengthening. This seems a considerable workload, limiting the time available to manage thematic programmes across the regional offices. There is therefore, a gap in terms of day-to-day management of the individual programmes, which has a number of consequences:

- Limitations in thematic guidance to regional programme units;
- Limited support to Commissioners in planning and coordinating policy and advocacy;
- Limited capacity for networking and relationship building in thematic areas, nationally and internationally;
- The National Programme Manager is without support staff, limiting the scope for qualitative assessment of the AIHRC's work, which might feed back into planning of activities.

##### **Limited legal expertise and capacity**

In comparison with certain other NHRIs (for example Nepal), the AIHRC has a limited capacity for specialised international and domestic legal advice and analysis. While many Monitoring and Investigation Unit staff have legal backgrounds, the AIHRC is without a dedicated legal unit. The current capacity consists of a legal adviser, and a newly appointed legal analyst. This limited legal capacity has a number of consequences:

- Limited capacity to analyse cases, advise regional offices on case management including particularly difficult cases involving powerful perpetrators and to draw cross-cutting conclusions about policy and reform needs from cases;
- Limited capacity to engage in legal challenges and interventions and to provide expertise on specific issues such e.g. fair trials, rule of law and law enforcement issues;
- Room for more expert knowledge on international legal issues.

##### **Some areas of duplication and unclear definition of roles**

The work of the different AIHRC units is interconnected. For example, individual cases of violence against women will involve both the Women's Rights Unit and the Monitoring and Investigation Unit. Human rights education workshops are carried out by both thematic programmes, and the Human Rights Education Unit. Thematic

programme units—Women’s rights and Child Rights—conduct monitoring, aspects of case work, and promotion activities. To an extent these areas of duplication have been pragmatically resolved. However, Commissioners have begun to consider substantial structural and organisational changes, including reformulating the Executive structure into Promotion, Protection, Monitoring and Capacity Building programmes. The AIHRC leadership, are however reluctant to increase staffing levels and expand the national office. As noted by several of those interviewed the greatest capacity challenges and resource needs are outside Kabul.

#### **Measuring change and evaluating performance and impact**

The AIHRC currently has a relatively limited capacity for M & E. While reporting against three-year action plan objectives is observed, this, and the donor quarterly reports tend to focus on activity, rather than on results and impact. As highlighted above, this may be in part due to the log frame for the three-year action plan, which does not always have objectives focused on specific measurable change in the human rights situation.

#### **4.9 Monitoring and Investigation**

The AIHRC **complaints investigation and monitoring of human rights** often recognized as its most important role. It is here that the AIHRC responds to the immediate needs of its most important stakeholders—the Afghan people, and in particular, victims of human rights violations. The Monitoring and Investigation programme represents the AIHRC’s largest investment of human capital – the unit in Mazar-i-Sharif has nine staff following merger with the Human Rights Field Monitoring Unit, compared to four staff members in other units.

Measures for assessing the results of this area of work are difficult. It is also the case that securing accountability in the case of abuses by some powerful perpetrators seems currently impossible—as a UNAMA human rights officer pointed out. Increasing accountability and impacting on the impunity that prevails for human rights abuses remains challenging.

AIHRC Monitoring and Investigation Officer in Mazar-i-Sharif stated that of 315 complaints registered by the office in 2007 (up to November), 150 were investigated, and 70 solved. Successful resolution was understood to mean redress and access to justice—for example prosecution of perpetrators of violence against women; ending situations of human rights violation, for example by release of illegally detained persons, or restoration of illegally confiscated lands. However, the evaluation team did not fully clarify the criteria for successful resolution, and whether, for example, in cases of gender-based violence, a sustainable protection from abuse had been secured.

It appears there is some margin for improved case investigation and intervention strategies, which might increase the number of cases where accountability of perpetrators is secured, and victims access justice. A number of issues related to monitoring and investigation of human rights issues emerged from discussion. These include:

- The criteria used to decided if AIHRC should intervene in different circumstances—understood to be the involvement of the state, either as perpetrator, or failure of government bodies to act according to international standards, for example, in prosecuting perpetrators;
- The human rights analysis made by the AIHRC of different case circumstances;

- Case investigation strategies and the quality of reporting on human rights violations was highlighted as an area for building capacity.
- Data analysis is a key issue for the AIHRC—extracting from cases common problems and identifying which institutions or groups are responsible for violations.

The team was also struck by the use of **mediation**, apparently as a response of first instance to some cases of violence against women and children. It is understood that cases may be initially received and mediation undertaken by the thematic (women's rights and child rights) units. If not resolved by mediation cases are then taken up by the Monitoring and Investigation Unit. While this response may be the most pragmatic under the circumstances, and also the one favoured by some victims, it raises policy and protection issues. The responsibilities of the state to take action to protect women from violence and to bring perpetrators to justice may not be enhanced if mediation is used. There is also a concern over follow-up, in cases where mediation may be initially successful, but a woman or child remains in a potentially abusive situation.

#### **4.10 Transitional Justice**

The AIHRC Transitional Justice remit is extremely challenging. Despite the adoption of the Action Plan on Peace Justice and Reconciliation, no significant action has been taken by the government to address the abuses of the past. The AIHRC currently has a single Commissioner who is responsible for both Transitional Justice and Monitoring and Investigation.

AIHRC frontline staff are taking forward the difficult, and potentially dangerous work to document past abuses during conflict, with the current conflict-mapping exercise. Staff described an incidents when their visit to field locations had been followed by threats should they seek to return.

The impasse at the national level over transitional justice remains. The issues surrounding the passing of the Amnesty Law, and the lack of action by government exert a destructive effect on Afghan public life. While the AIHRC is only one among several organisations with a role to play, it did seem that there was a possibly unexploited margin for it to act to improve communication and understanding and perhaps facilitate a consensus on the way forward. The evaluation highlighted two areas, where the AIHRC might play a role:

- Members of Parliament indicated that the prevailing hostility to transitional justice might be decreased by proper information about what transitional justice really means, and what the different options are;
- Despite the many different initiatives on transitional justice and a dynamic situation in civil society, communication and coordination, and understanding of the AIHRC's own work, seem limited. Facilitating coordination and information sharing therefore seems a potentially useful contribution.

Someone needs to outline the options, and a possible roadmap forwards. This does not necessarily have to be the AIHRC, but in view of the possible damage to its overall credibility if it is not seen to have taken effective action on transitional justice, the attempt might be worth making. However this would seem to require some increase in capacity at national level.

#### **4.11 Human Rights Education**

AIHRC Human Rights Education activities are extensive, with large numbers of people participating, both in communities and government bodies. Assessing the effectiveness of human rights education and promotional work is particularly challenging. Increasing awareness is a necessary first step to reducing the impunity of perpetrators and vulnerability to abuses. It does not necessarily in itself reduce the level of abuses or lead to increased activity by vulnerable groups to claim their rights, or action to hold perpetrators accountable. Accurate targeting of groups and institutions for human rights education is important, as is training which gives a real sense of agency, and helps participants identify action to improve the human rights situation.

The team was unable to observe in the time available AIHRC human rights education sessions in progress. The AIHRC Human Rights Education Commissioner and staff indicated various ways in which training produced results, including women coming forward to seek justice, and police treating detainees more humanely.

#### **4.12 Comment on selected thematic programmes**

The evaluation was not able to look in depth at the thematic programmes of the AIHRC, or comment on all areas of thematic work. In particular the team had little chance to understand the essential work of the People with Disabilities Programme, which was not included in the original Project. The work of the thematic programmes is extremely extensive, involving work on individual cases and on policy and legal change.

The Women's Rights Programme has worked on both draft domestic violence legislation and a new marriage certificate. Its extensive work alongside the Ministry of Women's Affairs and civil society organisations has raised awareness of among women of their rights. A possible decrease in early marriage, based on marriage registry data was highlighted by one AIHRC women's rights expert. Mazar-i-Sharif office representatives also stressed how the role of women in public life had increased.

There may be a need to increase awareness in some regional offices of the responsibilities of the state to take measures to address both violence against women, and to ensure the rights of children. The objectives for the work of regional offices might focus more strongly on strategies to get the government to undertake its responsibilities. The Mazar-i-Sharif office also highlighted that an increased range of awareness raising materials could be developed for work on women's rights. As with many areas, staff in field offices have a continuing need to gain knowledge, and develop their interventions.

#### **4.13 Strengthening the capacity of AIHRC staff**

The AIHRC is progressing in terms of the professional capacity of its staff. The AIHRC provides a range of training, both external and internal, to staff and monitors the training needs of staff. Staff capacity strengthening is a recognized priority for the AIHRC. Developing the necessary level of understanding on human rights issues, and skills for human rights interventions is a real challenge. A number of issues related to staff capacity were noted:

- The greatest need to develop skills and understanding of human rights is in regional offices, with an AIHRC capacity analysis having identified which offices are in need of particular help.



- There are still limitations in areas of substantive human rights knowledge, including fair trials issues and law enforcement issues.
- The full range of human rights issues relevant to cases of violence against women are complex. Understanding of due-diligence and the obligations of the state to protect women and children from abuses by non-state actors might be increased.
- The basic training on human rights for staff might be improved, and some additional training modules on specific human rights issues developed.
- Difficulties **in retaining staff due to the dangerous and challenging nature of some AIRHC work**, and higher rates of pay available in commercial, international and some NGO sectors were noted;
- Relevant experience and expertise is difficult to find in the Afghan context.
- There are difficult choices over which skill sets should be prioritized at management level. For example, in the difficult operational context faced by the AIHRC, relationship building and political and communication skills may be more important than technical knowledge of human rights issues.

#### **4.14 Recommendations**

##### **Institutional issues**

- The AIHRC and stakeholders should start consultation on an alternative appointments procedure taking into account regional and international best practice<sup>12</sup> and conformity with Paris Principles. Suggestions from different stakeholders should be encouraged;
- The Government of Afghanistan should be encouraged to provide funding to the AIHRC with a commitment to continuing contributions, and to make a public statement outlining why it is the responsibility of the government to fund the Commission;
- The AIHRC should pursue a strategy to build political support including engagement with parliament and might explain how parliaments in other countries are involved responsibly in NHRI processes and accountability;
- The AIHRC Law should be revised to strengthen the powers of the Commission. There should be range of sanctions for non compliance with AIHRC's recommendations and a clear authority to make mandatory recommendations is required;
- There should be a separate Article in the Law which specifies that government bodies must cooperate with the AIHRC recommendations, and that government institutions, authorities, CSO, NGO, and private organisations should assist AIHRC in its function; failure to provide such assistance/cooperation should have some punishment—even pecuniary.

##### **Policy and position on human rights Issues**

- Policy on human rights issues should be consistent and underpinned by a full range of human rights standards and guidance.

##### **Strategic approach and planning**

- The AIHRC might usefully focus on a limited number of strategic priorities for action, validated by analysis and research and ensure solutions are pursued with sustained advocacy strategies.

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<sup>12</sup> For example - in Nepal there is a constitutional council including the major political parties, which recommends names; a list then goes to a parliamentary committee, and after committee endorsement the PM appoints the commissioner.

- The post-2008 Action Plan might be streamlined, and include a more logical sense of the critical path and contingent steps towards achieving tangible progress on human rights issues.

### **Advocacy, building relationships and communication**

- The AIHRC should ensure that it clearly defines and communicates its role and mandate to civil society;
- The AIHRC should seek to identify one or two areas for focused partnership with civil society, and ensure these are developed with appropriate facilitation, resources and joint strategic planning;
- The AIHRC might extend the availability of its printing press to NGOs to print their human rights related materials and publications as a confidence building gesture;
- The AIHRC should develop regular communication and consultation with interested parliamentarians.

### **Management and organisational issues**

Solutions to the AIHRC structural challenges might benefit from organisational development expertise. It is therefore suggested that:

- As suggested by some AIHRC staff and partners, some additional capacity at national level might be considered. To address the gap in thematic and day to day management, programme coordinators with relevant expertise and professional background could be hired for each programme or thematic area.
- The external evaluation proposed above in Section 3 of this report might include an expert on organisational development to assist the AIHRC in reviewing different options. Alternatively, an external organizational review might be conducted;
- The structure of other NHRIs might be reviewed to provide alternative models;
- A legal unit providing increased capacity for legal analysis might be considered.

### **Monitoring and evaluation**

- The AIHRC might consider some increased capacity for M & E, focused on assessing impacts and how Commission interventions are improving the human rights situation;
- The proposal to commission an independent public opinion survey of the AIHRC is sound and should be implemented;
- The AIHRC might also commission an independent assessment of how complaints are handled and the impact of human rights education sessions.

### **Strengthening the capacity of AIHRC staff**

- A more comprehensive plan for strengthening the knowledge and skills of staff, possibly with a specifically designated budget, a roster of relevant external experts, and clear benchmarks for staff development might be developed;
- Donors and partners should ensure the AIHRC has full ownership and control over capacity building inputs and technical assistance;
- The AIHRC might consider an enhanced basic human rights training module for staff, which might be extended to the CSO community.
- The AIHRC should ensure periodic review of pay and conditions in other sectors to ensure AIHRC remains competitive.

- Enhanced security and staff protection for particularly dangerous contexts and appropriate life insurance and benefits packages should be provided.

## 5. Suggested Priority Human Rights Interventions for UNDP

Donors have invested heavily in the AIHRC. For many donors this has been their primary contribution to supporting human rights in Afghanistan. There is increasing recognition however that the AIHRC cannot bring about significant improvements in the human rights situation alone. A broader mobilisation is needed, and the AIHRC needs strong partners among civil society.

UNDP requested the evaluation team to give broad consideration to priority needs for human rights interventions beyond support to the AIHRC. UNDP DCSE specifically asked the team to test out the feasibility of proposals for providing support to civil society organisations to carry out advocacy on human rights issues.

Government and donor planning and the strategic framework for addressing human rights were highlighted as an issue of concern. These provide an important context both for the work of the AIHRC and for any intervention to support civil society.

It was felt by many that the framework and benchmarks under the Afghanistan Compact and Afghan National Development Strategy were inadequate to deliver on human rights commitments. The limited content on human rights included in the ANDS Initial Draft Governance and Public Administration Reform and Human Rights Sector Strategy does not identify the responsibilities of respective ministries to address human rights issues. It does not set out concrete or time-bound objectives, or the steps the government should take to comply with its obligations under international law. The issue of ensuring accountability of perpetrators is not addressed in the strategy. Most of the human rights content in the strategy in fact pertains to the AIHRC, highlighting the fact that the AIHRC tends to be perceived as responsible for human rights, rather than the government. The need to develop capacity in government to meet human rights obligations is not addressed.

Human rights should not feature only as a limited element in governance strategy. Afghanistan's human rights obligations provide the framework of minimum conditions necessary for human dignity. Afghanistan needs to develop a culture where power is exercised with responsibility and in the interests of ordinary people. Human rights obligations entail accountability, and government responsibility to protect and respect the rights of all, and to end impunity for abuses. They therefore provide an essential framework for transition. The government of Afghanistan and donors need to commit to a clear, time-bound and benchmarked framework for effective action to combat human rights abuses, and to develop the capacity to respect, protect and fulfil human rights obligations. Human rights should be mainstreamed through the ANDS strategic planning process.

### 5.1 Support to civil society advocacy on human rights

The UNDP proposal to support civil society advocacy on human rights issues was discussed with stakeholders in the course of the evaluation mission. The short time available and the relatively limited number of civil society organisations consulted constrained the ability of the mission to assess the needs of civil society. **However, the need for well-designed support for advocacy by human rights groups and other civil society organisations was broadly confirmed by stakeholder discussion. This reflects a number of factors:**

- **Civil society remains relatively weak and fragmented**, though it is progressively developing. Civil society organisations

- highlighted proposal writing, project management and strategic planning skills as areas for improvement.
- There appears to be a limited capacity to carry out systematic advocacy work which actually brings about improvements in the human rights situation. CSOs are sometimes more focused on lobbying the international community, rather than government.
  - Support to civil society appears to have been focused on Kabul, with insufficient work to systematically assist human rights groups in the regions to develop.
  - Networking and coordination appears to be relatively weak among NGOs. Attempts to build alliances and common platforms may have been limited, indicating a possible need to encourage focused joint action on concrete human rights goals.

A small number of stakeholders did however express reservations over providing support to civil society, stating that civil society and advocacy are artificial notions in Afghanistan, and that the current context prevents civil society from operating effectively. It seems sensible in the current context to start small, focusing on initiatives with clear objectives.

**Civil society organisations indicated a number of key priorities for effective support. Many of the points below came from representatives of a network of civil society organisations set up in Mazar-i-Sharif. Human rights groups and activists in the city have formed the network to increase their voice and work together in the promotion of human rights and democracy:**

- Increased support should be focused in regions outside Kabul.
- It should be possible to submit proposals in Afghan languages, and for non-English-speaking groups to have access to international actors.
- Longer projects and initiatives must be funded if real progress is to be made on human rights.
- Enhanced donor coordination would reduce the need for civil society organisations to approach many different donors;
- Authentic, community-based structures and groups must be supported if the absence of rule of law and governance in rural areas is to be tackled.
- Learning about the experience of other countries affected by conflict is useful.
- Media and information technology must be used if people are to change their views and behaviour.
- Short one-off workshops are of limited use—different approaches are needed to build the skills of CSOs.

**A range of civil society support provision is already in place, which might be more closely reviewed by UNDP to ensure added value:**

- The USAID funded Counterpart Initiative to Promote Afghan Civil Society (I-PACS), which has created extensive networks of NGOS, undertaken capacity analysis, provided technical assistance, and provided grants, working through NGO implementing partners.
- Support by the Danish Institute for Human Rights to the Afghan Civil Society and Human Rights Network which has around 40 members;
- EU funding under the European Initiative for Democracy and Human Rights (EIDHR);
- Bilateral donor support specific human rights CSO projects.

**Experience outside of Afghanistan offers a range of models for support to civil society.** For example, in countries including Bangladesh, DFID has supported development of long-term trusts or grant-making bodies which are locally managed, and combined high-quality capacity strengthening inputs with funding. These have the potential to become indigenous institutions, rather than short-term projects. Some of the characteristics of such an approach are:

- Organisational development support in areas such as financial management is provided alongside skills training, which is often highly appreciated by grantees. This assists CSOs in becoming more sustainable.
- Skills training is provided in the context of funded activities, and using a “learning by doing” approach.
- Clear transparent criteria for awarding funding can be set, to ensure selection of projects with tangible and specific objectives for change.
- Networking and cooperation can be encouraged among grantees, based around funded activities.
- Proposals can be reshaped by the grant-making body to increase their likely impact, and a high level of support can be provided during implementation.
- Monitoring and evaluation processes can be developed which review how effective projects are and identify areas for improvement.
- Support can be targeted at organisations who have a genuine constituency among particularly vulnerable and marginalised groups, and can build the strength and voice of grass-roots organisations;
- Longer term funding can be provided by such sustainable grant making mechanisms.

## **5.2 Recommendations**

- Donors should develop a consistent advocacy strategy to raise human rights concerns with the Government of Afghanistan. This should ensure sustained pressure on key issues, in addition to reaction to emerging crises.
- Increased common contingencies over human rights issues might be considered by donors.
- A appropriate forum for coordination and strategic planning on human rights issues should be ensured by donors.
- Donors should consider building the capacity of a Government of Afghanistan focal point on human rights and support the integration of human rights into the ANDS process.
- Donors and government should address the need for a clear, benchmarked and time-bound strategy for fulfilling government obligations to respect, protect and fulfil human rights obligations under the ANDS process.

### **Support to civil society advocacy on human rights**

- UNDP should develop its proposal for supporting civil society human rights advocacy through structured consultation with civil society organisations and a more substantial analysis of civil society needs and mapping of existing donor support.
- Good practice in the region and beyond might be drawn on to develop an appropriate mechanism for funding and providing organisational development and capacity strengthening support.

- Support might be provided for organisations outside Kabul, grass roots community based organisations, and those without English language skills.

## 6. Annexes

### Annex 1: List of Meetings

1. Chiara Cardoletti & Maurizio Molina, UNHCR, Protection Unit.
2. Miss Raza Azwa Petra and Mr Roque Raymundo, UNAMA.
3. Commissioner Ahmad Zia Langari, AIHRC.
4. Abdul Karim Azizi, Commissioner, AIHRC.
5. Mr Christopher Krafchak, Human Rights and Rule of Law, USAID.
6. Dr Ramoz Hussein, Executive Director, AIHRC.
7. Ahmad Fahim Hakim, Deputy Chair of the AIHRC, Commissioner.
8. Andreas Lovold, Second Secretary, Political Affairs, Royal Norwegian Embassy
9. Mr Annou Borrey, Country representative, UNIFEM.
10. Mr. Andrew Huber, Country Representative, Mr Abdul Bari, Swiss Cooperation Officer
11. Mr Said Ahamad Mohamand, General Director, Curriculum Development Centre, Ministry of Education.
12. Justice Dr. Bahahuddin Baha, Supreme Court.
13. Deputy Minister of Justice, Adalat Khowa
14. Najem Fahin, Legal Adviser, Ministry of Interior
15. Member of Parliament Mrs Shinkai Karokhail
16. Mrs. Fawzia Koofi, Member of Parliament
17. Mr Sareer Ahmad, Global Rights
18. Mr. Guillaume Terling, First Secretary, Royal Dutch Embassy
19. Mrs Jan Anttila, Human Rights Advisor, Office of the Representative of EU
20. Mr Zahidi, Research Officer, AIHRC
21. Ms Sitara, Head of Department- DCSE-UNDP.
22. Mr. Mohammad Farid Hamidi, Commissioner Transitional Justice, Monitoring and Investigation, Special Investigations Team.
23. S.A. Qader Rahimi, National Programme Manager, AIHRC.
24. AIHRC, Rahimullah Ramesh, Transitional Justice officer, Kabul Regional Office, AIHRC.
25. Mr Subsulla A. Khan, Head of Monitoring & Investigation Unit Mazar-i-Sharif Regional Office, AIHRC.
26. Audla Rahami- Women's Rights Unit, Kabul Regional Office, AIHRC.
27. Rahimullah Ramesh, Transitional Justice Officer, Kabul Regional Office, AIHRC
28. Mr Subsulla A. Khan, Head Monitoring & Investigation Unit, AIHRC Kabul Regional Office
29. Audla Rahami- Women's Rights Unit, Kabul Regional Office.
30. Regional Project Manager Qazi Sald Mohamad, Major Regional Office
31. Mr Munir Khasi Head of Monitoring & Investigation Unit, Mazar-i-Sharif Regional Office, AIHRC
32. Ms Jaqwa Kamel Hayatullah and Said Abdul Langary, Transitional Justice Unit, Mazar-i-Sharif Regional Office
33. Mrs. Sadia & Mrs Farnou, Women's Right Unit, AIHRC Mazar-i-Sharif Regional Office.
34. Mazar-i-Sharif civil society organisation roundtable S. Abdul Mamid Sajewat, CCA Profesor Sadik Asean, Balkh writer, Dr Najiv Paikan, Afghan Community Foundation and Malalai Roshan, Women's Rights Activist.
35. Seh Lih Long, Associate HR officer, UNAMA, Mazar-i-Sharif.
36. Section chief, AIHRC, Child Rights Unit, Major office,



37. Mr Rajaqdat Gulzani, Human Rights Education Unit, AIHRC, Mazar-i-Sharif Regional office
38. Dr. Sima Samar, Chairperson, AIHRC
39. Mrs. Hangama Anwari, Commissioner AIHRC
40. Dr. Sorya Sobhrang, Commissioner, AIHRC
41. Professor. M. Mushin Farid, Legal Advisor, AIHRC
42. G.Dastgir Hedayat Kabul Regional Programme Manager, AIHRC
43. Timo Oula, Charge D'Affaires, Sam Karvonen, First Secretary, Development Cooperation, Embassy of Finland

Participation in meetings

- Protection Working Group meeting held at UNHCR Office on 12/11/007.
- AIHRC Project Committee Meeting

## **Annex 2: Terms of Reference**

### **Support to the Afghan Independent Human Rights Commission**

**Project ID 00038945**

**UNDP, Kabul, Afghanistan**

#### **Final Evaluation Mission**

#### **TERMS OF REFERENCE**

##### **1. Background**

UNDP, in partnership with United Nations Assistance Mission in Afghanistan (UNAMA) and Office of the United Nations High Commissioner for Human Rights (OHCHR), has assisted the Afghan Independent Human Rights Commission (AIHRC) through a project on “Support to the Afghan Independent Human Rights Commission” to become operational and fulfill its ambitious mandate from the very first stage in 2002. The project was initially implemented through Direct Implementation (DIM) modality. Ongoing capacity development of AIHRC staff allowed for the project to shift to National Implementation (NIM) modality in November 2004. In autumn 2005, two consultancy missions provided concrete recommendations on further capacity development needs within the AIHRC. Following the implementation of these recommendations, agreement was reached that UNDP would phase out and the AIHRC would manage donor relations bilaterally from 1 April 2006 onwards.

##### **2. Purpose of the Evaluation**

In order to draw useful lessons from the past for future engagement between UNDP/UNAMA/OHCHR and AIHRC, a Final Evaluation Mission will take place in May 2007.

##### **3. Objective**

The overall objective is to provide guidance for future co-operation between UNDP/UNAMA/OHCHR and the Afghan Independent Human Rights Commission based on lessons learnt from the previous project of technical co-operation “Support to the Afghan Independent Human Rights Commission” (see Annex), with the following more specific objectives:

1. Complementing evaluation findings of October 2005, to assess the achievements by the AIHRC, and the impact of technical co-operation provided by UNDP, OHCHR and UNAMA, taking into account recent developments in Afghanistan.
2. To present concrete recommendations to UNDP, OHCHR, UNAMA and AIHRC with regard to future technical co-operation activities.
3. To document lessons learnt and best practices throughout the duration of the project, with a special focus on implementation modalities (shifting from DIM to NIM, final phasing out of UNDP, current bilateral donor relations).

4. To identify linkages of the work of AIHRC with current UNDP/UNAMA/OHCHR projects and other activities on human rights issues with suggestions for future co-operation.
5. To assess the Commission's Three Year Action Plan with regard to AIHRC's institutional mandate and the current implementation of the plan.
6. To make any other recommendations deemed appropriate to UNDP/UNAMA/OHCHR on means and mechanisms to better promote and protect human rights in Afghanistan, with a focus on national institutions.

#### 4. Existing Information

UNDP-AIHRC Project documents

- Reports of the former consultancies and evaluation missions

Current AIHRC Project document

#### 5. Process and Methods

The evaluation team will study project documents, project reports and evaluation reports of former consultancy/evaluation missions to the AIHRC, and other relevant material provided by the AIHRC, UNDP, UNAMA, OHCHR and the specialised UN agencies, as well as other relevant documents and reports.

In Afghanistan, the mission will meet with all relevant stakeholders, including AIHRC Commissioners and secretariat including sub-offices, UN Agencies and Programmes, UNDP, UNAMA/OHCHR, representatives of the Government, representatives of the donor community, especially those donors currently engaged with the AIHRC, as well as justice sector and Human Rights NGOs and CSO representatives.

A briefing and debriefing with the AIHRC, UNDP, and UNAMA/OHCHR should be held in Afghanistan. AIHRC and UNDP will provide logistical support to the mission during its stay in Afghanistan, including the preparation of briefing and debriefing sessions.

#### Management Arrangements

The Mission Members will report to UNDP, AIHRC and the Project Committee and liaise with relevant UNDP programme staff. They will closely consult with UNAMA/OHCHR and present their findings to the Project Committee for their comments and inputs.

#### Work Plan

The evaluation mission will take place in May/June 2007 for duration of 2 to 3 weeks.

#### Week 1

- Brief the AIHRC, UNDP and UNAMA/OHCHR in Afghanistan;
- Study project documents, project reports and evaluation reports of former consultancy/evaluation missions to the AIHRC, and other relevant documents;
- Conducting initial meetings with stakeholders

#### Week 2 & 3

- Meet with all relevant stakeholders, including AIHRC Commissioners and secretariat including sub-offices, UN Agencies and Programmes, Government and Donor Community representatives, Justice Sector, Human Rights NGOs and CSO organizations;
- Exit meeting with the AIHRC, UNDP and UNAMA/OHCHR in Afghanistan.

### 6. Deliverables

For the debriefing session, a debriefing note (max. 10 pages) with preliminary conclusions and recommendations should be prepared.

A final report and an executive summary of maximum 5 pages (stand-alone document), in English, should be submitted within 21 days of the conclusion of the evaluation team's mission to Afghanistan. The report should include concrete recommendations on future relationships between the UNDP/UNAMA/OHCHR and the AIHRC, identifying areas for future involvement. The report should also clearly address all the points stated in Part 3 of this Terms of Reference. Additional points should be documented as needed.

### 7. Team Composition

The evaluation team will consist of two international external consultants contracted by UNDP and selected by UNDP/UNAMA/OHCHR with the agreement of the AIHRC. UNDP will be administratively responsible for this mission. The consultants will be responsible for preparing the debriefing note, the evaluation report and the executive summary.

#### ***Required Qualification of the Consultants:***

- ✓ Advanced university degree in law or social sciences;

- ✓ Five to ten years of professional experience in development, project design, monitoring and management and strong record in evaluation;
- ✓ Academic and research experience in the relevant field;
- ✓ Sound knowledge of human rights issues; experience with national human rights institutions a strong asset;
- ✓ Experience in technical co-operation programmes and projects in a post-conflict context would be an added advantage;
- ✓ Knowledge of UNDP procedures and programme implementation strategies will be an additional advantage;
- ✓ Familiarity with the current human rights situation in Afghanistan would be an asset; and
- ✓ Fluent in English. Knowledge of local languages an asset.

#### 8. Procedures and Logistics

- ✓ Working hours is 8 per day and 6 days per week.
- ✓ The team will be based at the AIHRC office.
- ✓ Administrative support, office space and equipments will be provided by AIHRC.
- ✓ Transport will be provided by the AIHRC;
- ✓ The last 50% of the salary payments will be released upon the approval of the final report and the executive summary.

## **Annex I: Project Background**

The Afghan Independent Human Rights Commission was established by virtue of the Bonn Agreement signed in 2001, establishing interim authority with a transitional administration. The Bonn Agreement envisages that: "The Interim Administration shall, with the assistance of the United Nations, establish an independent Human Rights Commission, whose responsibilities will include human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions".

A national workshop on Human Rights took place on 9 March 2002 in Kabul to review the Human Rights provisions of the Bonn Agreement with a view to their implementation. A significant portion of the national workshop was dedicated to consideration of the proposed Independent Human Rights Commission. The meeting formed a standing national working group to continue planning for the independent commission and adopted a number of guiding principles for its establishment. Another session of the workshop was dedicated to consideration of the proposed programme of human rights education. In this case too, the meeting agreed to establish a standing national working group to continue planning for the national programme of human rights education and adopted a list of guiding principles for its development. A third session was dedicated to consideration of the question of national strategies for human rights monitoring and investigations, and for transitional justice. The meeting agreed to continue planning for the strategies, established a standing working group for this purpose, and adopted a number of guiding principles for their development. Attention to issues of gender and the rights of women was woven throughout the proceedings of the national workshop, and plenary discussions on the matter were supplemented by a working group session convened to propose elements to guide further planning for activities to advance the human rights of women. The meeting concluded that consideration should be given to the establishment of a standing national working group on the human rights of women, to continue planning in this area.

Thus, the meeting reviewed the entire Bonn Human Rights programme, and, importantly, established standing national working groups on:

- Establishment of an Independent Human Rights Commission.
- Development and implementation of a national programme of human rights education.
- Strategies for human rights monitoring and investigations.
- Approaches to transitional justice and addressing the abuses of the past.
- Advancing the human rights of women.

All working groups met and finalised a two year programme of activities in the relevant area. The Afghan National Working Group on the Establishment of an Independent Human Rights Commission convened a national workshop in Kabul on 25 May 2002, and agreed a draft decree on the establishment of the Afghan Independent Human Rights Commission and a two-year programme of activities for the Commission. Importantly, each of the working groups also agreed that the independent human rights commission, with the support of the UN, should be the main implementer and manager of the various components of the human rights programme.

The two year programme elaborated by each of the 4 working groups was brought together in the form of a Human Rights Programme for the AIHRC for a 2 year period, and then incorporated into the project document of technical assistance “Support to the Afghan Independent Human Rights Commission” (please refer to the project document).

The main outputs envisaged in the project document are:

- “Constitutionalization” of a national Human Rights Commission
- Establishment of mechanisms to protect the human rights of women
- Implementation of a national programme of human rights education
- Building capacity for the AIHRC to defend and protect the human rights of citizens and groups, including through investigation of human rights violations
- Development of options for managing issues of transitional justice in Afghanistan

To these, the AIHRC subsequently added the development of a programme of promotion and protection of children’s rights.

Further the project document envisages that

- The Commission, in leading the formulation and implementation activities, will reach out to the communities across Afghanistan involving them in its programme. To achieve this, the Commission will establish a network of regional offices in key centres across Afghanistan. These will, in turn, link with community groups, civil society organisations (CSOs) and centres of education to implement the programmes contained in this project. This will be especially useful in the areas of human rights education and advancement of human rights for women.
- The Commission will also work to ensure that the country’s new Constitution includes the institutionalisation of an independent human rights commission.
- To fulfil its commitment to the Bonn Agreement, the UN System’s support for the Commission is being coordinated through the office of the SRSG. Overall programme guidance will be maintained through a Steering Committee involving the Commission and its Secretariat together with the Office of the SRSG, UNOHCHR and UNDP.

According to the project document, “a terminal evaluation will be organized by the United Nations at the conclusion of the project, and shall include recommendations for follow-up activities and support, as appropriate”. The mission will evaluate the attainment of the project’s main objectives and provide recommendations on the structure of any follow up technical assistance projects, based on the role and mandate of the AIHRC as established in the constitution and legislation.

## **ANNEX II: Ethical Code of Conduct for UNDP Evaluations**

Evaluations of UNDP-supported activities need to be independent, impartial and rigorous. Each evaluation should clearly contribute to learning and accountability. Hence evaluators must have personal and professional integrity and be guided by probity in the conduct of their business.

Evaluators:

Must present information that is complete and fair in its assessment of strengths and weaknesses so that decisions or actions taken are well founded

Must disclose the full set of evaluation findings along with information on their limitations and have this accessible to all affected by the evaluation with expressed legal rights to receive results.

Should protect the anonymity and confidentiality of individual informants. They should provide maximum notice, minimize demands on time, and respect people's right to privacy and right to not engage. Evaluators must respect people's right to provide information in confidence, and must ensure that sensitive information cannot be traced to its source. They should inform participants about the scope and limits of confidentiality. Evaluators are not expected to evaluate individuals, and must balance an evaluation of management functions with this general principle.

Evaluations sometimes uncover evidence of wrongdoing. Such cases must be reported discreetly to the appropriate investigative body. Evaluators should consult with other relevant oversight entities when there is any doubt about if and how issues should be reported.

Should be sensitive to beliefs, manners and customs and act with integrity and honesty in their relations with all stakeholders. In line with the UN Universal Declaration of Human Rights, evaluators must be sensitive to and address issues of discrimination and gender equality. They should avoid offending the dignity and self-respect of those persons with whom they come in contact in the course of the evaluation. Knowing that evaluation might negatively affect the interests of some stakeholders, evaluators should conduct the evaluation and communicate its purpose and results in a way that clearly respects the stakeholders' dignity and self-worth.

Are responsible for their performance and their product(s). They are responsible for the clear, accurate and fair written and/or oral presentation of study limitations, findings and recommendations.

Should reflect sound accounting procedures and be prudent in using the resources of the evaluation.