

**BRIEF FOR THE SUB-COMMITTEE TO
REVIEW THE ACCREDITATION STATUS OF THE
AFGHANISTAN INDEPENDENT HUMAN RIGHTS COMMISSION
- OCTOBER 2008 -**

I. BACKGROUND

The Afghanistan Independent Human Rights Commission (hereafter referred to as the 'AIHRC') submitted its first application for membership to the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in March 2007. On the basis of the documentation submitted, the Sub-Committee on Accreditation recommended deferral of consideration of the application for accreditation of the AIHRC to October 2007 pending clarification of certain issues.

At the October 2007 session, the AIHRC was accredited with "A" status by the International Coordinating Committee. At this session the decision was made to review certain aspects of the AIHRC's application for re-accreditation at the Sub-Committee on Accreditation's meeting starting 3 November 2008.

In the October 2007 Sub-Committee on Accreditation's Report, the Sub-Committee expressed the following concerns:

- 1) It refers to the General Observation on "**Adequate Funding**", in particular that **funding from external sources, such as from donors or development partners**, should not compose the core funding of the NHRI as it is the responsibility of the State to ensure the NHRI's minimum budget which allows it to operate in the fulfilment of its mandate (emphasis added).
- 2) It refers to the Paris Principles on "**Composition and guarantees of independence and pluralism**", in particular that a stable mandate for members of NHRIs be established with a specific duration (emphasis added).
- 3) It stresses 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 (emphasis added).

These concerns were communicated to the AIHRC by the ICC Secretariat in a letter of 30 April 2008. The AIHRC responded to the concerns raised by the Sub-Committee in a letter dated 19 August 2008. The following two enclosures were forwarded to the ICC Secretariat with the letter of response:

- Revised Statement of Compliance with the Paris Principles (August 2008)
- A Report entitled "[A] Few Points on the ICC Accreditation to [the] Afghanistan Independent Human [R]ights Commission" (August 2008)
- An organigramme of the Commission;
- Annual Report 2007;
- Report II on Economic and Social Rights in Afghanistan, 2007.

In an email received by the ICC Secretariat on 19 August 2008, the AIHRC also submitted:

- Statement of compliance with the Paris Principles
- Accreditation Grid (received by email only, 19/8/09).

This brief summarizes the replies of the AIHRC to the issues raised by the Sub-committee (Section III of this brief onwards), after a short information section on the AIHRC (further information can be found in the summary prepared by the ICC Secretariat in October 2007).

II. INFORMATION ON THE NHRI

1. Background and Mandate

The Bonn Agreement signed on 19 December 2001, for the establishment of the Afghan Interim Government, states that to protect and promote human rights in Afghanistan, a national human rights commission shall be established. Therefore, the AIHRC was established on the basis of decree issued on 16 June 2002¹ by the Chairman of the Interim Administration of Afghanistan.

The establishment of the AIHRC, as a permanent national institution for protection and promotion of human rights of Afghan citizens, is enshrined in article 58 of the new National Constitution of the Islamic Republic of Afghanistan, adopted by the Afghan Grand Assembly (Loya Jirga) on 5 January 2004.

Article 58 of the Constitution:

- (1) The State, for the purpose of monitoring the observation of human rights in Afghanistan, to promote their advancement (*behbud*) and protection, shall establish the Independent Human Rights Commission of Afghanistan.
- (2) Any person, whose fundamental rights have been violated, can file a complaint to the Commission.
- (3) The Commission can refer cases of violation of human rights to the legal authorities, and assist in defending the rights of the complainant.
- (4) The structure and functions of this Commission shall be regulated by law.”

In their application, AIHRC states that the law of the AIHRC was debated by the Legislation Department of the Ministry of Justice and several representatives from the Supreme Court, Attorney General Office, Kabul University, and the Ministry of Foreign Affairs. After agreement on the draft, it was adopted by the Afghan Cabinet Ministers on 1 May 2005 and enacted by the presidential decree on 12 May 2005 in the form of Decree No. 16 of 2005 of the President of the Republic of Afghanistan on the enforcement of the “Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission” (hereinafter referred to as the Law).

Article 1 of the Law states: “This Law is made pursuant to Article 58 of the Constitution of Afghanistan; and Resolution 134 of 20 December 1993 of the United Nations General Assembly, in order to monitor the observance of human rights, to promote and protect human rights and to regulate the affairs related to the structure, duties, powers and method of work of the Afghanistan Independent Human Rights Commission.” The Commission is endowed with the responsibility to implement the present Law (art. 21(35)).

The objectives of the Commission (Law, article 5) are the following:

- i. Monitoring the situation of human rights in the country;
- ii. Promoting and protecting human rights;
- iii. Monitoring the situation of and people’s access to their fundamental rights and freedoms;
- iv. Investigating and verifying cases of human rights violations; and
- v. Taking measures for the improvement and promotion of the human rights situation in the country.

2. Activities

According to section 4.1 of the Institution’s Revised Statement of Compliance, the AIHRC liaises with civil society organizations in Afghanistan, as well as with representatives of the UN mission, regional, and international human rights organizations. The Institution conducts research on patterns of human rights abuse, in an effort to evolve strategies of human rights promotion and protection (Revised Statement, p.2)

The Revised Statement of Compliance also indicates that the AIHRC has developed collaborative relationships with a number of Afghan parliamentarians, who support the initiatives of the Institution as they pertain to national legislation, in particular efforts to foster a human rights culture in the

¹ A copy of this decree has not been provided to OHCHR. This reference has been taken from the Statement of Compliance with the Paris principles submitted by AIHRC

aftermath of the Afghan civil war. The Institution also advises the Afghan government on the harmonization of national legislation with international human rights standards, and reviews Afghan legislation for its compliance, by participating in discussions on draft legislation at the Afghan Ministry of Justice (Section 6.3 of the Revised Statement of Compliance).

The Institution also describes its efforts in the area of human rights education (Section 6.5 of its Revised Statement of Compliance) by mentioning organization of human rights education and training for the Afghan judiciary, armed forces and police, as well as for university professors and students. According to the Revised Statement of Compliance, the AIHRC has recently engaged curriculum experts, who have been seconded to the Afghan Ministry of Education to mainstream human rights into the Afghan school curriculum.

III. DEVELOPMENTS AND CONCERNS: THE APPOINTMENT PROCESS

The concerns expressed by the ICC Sub-Committee focus on ensuring the independence and pluralism of the AIHRC.

Under the heading “Composition and guarantees of independence and pluralism”, the Paris Principles specify the following:

- 1) *The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be established in accordance with a procedure which affords all necessary guarantees to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which will enable effective cooperation to be established with, or through the presence of, representatives of:*
 - (a) *Non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations, for example, associations of lawyers, doctors, journalists and eminent scientists;*
 - (b) *Trends in philosophical or religious thought;*
 - (c) *Universities and qualified experts;*
 - (d) *Parliament;*
 - (e) *Government departments (if these are included, their representatives should participate in the deliberations only in an advisory capacity).*
- 2) *The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the Government and not be subject to financial control which might affect its independence.*
- 3) *In order to ensure a stable mandate for the members of the national institution, without which there can be no real independence, their appointment shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be renewable, provided that the pluralism of the institution's membership is ensured.*

The AIHRC responded to the concerns raised by the Sub-Committee in a letter dated 19 August 2008. The following two enclosures were forwarded to the ICC Secretariat with the letter of response:

- Revised Statement of Compliance with the Paris Principles (August 2008)
- “[A] Few Points on the ICC Accreditation to [the] Afghanistan Independent Human [R]ights Commission” (August 2008)

1. Lack of adequate and consistent financial support from the Government of Afghanistan to the AIHRC

According to the AIHRC's letter of 19 August 2008, the budget of the national institution has not been transmitted to the AIHRC, despite the approval of the Institution's annual budget by the Afghan President. According to the Institution, the Afghan government presently lacks the administrative

capacity to ensure that the principles of governance and accountability are implemented at all levels. Additionally, senior government managers at all levels remain unfamiliar with basic human rights values and principles.

The revised Statement of Compliance submitted by the Institution contains no updated information on the financial independence of the Institution. The "Few Points" document submitted by the Institution, however, indicates that at present there are at least ten (10) donors who make regular contributions to the AIHRC's annual budget. The "Few Points" document also provides background on the previous financial arrangements of the Institution. According to this document, the Afghan President has directed the Afghan Ministry of Finance to allocate \$1 Million USD to the AIHRC for its annual operating budget for 2008. According to the "Few Points" document, the Ministry of Finance has allocated only \$100,000 USD of the funds to the AIHRC, citing the Afghan Government's budget deficit as the rationale for advancing only 10% of the AIHRC's designated operating budget. The AIHRC also states that "94% of the overall national budget of Afghanistan is paid by donors, and the donation to the AIHRC is also part of the national budget which is directly transferred by donors' government to the AIHRC bank account." (report "Few Points" page 3)

Additionally, while the Institution asserts in section 2 of its Revised Statement of Compliance that it does not receive any direction from the Government of Afghanistan in the execution of its functions, the Sub-Committee may wish to assess the degree to which the AIHRC's mandate may be influenced by the third-party donors who provide a large proportion of the Institution's funding, in light of the Sub-Committee's General Observation 2.6 on "Adequate Funding" that the NHRI enjoy complete financial autonomy.

In an e-mail communication from the AIHRC (dated 1 October 2008) in response to the concerns raised in this Special Review Brief, Dr. Sima Samar, the Chairperson of the AIHRC, asserts that the Commission is fully autonomous in terms of its financial management:

[The AIHRC] has developed a manual for financial and administration management based on the combined experiences gained from international and national financial management systems as well as considering the recommendations given by the audit companies. This manual ensures a transparent system of financial management. The AIHRC so far hasn't accepted the earmark fund from any donor for any activities which is out of the AIHRC's mandate or being contradictory to principle of human rights. The main donors have given their money to the AIHRC as core funding based on the contents of the AIHRC's action plans. The AIHRC also accepts assistance from the UN offices and trustworthy human rights organizations based on [a] partnership system. These partnership programs have been mutually agreed between the partnership parties. The AIHRC provides the donor countries with quarterly report and annual report which covers the [AIHRC's] activities and financial status. In addition, the AIHRC's annual progress report, which is publicized, includes the financial status of the AIHRC, including the source[s] of fund[s] received and expenditure[s] on various budget lines.

2. Concerns regarding guarantees of pluralism in the AIHRC's members' selection and appointment process

According to the AIHRC's letter of 19 August 2008, the members of the Institution are appointed by the President of Afghanistan. The appointment of the Institution's members currently office was undertaken by the President in consultation with a group appointed by the President. According to the AIHRC, this group consisted of one (1) Deputy President; several Cabinet Ministers (the names and number of Cabinet Ministers was not specified); one (1) senior Presidential Advisor; the President's Chief of Staff; the Secretary of the Ministers' Council; and the Executive Director of the President's Office. The AIHRC asserts in its letter that the President considers the merits of individual nominees, their respective competencies, and the principles of pluralism in appointing the Institution's members.

The AIHRC further asserts in the "Few Points" document that its members are drawn from civil society and possess "different and adequate background[s] on human rights and social affairs", and that the Institution's membership is representative of Afghanistan's broader ethno-linguistic diversity.

The "Few Points" document also describes the procedure under which the founding membership of the AIHRC was nominated and constituted, through a consultative process that took into account the perspectives of Afghan NGOs, members of the interim Afghan administration, and representatives from the OHCHR and the European Union. The "Few Points" document notes that the Afghan President is responsible for appointing the members of the Institution (article 7(1)), and also affirms

the Institution's opinion that "it is upon the President to make sure that his/her method for appointment of the AIHRC's commissioners should be fully in compliance with the Paris Principle[s]." This is troubling, given the Sub-Committee's General Observation 2.1 b) that the pluralism of an NHRI can best be achieved "through the appointment procedures of the governing body of the National Institution ...where diverse societal groups suggest or recommend candidates".

In the AIHRC's e-mail communication of 1 October 2008, Dr. Sima Samar, the Institution's Chairperson, clarifies the procedure that is followed in appointing the Commission's members:

[T]he appointment procedure for the AIHRC's commissioners now is that the President assigns a panel consisted [sic] of several cabinet ministers and other key government official, including key figures from the civil society organizations to identify competent nominees, considering the inclusion of nominees representing the divers[e] societal and different ethno-linguistic groups and gender. The Senior Appointment Panel reviews the long list of candidates and after scrutinizing, prepares a shortlist of the most nine competent persons for submission to the President for approval.

The Revised Statement of Compliance submitted by the Institution also provides critical supplementary information relating to the appointment process for the Institution's members. According to section 3.1.1 of the Revised Statement of Compliance, the Afghanistan Compact concluded between the Government of Afghanistan, the UN and donor countries in 2006 mandates the creation of a Senior Appointment Panel. According to the Revised Statement, two members of the five-member panel were appointed by the Afghan President, one from the UN Assistance Mission in Afghanistan (UNAMA), one from an Afghan civil society organization, and one chosen by the other four panel members.

According to the Revised Statement of Compliance, the purpose of this panel is to scrutinize the backgrounds of applicants for senior positions with the Afghan police, central and regional government, and the AIHRC itself. To achieve this goal, the Panel will create a database of information on senior Afghan government and agency officials, and will "look into competent candidates, considering the principal [sic] of pluralism and gender, for the post of AIHRC's Commissioners to be proposed to the President for approval." Despite this, it is not clear from the information submitted by the AIHRC whether the Senior Appointment Panel is currently active in recruiting candidates for placement at senior levels of government, and what their input into the process of recruiting members to the AIHRC is, if any.

In the AIHRC's e-mail communication of 1 October 2008, Dr. Sima Samar, the Chairperson of the AIHRC, asserts that the Senior Appointment Panel is presently operating, and that it is "equipped with term of reference, secretarial service, office space and procedure of reviewing the personal history of proposed nominees for senior positions":

The panel now, according to its term[s] of reference, [is] reviewing the nominees for positions of provincial and district governors, provincial chief police commanders, deputy ministers, members of the Election Commission, Administration Reform Commission and the AIHRC as well as presidents of the Independent Departments, such as ... the Central Statistic Organization and Local Governance Department. For each position, several nominees are introduced by the government [and] the Panel, after reviewing their personal history, only recommends ... one or two nominees for final Presidential approval. Nowadays all of the nominees for the abovementioned positions have to be reviewed by the Panel.