



# The Islamic Republic of Afghanistan

## Submission to the UN Universal Periodic Review 18<sup>th</sup> Session of the UPR Working Group

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Joint-Submission by CIVICUS: World Alliance for Citizen  
Participation, NGO in General Consultative Status with ECOSOC

and

**Afghan NGOs Coordination Bureau (ANCB)**

**CIVICUS: World Alliance for Citizen Participation**

Mr Tor Hodenfield, Email [tor.hodenfield@civicus.org](mailto:tor.hodenfield@civicus.org)

Tel +27 11 833 5959, Fax +27 11 8337979

Ms Renate Bloem, Email [renate.bloem@gmail.com](mailto:renate.bloem@gmail.com)

Web [www.civicus.org](http://www.civicus.org)

**Afghan NGOs Coordination Bureau (ANCB)**

Mr Sadaqat Ali, Email [info@ancb.org](mailto:info@ancb.org)

Tel +93 799 333 621, Fax +93 20 220 2656

Web [www.ancb.org](http://www.ancb.org)

## **1. (A) Introduction**

- 1.1** CIVICUS: World Alliance for Citizen Participation is an international movement with members in more than 100 countries worldwide. Established in 1993, CIVICUS nurtures the foundation, growth and protection of citizen action throughout the world, especially in areas where participatory democracy and citizen's freedom of association are threatened.
- 1.2** The Afghan NGOs Coordination Bureau (ANCB), founded in 1991, aims to coordinate the activities of Afghan NGOs with the Afghan government, the UN, international organizations, and donor agencies. ANCB strives to strengthen democracy and enhance the capacity of its member organizations through workshops, seminars and partnerships.
- 1.3** In this document, CIVICUS and ANCB outline urgent concerns related to the environment in which civil society activists and human rights defenders operate in Afghanistan, and discuss threats faced in the exercise of the freedoms of expression, association and assembly.
- 1.4** CIVICUS and ANCB are deeply alarmed by legislative and extra-legal measures taken by the Afghan government that curtail the freedom of association, peaceful assembly and potential for civil society activism.
- 1.5** CIVICUS and ANCB are also greatly concerned by undue and arbitrary restrictions on the freedom of expression, independence of the media and access to information.
  - In section B, CIVICUS and ANCB highlight concerns related to the freedom of association and restrictions on civil society activities.
  - In section C, CIVICUS and ANCB express concerns involving harassment and arbitrary detention of human rights defenders.
  - In section D, CIVICUS and ANCB highlight concerns relating to the freedom of expression, independence of the media and restrictions on access to information.
  - In section E, CIVICUS and ANCB highlight concerns regarding the freedom of assembly.
  - In section F, CIVICUS and the ANCB make a number of recommendations to address these concerns.

## **2. (B) Restrictions on freedom of association and impediments to civil society activities**

- 2.1** Article 35 of the Constitution of Afghanistan guarantees the right to freedom of association. Article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Afghanistan is a state party, also guarantees freedom of association. However, in practice a number policy and legal restrictions exist subverting the free exercise of the right to freedom of association. Through a combination of restrictive legislation and unwarranted closures of civil society

groups, the government wields a powerful tool to censure groups critical of official government policy.

- 2.2** Under the 2002 Law on Social Organizations, "Social Organizations" defined as "the voluntary unions of natural or legal persons, organized for ensuring social, cultural, educational, legal, artistic and vocational objectives" are subjected to a number of unwarranted and intrusive requirements with the potential to undermine the independence of civil society groups. According to the law, a Social Organization is required to secure legal registration with the Ministry of Justice and must further ensure that it has at least 10 founding members at the time of establishment. In addition, under the same law, foreign citizens are prohibited from being founders of Social Organizations. Finally, while rarely enforced, according to a 2005 Cabinet of Ministers' decision, Social Organizations are forbidden from receiving funding from foreign governments or international organizations.
- 2.3** Moreover, under the 2005 Law on Non-Governmental Organizations (NGO Law), the government is endowed with outsized discretion to dissolve organizations. Of principal concern is Article 35(1) of the NGO Law which stipulates that the Ministry of Finance is permitted to disband organizations which fail to provide the Ministry with its annual report within one year after the end of the fiscal year. The Ministry of Finance continues to invoke this law's provision at an alarming rate. Most recently, on 18 January 2012, at least 600 Afghan and 195 foreign civil society groups were closed for failing to provide the Ministry of Finance with biannual reports detailing their activities and budget.
- 2.4** In 2012, the Ministry of Justice put forward wide-ranging amendments to the Law on Non-Governmental Organizations and the Law on Social Organizations, which if adopted, would further curtail the independence of civil society groups in the country. In addition, in 2012, the Ministry of Finance put forward a number of amendments to the Law on Non-Governmental Organizations, which if adopted, would create severe challenges to the formation, activities and funding of NGOs.
- 2.5** The Afghanistan Independent Human Rights Commission (AIHRC), regarded as one of Afghanistan's most effective and independent government institutions, has been a steadfast ally and protector of civil society since its inception in 2002. However, President Hamid Karzai has taken a number of worrying measures to enfeeble AIHRC. In December 2011, President Karzai failed to renew the mandate of three of the Commission's eight commissioners, including Ahmad Nader Nadery, Ahmad Fahim Hakim and Mawlawi Gholam Mohammad Gharib. The three Commissions were outspoken critics of the 2009 presidential elections, which they claimed were marred by electoral fraud. In addition Ahmad Nader Nadery was noted to be involved in the preparation of a still unreleased AIHRC report documenting war crimes in Afghanistan from 1978 to 2001. To date, the three Commission seats remain unfilled.

### **3. (C) Concerns involving harassment, intimidation and attacks against human rights defenders (HRDs) and civil society activists**

- 3.1** The ICCPR guarantees the freedoms of expression, association and assembly. In addition, Article 12 of the UN Declaration on Human Rights Defenders mandates states to take necessary measures to ensure protection of human rights defenders. Nonetheless, intimidation harassment, physical attacks and murder against human rights defenders and NGO staff continued unabated. Impunity for armed groups who commit attacks against HRDs in an apparent attempt to undermine their legitimate activities remains pervasive. In 2012, according to the Afghanistan NGO Safety Office, incidents of physical attacks, including killing, injury and abduction perpetrated by armed groups and pro-government security against international and national NGO staff and human rights defenders remained relatively constant, at 111 incidents reported.
- 3.2** In 2012, a number of senior civil servants working for the Afghan Ministry of Women's Affairs were murdered in an apparent attempt to discourage the government's on-going campaign to address the systemic deficits in the protection and promotion of women's rights in the country. On 10 December 2012, Najia Sediqi, the acting head of women's affairs in Laghman Province, the local division of the Afghan Ministry of Women's Affairs responsible for promoting the advancement of women's rights Afghanistan, was shot and killed by two assailants while travelling to work in Mehtar Lam, the provincial capital. Prior to her murder, Ms. Sediqi had had been threatened for providing protection to a young girl who was at serious risk of reprisals for marrying an individual other than one prescribed by her family. Furthermore, on 13 July 2012, Ms. Sediqi's predecessor as the head of women's affairs in Laghman Province, Hanifa Safi, was killed by an improvised bomb placed under her car while driving through Mehtar Lam. While both attacks have been attributed to the Taliban, neither case has been resolved due to insufficient police investigations.
- 3.3** In a clear violation of international humanitarian law, medical personnel and humanitarian aid workers working for a number of international and national groups continue to be subjected to targeted attacks resulting in a drastic decline of humanitarian space. On 16 April 2013, in the Khanaqah district of Jawzjan province in northern Afghanistan, two members of the Afghan Red Crescent Society (ARCS), Mohammad Najibullah and Sayed Hazrat were shot and killed while travelling in a clearly marked ARCS vehicle. Moreover, on 6 August 2010, 10 members of International Assistance Mission (IAM) medical team were ambushed and killed in the north-eastern province of Badakshan while returning from a two-week mission providing eye treatment in Nuristan Province. The Taliban has claimed responsibility for the murders of the IAM aid workers which included six Americans, two Afghan men, a German woman, and a British woman.
- 3.4** Female aid workers also continue to be exposed to heightened risk of attacks while operating outside of the capital, Kabul. On 1 December 2012, an Afghan high-school student and polio eradication campaign volunteer, known as Anisa, was shot and murdered outside her home in Kapisa province, in eastern Afghanistan. Anisa's murder marked the second time in two days in which an

attempt had been made on her life. In addition in January 2013, in Maidan Wardak province, Taliban militants led by Mullah Rohani, a local Taliban leader, reportedly kidnapped, tortured and murdered a female aid worker. The unidentified victim reportedly worked for an NGO which provides social services to local Maidan Wardak residents.

#### **4. (D) Concerns regarding freedom of expression and access to information**

- 4.1** Article 34 of the Constitution of Afghanistan guarantees the freedom of expression and press. Article 19 of the ICCPR also guarantees the freedom of expression and the right to hold opinions without interference. However, in contrast to these rights, journalists and reporters continue to come under attack and face judicial harassment for reporting on sensitive topics. Furthermore, the government has introduced a number of policies limiting independent media.
- 4.2** While the environment for journalists has improved significantly since 2008, journalists in Afghanistan still operate under hostile conditions. According to an Afghan national media watchdog group, in 2012 there were 69 attacks on journalists committed by security forces, armed groups and private individuals. With 30 cases of physical attacks and threats committed against journalists from January to May 2013, rates of attacks against journalists are not expected to decrease in 2013.
- 4.3** Taliban militia continue to target both Afghan and international journalists who attempt to independently report on Taliban activities or espouse purportedly anti-Islamic values. On 22 April 2013, Ali Asghar Yaghobi, Director of the Department of Information at the Herat Directorate of Information and Culture and presenter of Mojhda radio, was attacked in Herat city, Herat province by Taliban forces in response to allegedly derogatory statements made Mr. Yabhobi on Mojhda radio about Islam and Taliban activities. In addition, on 12 November 2012, French photojournalist Pierre Borghi was kidnapped in Kabul by suspected members of the Taliban. After being held in captivity for 131 days, Mr Burghi escaped in April 2012.
- 4.4** Government officials have increasingly resorted to invoking policy and extra-legal measures to suppress independent reporting on government malfeasance. On 21 April 2012 Nasto Naderi, journalist and programme host for local TV station Noorin TV, was detained directly following the broadcast of material critical of the mayor of Kabul. Mr Naderi, who was released on bail 8 May 2012, was subjected to spurious charges including, making accusations against high-profile government officials without proof and drinking alcohol.
- 4.5** Furthermore, in an apparent attempt to limit access of information before presidential elections scheduled for April 2014, President Hamid Karzai issued a declaration calling on the Ministry of Information to suspend all “broadcasting programmes which are vulgar, obscene and un-Islamic and are counter to social morality.” The decision, initially put forward by Afghanistan’s Ulema Council, a religious advisory body comprised of the country’s leading clerics, significantly undermines Afghanistan’s burgeoning independent media sector

## **5 (E) Concerns regarding freedom of assembly**

- 5.1** Article 36 of the Constitution of Afghanistan guarantees the right to freedom of assembly. In addition, Article 21 of the ICCPR also protects the right to freedom of peaceful assembly. Nonetheless, severe limitations exist to the realisation of this right. On several occasions, police have used excessive and deadly force to contain demonstrations. In addition, the government has imposed unlawful sanctions on opposition parties for organizing peaceful demonstrations.
- 5.2** Police and other security personnel have occasionally used excessive force to disperse demonstrators. From 31 May to 2 April 2012, protestors held demonstrations across the country denouncing reports that Terry Jones, a nondenominational evangelical pastor in Gainesville, Florida, USA, had ordered the burning of a Quran on 20 March 2012. At least 24 persons were killed and hundreds other injured during the protests, including the murder of nine demonstrators in Kandahar Province, in southern Afghanistan on 2 April 2012. Following the demonstrations, Kandahar's provincial governor expressed concern over the excessive use of force among police forces and later announced that four policemen had been arrested for indiscriminately firing on the protestors.
- 5.3** On 2 May 2013, hundreds of protestors participated in peaceful demonstrations in Kabul's Cinema Pamir neighbourhood calling for accountability for war crimes committed by regional Afghan warlords. The protests, organized by the Solidarity Party of Afghanistan, a legally registered opposition political party, were sanctioned and officially permitted by local authorities. However, state security forces prematurely halted the protests and arrested at least nine people, six of whom reported being subjected to abuse and severe physical attacks while in custody for three days. In a further attempt to restrict the Solidarity Party's right to assemble, the Meshrano Jirga, the Upper House of the Afghan Parliament took unwarranted action by suspending the Solidarity Party on May 29.

## **6 (F) Recommendations to the Government of Afghanistan**

CIVICUS and the Afghan NGOs Coordination Bureau call on the Government of Afghanistan to create an enabling environment for civil society such that it can operate in accordance with the rights enshrined in the ICCPR and the UN Declaration on Human Rights Defenders. At a minimum, the following conditions should be ensured: freedom of association, freedom of expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state's duty to protect. In light of this, the following specific recommendations are made.

### **6.1 Regarding restrictions on the freedom of association**

- The Law on Social Organizations and the Law on Non-Governmental

Organizations should be suitably amended to ensure that restrictions on the freedom of association are removed;

- Registration procedures for public associations should be simplified, particularly the requirement of mandatory registration and the need for 10 Afghan Citizens to establish a Social Organisation;
- Prohibitions on foreign funding found in the Law on Social Organizations should be removed;
- Provisions found in the Law on Non-Governmental Organizations permitting the Ministry of Finance to forcibly dissolve organizations which fail to provide the Ministry with its annual report within one year after the end of the fiscal year should be amended. Additionally, efforts should be made to further judicial oversight by an independent and impartial court of any executive decision to dissolve NGOs;
- Proposed restrictive amendments to the Law on Non-Governmental Organizations and the Law on Social Organizations should be dropped; and
- All appointments to the Afghan Independent Human Rights Commission should be made in a fair and nonpartisan manner, with the aim of maintaining an independent and effective agency to oversee government functioning and ensuring better protection of civil society.

## **6.2 Regarding attacks and harassment of civil society activists and journalists**

- Attacks on and threats to journalists and human rights defenders should be publicly condemned by senior government officials to ensure protection by law enforcement agencies;
- Impartial and effective investigations should be conducted into all cases of attack, harassment and intimidation of civil society activists and journalists, and perpetrators brought to justice; and
- Police and security officials as well as other armed groups implicated in the abuse of journalists should be held accountable under the law.

## **6.3 Regarding restrictions to freedom of expression and access to information and intimidation, harassment and attacks on journalists**

- All journalists detained for exercising their freedom of opinion and expression should be unconditionally and immediately released. Their sentences should be reviewed to prevent further harassment;
- Attacks on and threats to journalists should be publicly condemned by senior government officials to ensure protection by law enforcement agencies; and
- The government directive calling on the Ministry of Information to exercise

excessive censorship over broadcasting programmes should be suspended.

#### **6.4 Regarding restrictions on freedom of assembly**

- Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the Right to Peaceful Assembly and Association in his annual report (2012) which call for simple notification rather than explicit permission to assemble;
- Recourse for judicial review and effective remedy should be provided including compensation in cases of unlawful denial of the right to freedom of assembly by state authorities;
- Security forces in charge of crowd control should be equipped with non-lethal weapons and provided training across the board on humane means of crowd control as well as on the UN Basic Principles on the Use of Force and Firearms;
- Every case of injury caused to protestors by security forces should be subjected to mandatory and transparent investigation by an independent commission; and
- The use of live ammunition on peaceful protesters should be immediately stopped.

#### **6.5 Regarding Access to UN Special Procedures and Mandate Holders**

- A standing invitation should be extended to the UN Special Procedures, particularly to the Special Rapporteur on Human Rights Defenders, Special Rapporteur on Freedom of Expression, the Special Rapporteur on Freedom of Peaceful Assembly and Association and the Special Rapporteur on Independence of Lawyers and Judges.