

**International Coordinating Committee Sub-Committee on  
Accreditation (ICC-SCA) – Afghanistan Independent Human  
Rights Commission (AIHRC)  
Stakeholders' Submission**

Submission by:

**The Asian NGO Network on National Human Rights Institutions  
(ANNI)\***

**Civil Society and Human Rights Network, Afghanistan (CSHRN)\*\***

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*\* The Asian NGOs Network on National Human Rights Institutions (ANNI) was established in December 2006. It is a network of Asian NGOs and human rights defenders working on issues relating to National Human Rights Institutions (NHRIs). ANNI is composed of members that are national organizations from all over Asia. ANNI currently has 30 member organizations from 17 countries or territories. The work of the ANNI members focus on strengthening the work and functioning of Asian NHRIs to better promote and protect human rights as well as to advocate for the improved compliance of Asian NHRIs with international standards, including the Paris Principles and General Observations of the Sub-Committee on Accreditation (SCA) of the International Coordinating Committee (ICC).*

*The Asian Forum for Human Rights and Development (FORUM-ASIA) is the Secretariat of ANNI. FORUM-ASIA has Consultative Status with the ECOSOC (UN Economic and Social Council) since 2004.*

*\*\* The CSHRN is organized as a nationwide network of 124 civil society organizations representing broad segments of Afghan society in Kabul and in four provinces. The members work in a variety of areas such as women's rights/issues, transitional justice, freedom of expression and access to information (radio- and TV production, printed media). All are bound together by common commitment to the Universal Declaration of Human Rights, the common determination to promote human rights and to consistently apply rights-based approaches to what they do.*

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## Introduction

This stakeholder information is jointly submitted by the Asian NGO Network on NHRIs (ANNI) and the Civil Society and Human Rights Network (CSHRN) for the accreditation review of the Afghanistan Independent Human Rights Commission.<sup>1</sup> This submission focuses mainly on issues that have threatened to undermine the effective work and functioning of the AIHRC, namely the problematic appointments made in 2013 as well as the inadequate financial resourcing by the State.

In addition, this submission also draws attention to the lack of protection by the government given to members of the AIHRC in the discharge of its duties as well as fulfillment of its mandate to promote and protect human rights. Specifically, the AIHRC has been unable to release a fact-finding report that maps and analyzes the conflict period spanning over 30 years. The lack of protection for staff members of the AIHRC afforded by the government as well as the alleged political compromise between the administration with human rights violators has prevented the publication of the AIHRC's most significant and meaningful contribution to Afghanistan's democratic transition process.

ANNI and the CSHRN acknowledge the tremendous achievements of the AIHRC in an exceptionally challenging political and security environment where governance and domestic accountability/protection institutions are weak while perpetrators of past violations are held unaccountable as a culture of impunity persists. Despite these challenges, the institutional growth of the AIHRC has seen its mandate, visibility and out-reach expand significantly in the country and evolved to be an important and credible institution to its stakeholders, particularly human rights defenders, ordinary citizens and victims of rights violations.

With the anticipated withdrawal of much of the international community's support from Afghanistan in 2014, the country will continue to face many serious challenges. This submission raises some issues that the AIHRC and the government of Afghanistan in particular must address in order not to undermine the gains made in human rights in the past 12 years.

## Independence

The Afghanistan Independent Human Rights Commission (AIHRC) is a Constitutional body established under Article 58 of the Afghan Constitution in 2002. It was established pursuant to the Bonn Agreement, which sets out the framework for transitional governance and attendant institutional arrangements in Afghanistan following protracted armed conflict.

The AIHRC acquired a statutory basis in 2005 when the "Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission",

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<sup>1</sup> ANNI is a network of human rights organizations and defenders engaged with national human rights institutions (NHRIs) in Asia advocating for the effective work and functioning of these bodies for the promotion and protection of human rights.

enacted by the President, was adopted. The law, however, is yet to be approved by the current Afghan parliament.

The ICC-SCA had recommended in the November 2013 report “a clear, transparent and participatory selection process that promotes merit-based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution”. Membership selection is supposed to be conducted through an open and transparent process with clear and established criteria that takes into account the perspectives and participation of civil society. Despite nominations from civil society to the President, none were selected. At present, there are no measures to strengthen the selection process in compliance with the Paris Principles and efforts should be made to ensure such guarantees in relevant legislation, regulations or binding administrative guidelines.

There are nine Commissioners in the AIHRC appointed by the President for service terms of five years. To ensure the independence of the AIHRC, the President has no authority to remove the Commissioners once they are appointed.

However, in December 2011, the AIHRC was left in limbo following the expiration of five-year terms of office of all nine Commissioners. Only four Commissioners, which including the Chairperson, were given new terms. The President decided not to renew the tenure of three members, removed one without reasonable cause while the fifth position was left vacant due to an accident.

It was allegedly an act of retaliation following the role of some members in completing a landmark conflict mapping report which documented human rights violations in Afghanistan between 1978 and 2001. On 15 June 2013, after 19 months of overdue appointments, the period of uncertainty came to an end with appointment of five new commissioners (most of whom displayed poor human rights records) due to pressure by the international community ahead of a meeting with external donors for permitting serious and grave lapses in the AIHRC.

The founding law of the AIHRC (Article 11) requires that commissioners have a good reputation, demonstrate independence, enjoy popular trust and have a commitment to human rights. However, it does not provide any details on the process for seeking candidates and their subsequent assessment, selection and appointment. Members, including the Chairperson, are therefore appointed largely at the discretion of the President of the Republic. The shortcomings of this selection process were acutely felt in the recent appointments.

Only one of the five new commissioners has a background in human rights while most controversially, one is a former Taleb who served in the previous regime. Among the new appointees also is a former member of notorious Jamiat-e Islami Party. The party is allegedly one of the main perpetrators of gross and systematic human rights violations during the war. Despite resignation from the party

membership, she neither has any prior and direct experience of human rights work nor proven herself to be sufficiently independent from party affiliation and bias.

The newly appointed Commissioners did try to create problem in the beginning which affected the performance of the AIHRC. The new appointees tried to create alliances within the AIHRC while also openly criticizing the work of the AIHRC. One even went as far as to call for the resignation of the previous Commissioners. The unilateral and unconsultative appointment process clearly created divisions and disrupted the daily operations of the AIHRC.

Furthermore, one of the aforementioned newly-appointed Commissioners, Abdul Rahman Hotak, had previously openly denounce Law on Violence Against Women and had served in the Taliban government that was culpable for consideration human rights violations against girls and women (a hallmark of the former regime).

Such problematic positions adopted by a member of the AIHRC is a cause for worry as it closely mirrors the Afghan government's rejection of recommendations to protect women at its recent Universal Periodic Review in June 2013, such as the prosecution of 'moral crimes'.

This appointment process of 2013 is in serious violation of the requirements set out in the Paris Principles. The ICC-SCA had deferred the accreditation review of AIHRC in 2013 by a year in order for the government to rectify the problem. It had also prompted outgoing United Nations High Commissioner for Human Rights Madam Navi Pillay to speak out against it twice in 2013.

ANNI and CSHRN echo her call to the President to rectify the problem that would severely undermine the achievements of the AIHRC and the human rights gains in the country. If the AIHRC downgraded, Afghanistan stands to forfeit funding or face penalties pertaining to bi/multi-lateral donorship agreements under the Tokyo Mutual Accountability Framework for failure to meet or maintain human rights benchmarks.

To date, outgoing President Karzai had not taken steps to address the problem or reverse the appointments. Presidential candidates have glaringly also omitted any commitment to human rights promotion and protection, including the strengthening of the AIHRC, in their campaign platforms or elections manifesto.

#### Inability to Fulfill Mandate

**Monitoring Power of the AIHRC to monitor detention centers:** The AIHRC has the legal powers to initiate investigation to any allegation of human rights violation of citizens. The AIHRC also has the right to full cooperation of all state institutions and authorities. However, such cooperation is not often extended to the AIHRC in practice. For instance, despite provisions in the enabling law that allow the AIHRC free and unannounced access to detention, AIHRC monitoring teams are refused entry to the detention centers without prior notice. The work

of the AIHRC in detention facilities is further impeded as they are not allowed to take photographic evidence and documentation. This is thought to be in response to widespread allegations of torture in detention cells run by Afghan National Security Forces (ANSF), in particular the detention centers controlled by National Directorate of Security (NDS).

**The "Conflict Mapping in Afghanistan Since 1978" report:** The AIHRC's conflict mapping report documents gross human rights violations committed in Afghanistan since 1978 to the transition to civilian administration under President Karzai. The 800+ pages report thoroughly details the severe human rights abuses committed during the different phases of the Afghan civil wars over the past three decades from documentary evidence as well as testimonies from victims.

The AIHRC completed the report in 2012 as part of a national plan to develop a mechanism and strategy for transitional justice, including mapping of past abuses and establishing a set of judicial and non-judicial measures implemented to redress the legacy of massive human rights abuse. It also involved a consultation carried out by the AIHRC in 2004 based on in-depth interviews and focus groups, addressing issues of justice and accountability for past abuses.

To date, the Afghan government has blocked its publication and release. Instead, the Afghan parliament passed the National Reconciliation, General Amnesty, and National Stability Law in (insert). The law provides immunity and pardons former warlords who were involved in human rights violations, war crimes and crimes against humanity.

Many believe that a major reason behind not publicizing the report is that the AIHRC has not received a positive signal or assurances from the government of Afghanistan from retaliation or reprisals against the AIHRC and team of researchers. At present, former warlords still wield considerable power with a sizeable number holding office within the government in high-ranking positions. It is also alleged the report implicates many high-level government officials of gross human rights violations and abuses during the conflict. Clearly, there is a lack of protection mechanism against intimidation, stigmatization, harassment or attacks against members or staff of the AIHRC.

The former Special Rapporteur on the situation of Human Rights Defenders, Madam Margaret Sekaggya, stated that national institutions which operate in compliance with the Paris Principles relating to the Status of National Institutions, and their members and staff, can be considered as human rights defenders, as they strive to promote and protect human rights. The widespread series of reprisals as well as exposure to attacks and threats is a recurring pattern against HRDs, including the AIHRC, in Afghanistan.

**Effectiveness and Resourcing the AIHRC:**The AIHRC is an important institution generally doing a very commendable job in the highly difficult circumstances. The AIHRC has taken on a wide variety of roles that traditionally

have been the work of government. In addition to playing a watchdog and monitoring role, it has often had to be the main delivery mechanism.

The AIHRC's budget is almost entirely funded by external donors despite the Constitutional obligation of the State to provide financial adequate support to the AIHRC. The AIHRC has been constantly seeking for budget allocation to be institutionalized by the State but their demands have been denied. Approximately 99% of the AIHRC's budget is sourced from external donors. The high dependency on external funding also has implications on the sustainability of long-term projects given its involvement in broad areas of work.

Only during 2012 and 2013 the Afghan government provided half-million and 1million US Dollars respectively to the AIHRC while the annual budget of the AIHRC is over 10 million US Dollars. The overall 1.5 million US Dollars government's commitment over a period of two years was only allocated to operational costs and not the programmatic activities of the AIHRC.

Inadequate State funding of the AIHRC continues to pose a significant problems for its operations. This has been repeatedly highlighted by various bodies/states in different fora since 2005 when the AIHRC was gained membership into the Asia Pacific Forum of NHRIs. At the outset, the government was afforded considerably more latitude in its contribution and resourcing of the AIHRC because of the circumstances surrounding its transition. However, the AIHRC today has not received substantial increases in its allocation of funds to ensure its long-term sustainability. To date, there has been no attempt to institutionalize core/permanent funding and regular budgeting of the AIHRC.

Recommendations:

To the government of Afghanistan:

1. Revisit the appointment of the new Commissioners to the AIHRC. Ensure that the selection, appointment, and removal procedures of the members of the NHRI should not be handled exclusively by the executive branch of government. The method of selection and appointment of the members of the NHRI should be fair and transparent, so as to afford all necessary guarantees of independence.
2. Ensure that members of the AIHRC are immune from criminal or civil legal action for all tasks undertaken by them in the proper exercise of their official functions. Establish effective protection measures or programmes to guarantee the security of members and staff of national institutions while discharging their official functions in good faith.
3. Commit to actions that strengthen the capacity of the AIHRC, including providing adequate funding and reviewing the Law on the Structure, Duties and Mandate of the AIHRC to ensure its alignment with Paris Principles

4. Ensure that the AIHRC is accountable to Parliament and to the public, including through the discussion of annual reports, which should be widely disseminated and made easily available to the public. Appropriate follow-up mechanisms to recommendations issued by the AIHRC should be established.
5. Ensure adequate funding of the AIHRC and that the budget be approved and decided by parliament and comes directly from the State budget. Explicit provision should be made in the NHRC Bill to allow the AIHRC the level of control necessary to ensure its ability to operate implement its programmes independently and effectively.
6. Ensure that the AIHRC has adequate powers of investigation, including authorization to visit detention centers, to allow them to conduct prompt and impartial investigations into all allegations of violations and provide remedy to victims.

To the AIHRC:

7. The AIHRC should convene a working group to define a comprehensive strategy for release of the Conflict Mapping Report, identifying key conditions that must be met to ensure its release.
8. Establish appropriate follow-up mechanisms to recommendations issued by the AIHRC. Annual and thematic reports of the AIHRC must be presented and discussed in Parliament and ensure that adequate follow-up be entrusted to the corresponding parliamentary committees/task forces to mainstream their recommendations and monitor their implementation.

## ANNEX 1: Summary of List of Recommendations

### Afghanistan: Afghanistan Independent Human Rights Commission (AIHRC)

November 2008: The SCA confirmed the **status A** accreditation of the Commission.

November 2013: The SCA recommended that consideration of the re-accreditation of the AIHRC be deferred to its second session of 2014.

	<b>Recommendation</b>
<p><b>General</b></p> <p>* refer to ICC-SCA General Observation 2.6 on ‘NHRIs during the situation of a coup d’état or a state of emergency’</p>	<p>To continue to maintain its vigilance in monitoring, promoting and protecting human rights in Afghanistan (2008 &amp; 2013)</p>
<p><b>Selection and appointment</b></p> <p>* refer to Paris Principle B.1 and to ICC-SCA General Observation 1.8 on ‘Selection and appointment of the decision-making body of National Human Rights Institutions’</p>	<p>A clear, transparent and participatory selection process that promotes merit-based selection, ensures pluralism and promotes the independence of, and public confidence in, the senior leadership of a national human rights institution (2008 &amp; 2013)</p>
	<p>Such a process would include requirements to (2013):</p> <ul style="list-style-type: none"> <li>- Publicize vacancies broadly;</li> <li>- Maximize the number of potential candidates from a wide range of societal groups;</li> <li>- Promote broad consultation and/or participation in the application, screening, selection and appointment process; and</li> <li>- Assess applicants on the basis of pre-determined, objective and publicly available criteria;</li> <li>- Select members to serve in their own individual capacity rather than on behalf of the organization they represent.</li> </ul>
	<p>The selection process to be formalised in relevant laws, regulations or binding administrative guidelines in order to ensure its application in practice (2013)</p>



	<p>To engage with the President and government to address the concerns outlined above and to ensure that the process is instituted in relevant laws, regulations or binding administrative guidelines (2013)</p>
<p><b>Staffing</b></p> <p>* refer to Paris Principle B.2 and to ICC-SCA General Observation 2.4 on ‘Recruitment and retention of National Human Rights Institution staff’</p>	<p>To ensure that the AIHRC’s staff is broadly representative of the society in which it operates, and in particular to increase the level of representation of women within its staff (2013)</p>
<p><b>Adequate funding</b></p> <p>* refer to Paris Principle B.2 and to ICC-SCA General Observation 1.10 on ‘Adequate funding of National Human Rights Institution’</p>	<p>To be adequately funded in order to function effectively and independently according to the provision which include (2008 &amp; 2013):</p> <ul style="list-style-type: none"> <li>- the allocation of funds for premises which are accessible to the wider community, including for persons with disabilities. In certain circumstances, in order to promote independence and accessibility, this may require that offices are not co-located with other government agencies. Where possible, accessibility should be further enhanced by establishing a permanent regional presence;</li> <li>- salaries and benefits awarded to its staff comparable to those of civil servants performing similar tasks in other independent Institutions of the State;</li> <li>- remuneration of members of its decision-making body (where appropriate);</li> <li>- the establishment of well-functioning communications systems including telephone and internet;</li> <li>- the allocation of a sufficient amount of resources for mandated activities. Where the National Institution has been designated with additional responsibilities by the State, additional financial resources should be provided to enable it to assume the responsibilities of discharging these functions</li> </ul> <p>To comply with appropriate domestic regulations of financial management and accountability, including independent annual</p>

	auditing and the public release of financial reports (2013)
	Not to include funding from external sources, such as from international development partners to compose the core funding of the NHRI, as this is the responsibility of the State (2013)
	To advocate with the government for sufficient and sustainable State funding and the application of accountability mechanisms that facilitate the independent operation of the commission (2013)
	To seek advice and assistance from the OHCHR and the Asia Pacific Forum of NHRIs (2013)