

The Commitment of the Afghan State to International Human Rights

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Preamble the Afghan Constitution:

“We the people of Afghanistan (...) Observing the United Nations Charter as well as the Universal Declaration of Human Rights.”

1. Introduction

Today, human rights are regarded to be one of the main motives for legal reforms in modern states. Already during the Cold War many states conducted legal reforms based on the Universal Declaration of Human Rights (UDHR) and the different UN human rights conventions. These reforms mainly focused on civil and political rights. However, economic, social, and cultural rights also constitute important aspects of constitutional reforms. Right after the Cold War, the Balkan region of Europe became an epicenter of regional conflicts and violence. During this period, in 1992–1995, the world witnessed some of the worst mass atrocities and violations of human rights and humanitarian law since the Second World War. In reaction to these events, many newly established democracies, especially in Eastern Europe, carried out legal reforms based on human rights values in a stable and coordinated manner. The international community supported these young democracies, both politically and economically, to conduct their legal reforms.

During the Cold War, Afghanistan was an arena of conflict and war for the superpowers, i.e. the USA and the Soviet Union. After the Cold War, they turned their backs on Afghanistan. The country, which was in need and severely suffered from the consequences of the Cold War, became a victim of civil war and experienced high records of human rights violations. In 1996 the Taliban took over control and ruled the country. During this period Afghanistan witnessed some of the worst scenarios of human rights violations that ever occurred worldwide. Having failed to establish a centralized state under the rule of law, Afghanistan turned into a safe haven for international terrorists, including Osama Bin Laden. When the 9/11 attacks were conducted, the country returned into the focus of international attraction. A western alliance, led by the USA, interfered in Afghanistan based on UN Security Council Resolution 1986. The war against international terrorists had begun. In December 2001, the Taliban Regime was removed with the support of international military forces.

The international community initiated the Bonn negotiations amongst the Afghan main political fractions. The Bonn Agreement was signed in December 2001, according to which a new transitional government had to be organized by the alliance of political parties and movements. The international community played a key role in supporting the construction of a new state. The Bonn Agreement also provided assistance to the interim government, which was headed by President Hamid Karzai. Two years later, the government appointed a Constitutional Committee in order to draft a new Constitution.

In December 2003, the Constitutional Loya Jirga¹ adopted the first democratic and human rights respecting constitution of Afghanistan. The second chapter of this Constitution guarantees fundamental rights and duties of Citizens². The Preamble of the Constitution and its Art. 7 provide that the state shall respect the UN charter and internationally recognized human rights values.³ Moreover, the Constitution demands that the Afghan state has to take care of the organization of organize national human rights institutions that promote, protect and monitor the human rights situation in Afghanistan⁴. Thus, the adoption of the Afghan Constitution played an important role in the promotion and protection of human rights.

This article studies the commitment of the Afghan state to international human rights law and mechanisms after the period of the Taliban collapse. In order to follow up the coherent synergy of the thematic areas, the article focuses on international law and international relations, the position of human rights in international law, and the role of states in the implementation of human rights conventions. Additionally, the article will illustrate some practices used to integrate international human rights law into national legislations. Subsequently, the article will shed light on the human rights situation in Afghanistan, human rights in its domestic legislation, and its cooperation with the international institutions.

2. Four Major Steps of International Law/Human Rights Development

a) The state as a main element of international law and human rights

For the first time in human history, the perception of law was linked to the creation of “power”, which consisted of two main resources, economic and human resources. The notion of power referred to the organizations of economic and human resource, in order to serve society. Hereafter, the meaning of ‘political power’ emerged. Political power intended to generate a systematic relationship between economic and human resources and individuals of society on the other hand. The ancient societies, around

1 A Loya Jirga means grand gathering is a special type of elderly meeting that is mainly organized for choosing a new head of state in case of sudden death, adopting a new constitution, or to settle national or regional issue such as war.

2. Chapter two contains 38 articles that mainly guarantee fundamental human rights of all Afghans.

3. Observing the United Nations Charter as well as the Universal Declaration of Human Rights.

4. Article 58 of Afghanistan Constitution: To monitor respect for human rights in Afghanistan as well as to foster and protect it, the state shall establish the Independent Human Rights Commission of Afghanistan. Every individual shall complain to this Commission about the violation of personal human rights. The Commission shall refer human rights violations of individuals to legal authorities and assist them in defence of their rights. Law shall regulate organization and method of operation of the Commission.

five thousand years ago, created the notion of political power. Political power was created when communities' leaders organized the economic power of individual communities. Subsequently, the economic power was to serve the communities based on rules and regulations. The rules and regulations the economic power was based on, defined also the role of political power and individual citizens of each community. As a result of those definitions the historical states were created. The state was defined by its political-economic power, its citizens and its governance within a clear geography. The earliest forms of the state emerged when it became possible to centralize power in a durable way. Initially states emerged from conquests, followed by a civilian or military bureaucracy imposing sets of ideals and laws upon the newly emerged state and its citizens ⁵. Subsequently, the ancient states created laws and regulations to define the power within a given territory. The law determined the role and responsibilities between state and individuals. Such a determination played an important role in the creation of civil rights of individuals. The creation of a state was the main achievement of humanity in order to promote basic human right values. Some anthropologists call this period of human history, stateless society.⁶ However, the creation of regulation and coordination between individuals and political power explains the creation of states.

b) Initial relationship between states

First, states started to cooperate with each other because of their interest in their economic development. The historical states had organized relationships in order to benefit from each other's resources for economic growth. The economic interests were recognized as a major phenomenon in the political relationship between two states⁷. Consequently, powerful and weak states were identified and the powerful states dominated the regions. The political power of states was widened geographically and the notion of geopolitics was promoted. National armies were created and national interests determined by political science. Hereby, the political science regulated the relationship between states during this period. Meanwhile, international relations among various states were regulated by international law. During this period, the national interest of a state was conducted by national states. National sovereignty was legitimating international

5. Klaus Kästle. "Countries of the World". Nationonline.org. Retrieved 2013-02-20.

6. It is not enough to observe, in a now rather dated anthropological idiom, that hunter gatherers live in 'stateless societies', as though their social lives were somehow lacking or unfinished, waiting to be completed by the evolutionary development of a state apparatus. Rather, the principal of their sociality, as Pierre Clastres has put it, is fundamentally against the state.

7. Bilateralism is the conduct of political, economic, or cultural relations between two sovereign states.

relations.⁸

c) Coordination among states

In order to regulate the international relationships of various states, international and regional organizations were organized. International organizations developed inter-governmental mechanisms and structures. The League of Nations was the first international organization, whose primary goal was to maintain peace and security. Currently, the largest intergovernmental organization is the United Nations (UN), aiming at the promotion of international cooperation in various fields helping to ensure peace and security. The UN Charter promotes the culture of collaboration, monitoring and evaluation of international law and relations. According to the UN principles, international law is recognized as a fundamental principle for the rule of law, to which all UN member states are committed and international relations is the methodology of state relations based on the UN Charter.

d) Human rights as the value of international law

In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR). The Declaration functioned as the philosophy of human rights. The adoption of the UDHR was considered as a value-based revolution for international law and relations. Based on this Declaration, the UN adopted seven human rights conventions concerning civil, political, economic, social, and cultural rights. The conventions are regarded to comprise international human rights standards and to function as a mechanism, following due to which states are committed to promote and implement human rights and therefore to monitor and report on the respective human rights situation. After the Second World War, the world experienced mass violations of human rights. Furthermore, during the Cold War period, the values of human rights were disregarded by ideological superpowers. However, the international community adopted several main conventions and optional protocols. In 1949, the UN adopted four main conventions on international humanitarian rights. Both human rights and humanitarian law have played an important role in the promotion of human rights and legal reforms based on human rights. Today, human rights are one the most prominent issues worldwide. Based on the UDHR and the UN Charter, the international community is asked to cooperate in order to effectively protect and promote human rights around the world.

8. Giorgio Agamben "Blomo Sachar" pages 177, 189.

3. The Role of the State in the Implementation, Monitoring and Reporting of International Human Rights Instruments

To promote, monitor, evaluate and report the human rights status of the international community, the UN has created international monitoring mechanisms. According to the UN principles, there are three major monitoring mechanisms, which are Human Rights Treaty Bodies, Special Procedures and Universal Periodic Review. The treaty based bodies, referred to as committees, consist of professional and independent experts and monitor the implementation of the various human rights treaties. The Treaty Bodies review the periodic state reports and provide recommendations and report to the UN Human Rights Council on the various human rights situations according to the conventions requirements.

The Special Procedures is a mechanism of human rights monitoring that focuses on special human rights themes and special human rights violations from a country-specific perspective. The General Secretary of the UN appoints special reporters, based on the UN Human Rights Council Recommendations. The UN General Secretary further appoints the human rights special reporters chosen amongst well-known human rights activists and specialists. The Special Procedures visit the countries and conduct interviews with human rights defenders/activists, civil society institutions, state institutions as well as human rights victims. All members of the UN are obliged to provide facilities, coordinate meetings, security and cooperation with the UN human rights missions and monitoring delegations. The Special Reporters monitor human rights situations of states in a professional, technical and impartial manner and report to the UN Human Rights Council according to UN human rights instruments, mainly UN conventions and optional protocols. The reports of the Special Reporters provide suggestions and recommendations on how to improve the human rights situation.

The Universal Periodic Review (UPR) is the newest and the third monitoring mechanism. According to the UPR, all UN state members are required to provide a comprehensive periodic report. The UN Human Rights Council reviews the reports. Finally, the UN Human Rights Council members deliver the outcome report providing recommendations to member states on the improvement of the human rights situation in the states under review. The UPR monitoring system strengthens the commitment and political will of state members to adhere to the human rights principles, due to the reason that the high level delegations of each UN member state present the state report to the UN. The reports contain three main elements, which are a preamble that emphasizes the commitment of the state, the human rights status and a conclusion. In the third part the

state responds to recommendations of the UN Human Rights Council.

4. International Law as a Source for the Afghan Constitution

International human rights principles are a value-based source for the Afghan Constitution. Based on the Constitution, the Afghan state is responsible to implement international human rights law into the national legal system. Afghanistan ratified seven international human rights conventions such as the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of Persons with Disabilities (CRPD). Prior to 2001, the Afghan Government ratified five conventions. Only the CEDAW and the CRPD were ratified after the collapse of the Taliban regime. The conventions were signed and ratified during the Cold War period by the Soviet supported government in Afghanistan. Thus, the ratifications had a political character rather than being a sign of Afghanistan's commitment to human rights standards. The majority of these conventions were ratified without precondition. Based on the Constitution, Afghanistan is an Islamic state and Sharia is a source for the Afghan national legislation. Consequently, the legal sources such as the international law, the Sharia law and the international human rights standards do not coordinate with each other in terms of promoting and protecting human rights. The lack of systematic coordination between these legal sources results in an unacceptable behavior towards human rights implementation in Afghanistan. For instance women rights violation, domestic violation, and violations of the rights of children are broad and visible consequences of legal misperception in Afghanistan.

5. Human Rights as Political Agenda for Political Regimes

Recognition of human rights in the Afghan Constitution was a political goal imposed by the international community after the period of the Taliban regime. However, during this process, the Afghan Constitutional Committee did not conduct proper legal analysis and research in this regard. The international experiences demonstrate that research-based analysis can help to identify the gap between theory and practice of legislation. The research can also identify the religious, cultural and traditional differences between international and national law. The international law can be integrated into

the national context in as much as a proper national condition is guaranteed. During the first *Loya Jirga*, so-called Conditional *Loya Jirga*, the Western partners focused on the international human rights principles without supporting the creation of a constitution that also respects the Islamic values, which should have been identified as a value for the new constitution next to international human rights standards being a major source for the Afghan legal system.

a) Lack of Knowledge and Professionalism in International Human Rights Systems

The political regimes of Afghanistan during the past four decades ratified seven international human rights conventions without having made any observations. Despite political manoeuvring of the Afghan state, such a behavior may demonstrate lack of knowledge as well as a lack of capacity in the field of international human rights rules, regulations and standards. During the Cold War the Afghan state, also known as the Democratic Republic of Afghanistan (DRA) was isolated from international human rights systems. Based on the UN Security Council, DRA was under the aggression of the Soviet Union. The interaction of the UN and the international community with DRA was restricted by the UN resolution.⁹

From the perspective of Afghanistan, observations on the conventions were understood as a negative impact on the notion of the conventions. This understanding damaged the constrictiveness of dialogue between Afghanistan and the international community, in particular in the field of international human right law. In reality, to make observations demonstrates the commitment of the UN state members to the goal, content and recommendations of the conventions. Afghanistan, as a traditional and developing society, might have reservations about the UN conventions' membership.

b) Lack of National Dialogue on Conventions' Concepts and Goals

The political regimes in Afghanistan, in the past 35 years, ratified the international human rights conventions without appropriate dialogue between state, civil society, political parties and academic institutions. Lack of dialogue has badly damaged the legitimacy of the decisions made by the Afghan government to sign the human rights conventions. Meanwhile, the international human rights law emphasizes on an organic relationship between state and citizens to promote, protect and implement human rights fundamental principles. The state has the duty to assure civil and political rights provide for economic, social and cultural rights. The citizens on the other hand exercise their

9. The Soviet-Afghan War lasted over nine years from December 1979 to February 1989.

rights within the legal guarantees of the state institutions. The role of civil society, to strengthen the relationship between citizens and state institutions, is essential. According to international human rights guidelines, all UN state members have to organize a constructive dialogue with citizens via civil society institutions to become legitimate members of the UN human rights conventions.

c) Lack of Research on the Conventions' Concept at the National Level

The main element needed for cooperation and translation of international law into national legislation are legal studies on the state, its needs, and capacities and on the political context. Also the consequences of signing any international convention need to be examined. The Afghan state has not conducted any research in this regard. Usually states applying for membership to international conventions conduct such studies. Such coordination with the international community is missing with regard to the Afghan membership of the international human rights conventions. Thus, the political regimes' decision to join international human rights conventions was a political one rather than an analytical one. The good lessons from post war situations demonstrate, that the state applying for membership of international conventions appoints a task force of researchers in the fields of human rights. The task force organizes a baseline and advanced studies on the conventions' legal and implementing requirements. The task force provides the applying states with a list of recommendations on the conventions' membership. The task force may recommend asking for observations on the conventions' implementation into national legislation. Subsequently, states organize a dialogue with civil society institutions, based on the task force recommendations. The civil societies respond to the recommendations and provide suggestions and any possible amendments. The last step is the dialogue with the national parliament. The task force provides the parliamentarians with all the necessary documentation and argumentation, enabling the parliament to properly discuss the signature of a convention with the government. At this stage, the international human rights systems study the recommendations and possible observations. In case that the observations are rationally justified and do not harm the goal and asset of the convention, the UN human rights system approve the membership. Hereby, the state parliaments approve the membership of the applying state to the UN human rights conventions. As soon as the convention is signed and approved by the government, the parliament should decide how to incorporate the convention into the national judicial system. There are three methods to do this. The first method is to use the convention directly in the national legal system. By doing so the national parliaments

recommend the governments to initiate relevant mechanisms, strategies, policies and structures to implement the convention. The second way is to integrate international conventions by adopting national legislation to implement the international convention. The third option is to integrate the conventions' conception in several legislations.

d) Lack of Interpretation of Conventions

For the sake of a coherent and systematic relationship between the UN member states and the UN human rights organizations, the national governments interpret human rights conventions before signing or adopting. A group of lawyers, human rights defenders/activists appointed by the state, interpret the goals, requirements and state regulations. The objective of interpretation is to study the positive and possible negative impacts of the convention on the national state structure and legislation. Furthermore, the court system will be examined in case of the implementation of the conventions. The reason for interpreting the conventions is to make the language of the convention simple and comprehensible. It is imperative to interpret the international law before adopting it. Such a methodology is recommended to new democracies and societies under legal reforms.

In a society like Afghanistan, interpretation of human rights conventions is essential and recommended. The Afghan society has experienced totalitarian regimes for 270 years, which started when the central state was created.¹⁰ The Afghan society had not experienced a creation of civil society, since political parties had been prohibited and civil and political freedoms had been banded. Thus, when a society lacks fundamental knowledge regarding civil and political freedoms, how is it then possible to comprehend the goal and condition of modern international human rights legislations? Hereby, the reasons for the importance of the interpretation of conventions will be mentioned below:

- Interpretation of conventions could support the Afghan state apparatus, citizens and political activists to, properly respond to the conventions. In such case, the Afghans membership to international conventions could be conducted based on the Afghan requirements and culture.
- Interpretation of conventions could support the UN and Afghans international partners to understand the Afghan states' observations and preconditions.
- Interpretation of conventions would contain a translation and interpretation of terminologies, terms and conditions, as well as of the role and responsibilities of the

10. In 1960s Afghanistan's King Zahir Shah organised a series of democratic reform such as freedom of political parties and in some instance freedom of media. This period called Decade of Democracy in Afghanistan.

state and the international community.

- The interpretation of conventions could thus pave the way for both the state and the UN human rights systems to avoid any misunderstandings.

e) Lack of Monitoring Systems

Lacking a monitoring system in Afghanistan in the past three decades has resulted into a breakdown of a systematic partnership between the UN system and Afghan partners. The war against the Soviets and the civil wars in the 80s and 90s harmed the infrastructure of the Afghan state. The one-party systems and the lack of pluralism in the state regime restricted the role of independent institutions to monitor human rights situations. The civil rights activists, women rights defenders and intellectuals have been imprisoned, tortured and executed. Afghans became the main victims of an ideological war, which originated from the Cold War. The political society of Afghanistan was divided between extreme Western and Eastern ideologies or fractions during 1978–1992. The left oriented government violated the rights of the right-wing political notion. When the Islamic parties came into the power in 1992, a civil war destroyed Kabul city. The right-wing parties, tremendously violated the human rights of Afghan citizens. During these political regimes, the civil society could not mobilize its monitoring systems at all. The lack of civil society's monitoring role intensely damaged the independent supervising system concerned with the implementation of the conventions in the Afghan society.

f) Lack of Sustained Reporting Systems

The Afghan state reporting system to the UN has been vulnerable for the past 35 years due to the Cold War and Civil War. Meanwhile, the Afghan state has not established a functional and stable reporting system in the state structures until 2010. In 2010 the international community supported Afghanistan to establish a Human Rights Supported Unit (HRSU) in the Ministry of Justice.¹¹ HRSU is a pool of resource and information on human rights situations in Afghanistan. Within HRSU a database was developed that measured indicators of human rights implementation in Afghanistan. HRSU has conducted some working groups together with state institutions that are mandated with the human rights commitment of the Afghan Government. Meanwhile, HRSU organizes capacity building programmes for the Afghan governmental institutions on the commitment of Afghanistan to human rights. Unfortunately in the UN human rights system, the reporting status of the Afghan state has one of the worst records throughout

11. In 2010 Human Rights Support Unit at the Ministry of Justice was established by support of UN Development Programme (UNDP) in Afghanistan.

the world. According to the UN human rights guidelines, the UN state members are bound to report based on three areas and requests, which are, 1. To what extent does the state member integrate the UN conventions? 2. To what extent does the state member create mechanisms, structures, policies and strategies based on the conventions? 3. What is the implementation status of the conventions?

In case a state member does not follow the UN human rights guidelines, it should provide reasonable justification for its neglectful attitude towards its obligations. After the Taliban period, some positive changes occurred in this respect. For the first time since 2009, the government of Afghanistan provided an UPR report to the UN Human Rights Council. The report demonstrated the commitment of Afghanistan to its international human rights obligations. In 2009, the Afghan state had submitted the initial report on CEDAW. UN Women supported the Afghan government to prepare the report. Although the report was not responding to all conditions of CEDAW, the international community, however, warmly welcomed the report. During the report examination, the international community issued a list of recommendations to the Afghan state for improvement of women rights in Afghanistan. In 2009, the Afghan state worked intensively on a state-report on CRC. UNICEF supported Afghans to develop the report. The report played an important role in the promotion of children rights within state structures. During the preparations of report, the ministry of Education, Health Care, Social Affairs and Interior played an active role. During the examination of the report in the CRC Committee for the Protection of Rights of Children, the Afghan state delegation received recommendations to improve implementation of CRC in Afghanistan. Between 2013–2014, the Afghan government conducted the CAT state report. UNDP in Afghanistan has supported the reporting project. Based on the reporting project, three main components were organised during the reporting preparation. The first component consists of organisational issues, such as The Steering Committee (SC), technical Working Group (WG) and Coordination Committee (CC) (Secretariat) was organised. The second component regards the capacity building programmes on CAT's goals and requirements from the Afghan state was conducted. During the capacity building, the list of issues¹² was trained to WG and CC. The final and third component consists of promoting CAT in the Afghanistan National Directorate for Security, Police and Prosecution Office activities. In 2009 the Afghan state submitted the second UPR report to the UN Human Rights Commission. The second report had a main focus on the

12. UN Committee against Torture referred list of issues to government of Afghanistan. The list of issues addressed Afghan state to respond to 58 questions on implementation of UN Convention against Torture.

UN recommendations of the initial UPR report.

Table: Conventions ratified by the Afghan state¹³

ردیف	Convention	Date of ratification	Initial report	Second Periodic report	Not reported	Current status of reporting
1	International Covenant of Civil and Political Rights (ICCPR)	1983/4/24	1984	1991	Third, fourth and fifth reports were not submitted	Since 23 years the Afghan state has not submitted a report to the UN Human Rights Committee
2	International Covenant of Economic Social and Cultural Rights (ICESCR)	1983/4/24	1991	2008	Fifth report is not submitted	The Afghan state should have submitted the report in 2014.
3	Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	2003/3/5	2009		Third report	has not yet taken up its duties

13. The organogram was developed by H. Faiz human Rights researcher of Afghanistan Civil Society and Human Rights Network www.cshrn.af

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No	Convention	Date of ratification	Initial report	Second Periodic report	Not reported	Current status of reporting
4	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),	1987/4/26	1992	Not submitted	Second, third, fourth and fifth reports were not submitted	During 2013–2014 the work on the state report was conducted. The report is submitted. The examination of state report is expected soon
5	Convention on the Rights of Persons with Disabilities (CRPD)	2012/9/18	2014		First report	The Afghan State was expected to submit the first report in October 2014
6	International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	1987/4/26	1984	Not submitted	The second, third, fourth and fifth were not conducted	Since 29 years the Afghan state has not submitted any report to UN Committee on Elimination of All Forms of Racial Discrimination
7	Convention on the Rights of the Child (CRC)	1994/4/17	2009		Third report	Expecting the government start working on the report
8	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	2002/9/24	Not submitted		Initial report	Since 10 years the government has not submitted the report to UN CRC Committee

No	Convention	Date of ratification	Initial report	Second Periodic report	Not reported	Current status of reporting
9	Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography	2004/10 /19	Not submitted		Initial report	Since 10 years the government has not submitted the report to UN CRC Committee

g) Weakness of Dynamic Human Rights Diplomacy

Human rights diplomacy stands for the coordination of the state's commitments to the international community based on international law. In fact, human rights diplomacy is the interaction of states with other states and international organizations in the field of human rights. According to the UN Charter, all member states must respect and endorse the principles of the UNDHR. The state human rights policy is coordinated by constructive collaboration with the UN human rights systems, mainly the UN Human Rights Council, the UN High Commissioner Office on Human Rights, Treaty Bodies, Special Procedures and UPR monitoring mechanisms. The UN state-members coordinate their activities with the international community through their sites in Geneva. The Geneva Embassy represents state members to the UN Economic and Social Council (ECOSOC). The Geneva representation coordinates the states' accountability in reporting, monitoring and evaluation to the UN system. Human rights diplomacy in contemporary international relations covers three generic actors: states, independent persons representing Inter-Governmental Organizations, and Non-Governmental Organizations.

The United Nations Charter from 1945, which comes close to being an embryonic global constitution, requires all member states to recognize and take action in behalf of human rights. In article 55 it is states as such: "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion." Thus in the UN era the discussion, regarding human

rights in territorial states, became internationalized and was no longer protected from international attention by the idea of state sovereignty. Nothing is more sensitive than the relationship between individuals and their government.¹⁴

According to Afghanistan National Development Strategy (ANDS), the Afghan national and international policies should accommodate human rights standards as main components of legal reforms. Although human rights and women issues are included in the new foreign policy of Afghanistan, the political will of the government is, however, not consistent with the Afghan state's commitments. Meanwhile, the Afghan government has also not allocated a proper economic resource for human rights issues in the foreign policy. In 2008, within the Ministry for Foreign Affairs, a division for human rights, known as Directorate for Human Rights and International Women Affairs, was established. The directorate is mandated to coordinate the Afghan governments' human rights diplomacy. However, the directorates' core activities depend on individual projects supported by international communities. The above-mentioned reports to the UN human rights systems were conducted with the technical and financial support of international partners. The state does not even allocate financial means to cover the travel expenses of the Afghan state delegations to the UN monitoring mechanisms. The directorate plays enables fundraising for the Afghan state reporting to UN human rights systems. The Afghan foreign policy heavily considers political issues, such as the relation with NATO members, US, EU, neighbouring states and international associations. The human rights division of the Ministry for Foreign Affairs does not obtain the same status as political divisions of the foreign policy.

One of the main challenges for the promotion of human rights in state structures is the lack of gender balance. ANDS recognises the challenge and recommends the establishment of human rights and gender sections within main ministries. Today the majority of ministries have established gender policies with governmental structures. HRSU coordinates the common position of human rights divisions in governmental institutions. During the preparation of state reports to the UN systems, HRSU cooperates with the Directorate for Human Rights and International Women Affairs. However, the coordination between human rights divisions does not have a stable and sustained character. The process is referred to as the donor driven practice.

6. Human Rights as an International Political Agenda

The human rights standards in Afghanistan have not been contextualised yet. During the

14. David P. Forsythe, "Human Rights In International Relations" (Cambridge).

main events, such as international conferences, the human rights issues became more important. The international partners emphasize on the Afghan state's commitments to respect and implement human rights, especially women rights in the national and international programmes. Some international partners as the EU, US, Canada, and Australia limit their support to the Afghan government under the precondition of Afghanistan being committed to human rights standards. Due to such pressure, the government pays much attention to human rights issues. The leaders of the Afghan state include human rights assurance in their speeches and promise lots of ferrets to implement human rights standards. However, the practice of implementing the human rights standards is rather an issue, because as soon as the main events are reaching conclusion the human rights issues are forgotten. Warlords are affiliated to the government and parliament members and leaders violate human rights of citizens on daily basis without legal consequences. Even the government officials and members of the parliament (MP) violate human rights of the Afghan citizens and are deprived of prosecution.¹⁵ Due to corruption and nepotism, only a few human rights violators have been prosecuted during the past decade. Throughout the past two years, nine women were stoned to death in different provinces of Afghanistan. Some of these inhuman acts have been exerted in the geography of governmental jurisdiction.¹⁶ These violations are broadly documented by international human rights organisations, such as Human Rights Watch, Amnesty International and international civil society organisations. The government's officials reject the accusations and do not follow up the consequences of these statistics.¹⁷

7. Role of Civil Society on Monitoring and Reporting of International Human Rights Instruments to the UN Human Rights Mechanisms

Civil society is the "third sector" of society, along with government and business. The term of civil society refers to the wide array of non-governmental and not-for-profit organizations, that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide array of organizations, containing: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations,

15. On September 2016 7th a MP bodyguards from Herat province killed a young soldier in Kabul. In February 2015 a PM bodyguards from Panjsher province killed a taxi driver in Kabul city.

16. According to official statistics. In reality the number is possibly likely to be higher than nine.

17. In August 2016 the Human Rights Watch accused General Abdul Rashid Dostom of committing genocide in the Northern provinces of Afghanistan during the operation against Taliban.

faith-based organizations, professional associations, and foundations.¹⁸ The civil society describes organic activities of citizens for dialogue with the state for the benefit of citizens' life conditions. The civil society's recognition by the state strengthens the role of citizens in the decision-making process. In fact, the civil society is a source of legitimacy for a democratic, modern and national state. The civil society's main missions are advocacy for human rights values, monitoring of the state, organizing of awareness raising activities, dissemination of information and representing citizens in national and internal dialogues. In the field of human rights, civil societies monitor human rights situations and respond to the national and international organizations accordingly. The civil society observes the commitment of state institutions to international human rights standards and provides shadow reports on human rights situations to the UN human rights monitoring systems. The UN human rights monitoring system uses those shadow reports as a source of information on the human rights situations in the respective countries. Usually, the UN human rights monitoring systems compare them with the state reports. Such appraisal shows the picture of human rights situation in national state.

The civil society in accordance with the modern notion is fairly new in Afghanistan. However, Afghanistan is a country of classic civil society, called "*Jirga*"¹⁹. Due to the feeble role of the state to serve its citizens properly, the *Jirgas* in the remote provinces are playing the role of arbitrator between citizens and state institutions. Usually the decisions of *Jirgas* do not retort to human rights standards. Especially the decision of *Jirgas* during the mediation between two parties in conflict lead to violations of human and women's rights.²⁰ The *Jirgas'* structure is quite restricted. It means that only influential persons, mainly rich and powerful persons, which are referred to as *Khans* and *Maleks*²¹, can obtain membership of *Jirgas*. *Jirgas'* decisions are not legally accepted. However, due to traditions and cultural characteristics, people living in the remote areas respect and implement decisions made by *Jirgas*. Informal justice is broadly practiced in Afghanistan. In many cases the interaction of *Jirgas* based on informal justice results in systematic violations of human rights in Afghanistan.

After the Taliban period, Afghanistan's new state provided legal conditions for the

18. World Bank definition of civil society.

19. *Jirga* is a Pashto word that means meeting. It is a gathering of elder, experienced and influential people to a gathering where main and important decisions are taken.

20. *BAD DADAN* means when one family member kills an other family member the *Jirga* decides to give a young girl to compensate to victim family. Consequently the young girl is used as a mean of revenge between two families. The young girl suffers her entire life from two families conflict.

21. *Khan* means owner of big sizes of land with a lots of servants. *Malek* means representative of village/villages.

creation of modern civil society. Nowadays the independence of the civil society is accepted. The international community supported the new emerged civil society, both financially and technically. The new civil society works in three main areas: political participation, Human Rights and access to social and cultural freedoms. Based on this characteristic, the civil society has been classified.²² Today, Afghanistan has the highest number of civil society organizations in the region. The main mission of the civil society is advocacy in general. According to the civil society, institutions' advocacy means mobilisation of efforts to influence the legislations and policies according to the citizens' demands. During the past decade, the Afghan civil society has had some considerable amount of achievements. The civil society actors have played a central role in drafting Afghan Free Media Law, Access to Informational Law, the Law of Elimination of Family Violence, and many policies and strategies and participated in major national and international events.

The Afghan civil society institutions have generated a cooperative and vital communication with the international civil society institutions. The international civil society institutions use the reports and analysis of the Afghan civil society institutions and the international communities provide expertise in the fields of thematic and managerial capacity building to the Afghan civil society institutions. During the preparation of the human rights state report, the civil society institutions play an active role in the dialogue with state institutions. The state delegations to the UN human rights monitoring system, during the examination of reports include representatives of the civil society institutions. It demonstrates the credible role of the civil society amongst the Afghan citizens. The Afghan civil society has created interaction with the UN Human Rights Council. The human rights NGOs provide analysis, reports and briefing to UN. The civil society networks have provided a shadow report on UPR, in 2009, to UN Human Rights Council.²³ One of the active paths to communicate with the international community is the coordination of the civil society institutions with embassies and representations of the international communities in Afghanistan. Afghanistan is a principal geography for international development. Therefore, many international delegations visit Afghanistan. During the visits, the international delegations meet the Afghan civil societies to discuss human rights situations. The civil society plays an active role in the monitoring of the Afghan state commitment to international communities.

22. Each area of civil society mobilized their affords to networks. For instance Civil Society and Human Rights Network, Afghanistan Women Network, Afghan Civil Society Forum.

23. In 2009 the CSHRN has submitted a civil society shadow report to UN Human Rights Council. Council members used the Report to make Recommendations to the Afghan state on Human Rights Situation.

There are some critiques on the role of the civil society in the promotion of human rights in Afghanistan. The main challenge for the civil society is its lack of sustainability. The civil society institutions are totally dependent on the support of the international community. The government has not developed programs that support the civil society with national resources. The dependency of the civil society on international communities reduces the legitimate role of NGOs in Afghanistan. The donor driven policies and structures of NGOs in Afghanistan generate a gap between citizens and state institutions. The modern civil society lacks a productive dialogue with traditional civil society institutions. In fact, the modern civil society NGOs, represent centers of big cities and the traditional civil society institutions represent villages and remote areas. Moreover, the civil society suffers from corruption. Lack of transparency and accountability concerning the utilization of funds and related activities has badly damaged the role and reputation of the civil society in Afghanistan. Lack of democratic structures, strategies and policies in some civil society institutions happens due to the immorality of NGOs towards citizens.

8. Role of National Human Rights Institutions (NHRI) as the Watchdogs for Implementation, Protection and Monitoring of International Human Rights Instruments

Human rights have been a core concern of the United Nations since its inception. The responsibility to respect, protect and fulfil human rights depends upon the member states. They ratify inter- national human rights instruments and are required to create mechanisms to safeguard human rights. The governance of human rights is complex and diffuse. All parts of the government are involved with other kinds of national institutions and civil societies²⁴. The notion of the National Human Rights Institutions (NHRI) was manifested during the international conference in Paris in October 1991. The UN conference approved a paper, called Paris Principles (PP) on NHRI. According to PP, NHRI is an independent watchdog institution that monitor, promote and protect human rights of citizens. Based on PP, the states should, financially, support NHRI. However, the NHRI operates with interference of states. Political and professional independency of NHRI is the major principle of these human rights institutions. In fact, the NHRI is a state independent human rights organisation. NHRI remains between the state and the

24. UN, Office of the High Commissioner for Human Rights, "National Human Rights Institutions, History, Principles, Roles and Responsibilities", see http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

civil society institutions. Thus, the independence of NHIR plays a crucial role in their activities.

In the Afghan context, the Independent Human Rights Commission (AIHRC) plays the role of NHRI. AIHRC obtains a strong legitimate mandate. Article 52 in the Afghan Constitution recognises the independency of AIHRC.²⁵ AIHRC was established in 2003 by the support of the international community. AIHRC has established 14 regional and provincial offices across the country. Nine commissioners and operational structures compose the commission. AIHRC's main activities cover the monitoring of human rights situations, advising the state on human rights legislations, train the Afghan state institutions on human rights fundamental principles, provides researches and analysis on human rights situations and stipulates reports on human rights situations to the Afghan state, the UN human rights system and international stakeholders. An important area of AIHRC is the coordination of human rights activities with the civil society institutions. The commission coordinates its monitoring activities with the civil society institutions.

The main challenge for the commission is the financial dependency on international donors. The Afghan government has not allocated a suitable budget for the commission. As international partners supply the commission resources, the strategy of the commission is affiliated to foreign policies.

The President should appoint the commissioners after consultation of the civil society organisations, human rights defenders and activists. However, the political parties, even the warlords, interfere with the appointment of commissioners. Consequently, the commissioners' appointment procedure badly suffers from political agenda and figures. Such interference strongly harms the spirit of independency of the national human rights institution in Afghanistan.

Lack of professionalism is also a big challenge for the commission. Afghanistan still suffers from expansive human rights violations. Meanwhile corruptions, a lack of rule of law in the remote areas, lack of access to justice for citizens are the main reasons for broad human rights violation in Afghanistan. The commission does not have the ability to monitor and report the human rights violations properly.

The commission provides researches and reports on the civil, political, economic and cultural rights. The reports reach the international human rights systems. The UN human

25. Article 58 of Afghanistan Constitution: " To monitor respect for human rights in Afghanistan as well as to foster and protect it, the state shall establish the Independent Human Rights Commission of Afghanistan. Every individual shall complain to this Commission about the violation of personal human rights. The Commission shall refer human rights violations of individuals to legal authorities and assist them in defence of their rights. Organization and method of operation of the Commission shall be regulated by law."

rights structures benefit from the commission's reports. The commission also obtains a human rights claim mechanism. The mechanism consists of a database, registration system and follow-up guide lines.

9. United Nations Assistant Mission for Afghanistan (UNAMA) Human Rights Division

Human rights are a priority issue for the United Nations Assistant Mission for Afghanistan (UNAMA). UNAMA's Human Rights Unit, as a part of the Office of the United Nations High Commissioner for Human Rights, pursues an overall strategy to ensure the protection and promotion of human rights in Afghanistan in support of all Afghan people. This strategy focuses on the Unit's programmatic approach on targeted research, reporting, advocacy and engagement in strategic partnerships, and private and public dialogue with the government, military, international and civil society actors, and communities across Afghanistan in five priority areas

- Protection of civilians in the armed conflict;
- Monitoring and reporting on grave child rights violations in the armed conflict;
- Elimination of violence against women and promotion of gender equality;
- Human rights aspects of peace and reconciliation
- Prevention of torture in detention and arbitrary detention.

The priority areas reflect UNAMA's mandate and the main human rights concerns of the Afghan people and serve key elements or benchmarks in the ongoing security, political and economic transition in Afghanistan. UNAMA focuses on aspects of women's rights throughout all of its priority issues, but gives particular priority to combating violence against women and enabling their participation in the public sphere, especially in political life and in peace and reconciliation processes. In the past four years, UNAMA has released four public reports documenting widespread harmful practices and evaluating the government's progress in implementing the Elimination of Violence Against Women Law (EVAW law). These reports, based on extensive country-wide research, found that while the government has taken some measures to enforce legal practices to protect women and girls from violence, most cases still require further concrete measures to end widespread violence and discrimination against Afghan women and girls and ensure that they have access to justice. A fifth public report on the findings of the Women's Access to Justice Project was launched in April 2015.

Regarding the protection of civilians, UNAMA Human Rights Unit undertakes a range of activities aimed at minimizing the impact of the armed conflict on civilians.

This includes independent and impartial monitoring, documentation and reporting of incidents, involving loss of life or injuries, advocating for activities to strengthen the protection of civilians affected by the armed conflict, and initiatives to promote the respect for international humanitarian and human rights law and the Afghan Constitution among all parties to the conflict. UNAMA Human Rights Unit documents and advocates on behalf of conflict and non-conflict related detention practices, involving the Afghan authorities and international military forces to address detainee mistreatment and torture, weakness of due process guarantees, impunity and widespread arbitrary detention that partly contributes to fueling the conflict.

The UNAMA Human Rights Unit, through its Child Protection team, works closely with the government and other partners to monitor and report on the grave child rights violations committed by parties involved in the armed conflict and to promote accountability. UNAMA Child Protection also acts as a secretariat for the UN-led Country Task Force Monitoring and Reporting and coordinates the monitoring and reporting mechanism on violations committed against children in the armed conflict.²⁶

10. Conclusion

Afghanistan has been suffering from human rights violations for more than 35 years. During this period, Afghans have experienced all kind of international, regional, civil and gorilla wars. This has resulted in the death of around two million people, created around seven million refugees and internally displaced one million persons. According to the findings of this article, human rights are a major topic for the national and international community.

Afghanistan has gained lots of achievements in the field of civil and political rights. However, Afghans witness many challenges in the field of economic, social and cultural rights. Lack of economic security and rights have resulted in a high unemployment rate and growth of crime, reasons for the Taliban gaining ground. There should be a balance between political and eco-social security.

Impunity for human rights criminals should be stopped. The human rights violators, mainly women rights criminals, do not face prosecution in the remote areas. The crime against women's dignity is increasing. The article would like to suggest to the UN Human Rights Council to take appropriate measures to advocate for human rights of women in Afghanistan. The Human Rights Council may appoint some monitoring missions to observe human rights of women in Afghanistan. Special tribunals should

26. Publication by UNAMA "Protection and promotion of human rights in Afghanistan is a priority work area for UNAMA"

be organised for women rights criminals. The propaganda against women rights in Afghanistan should be banded.²⁷ The UN should observe Afghan state behaviours based on its commitment to CEDAW.

It is time to implement human rights standards. Lack of political will and the high governmental structures are a major challenge. The human rights should become a daily exercise rather than a political issue for national and international institutions. Human rights are a source for a state's constitution and international law. Subsequently, according to the rule of law, human rights implementation is a duty and not a desire. The leaders and managers of the Afghan state are obliged to implement, evaluate and monitor human rights obligations.

There are around seven millions refugees and displaced across the border between Afghanistan, Iran and Pakistan. The human rights of Afghan refugees are roughly violated by the neighbouring states. Death penalty, torturing, and other inhuman acts are the worst and broad routine on the borders between Afghanistan with the neighbouring countries. The issue of Afghan refugees is getting a global standing. The article proposes the UN Human Rights Council to appoint a special reporter to study human rights situations of Afghan refugees in the region. Meanwhile, the article proposes the UN HR Council to discuss with UN structures, such ECOSOC and UN Security Council, to handle diplomatic channels in respect of the dignity of Afghan Refugees human rights with the Islamic Republic of Pakistan and the Islamic Republic of Iran.

Human rights diplomacy must be supported politically and economically. If a government is a signatory of seven main human rights conventions, it means the government should allocate proper means to coordinate with the international human rights mechanisms. The article suggests that the foreign policy integrate human rights standards in each outcome of its strategy. The mandate of Directorate for Human Rights and International Women Affairs should be supported by political encouragement. The article recommends the Afghan government to establish a permanent Steering Committee for human rights reporting to UN Systems based on international law. The Steering Committee should monitor the reporting timetable, evaluate the implementation, recommend reporting and fundraise for report writing.

The HRSU mandate should be strengthened. The unit must be moved mandatory and physically from the MoJ to the Presidential Office. HRSU at the presidential level can better serve as a coordinator for human rights programmes at the governmental level and

27. In some mosques the religious leaders do propaganda against Afghan women role in the society. To use the tribunes of Mosque for organising these propaganda impact negatively in the Afghan society.

as a human rights resource centre. Meanwhile, the position of HRSU at the President Office will support the human rights diplomacy at the MoFA level. The position of HRSU at the President Office facilitates human rights structures at the governmental levels to register human rights cases and prosecute human rights criminals.

The civil society institutions should pay more attention to advocate on behalf of the implementation of conventions. The civil society should learn the technics of human rights advocacy professionally. The experiences from the international community, that if civil society institutions are able to professionally advocate for human rights conventions, the human rights situations improve. The human rights commission, civil society networks, HRSU and DHRIWA should support each other to advocate for human rights conventions reporting.