



**THE ASIA PACIFIC FORUM**  
OF NATIONAL HUMAN RIGHTS INSTITUTIONS

... a partnership for human rights in our region

ABN 98 099 972 997

## QUESTIONNAIRE

### **Advisory Council of Jurists - Terms of Reference on Torture Background Paper on Torture**

Please complete the questionnaire and send all responses by e-mail to:

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Responses to this questionnaire will be used in the Background Paper on Torture which will be distributed to the Advisory Council of Jurists.

We would be grateful to receive your response by or before **10 December 2004**. Thank you in advance for your time and contribution.

Information about the Advisory Council of Jurists and the terms of reference on torture is available at <http://www.asiapacificforum.net/jurists/>

### **Activities of National Human Rights Institutions:**

1. Has your Commission received complaints from individuals or groups claiming torture? If so, how many complaints and please describe some of the most important cases and the role of your Commission in resolving the complaints.

The Afghanistan Independent Commission is regularly receiving complaints through its 10 regional and provincial offices and the headquarters.

The AIHRC Protection Unit investigates specific complaints of human rights violations and seeks remedies to end the abuses. These cases involve abuse of authority. The Commission also investigates cases of domestic violence as human rights violations. Between June 2003 and May 2004, 881 complaints of human rights abuses were filed with the Afghan Independent Human Rights Commission's Kabul office. In the prior year, 775 complaints were filed.

Of these 881 complaints, 112 were resolved following AIHRC investigations and interventions. In another 444 cases, AIHRC has send letters or otherwise contacted appropriate authorities in an effort to remedy violations, but the cases are as yet not concluded.

Some complaints contain multiple types of human rights violations. During this period, the complaints included 974 individual human rights violations. Violations include murder, forced marriage, rape, property confiscation and destruction, forced migration, torture, illegal imprisonment, kidnapping, beating, and selling of women.

This year property violations were the most frequently reported human rights abuse. Of the 881 violations, 435 or 44% involved property crimes -- 29% were reports

of confiscation of land and 15% were reports of property destruction. From June 2002 to May 2003, only 96 or 9% of the reported violations involved property crimes.

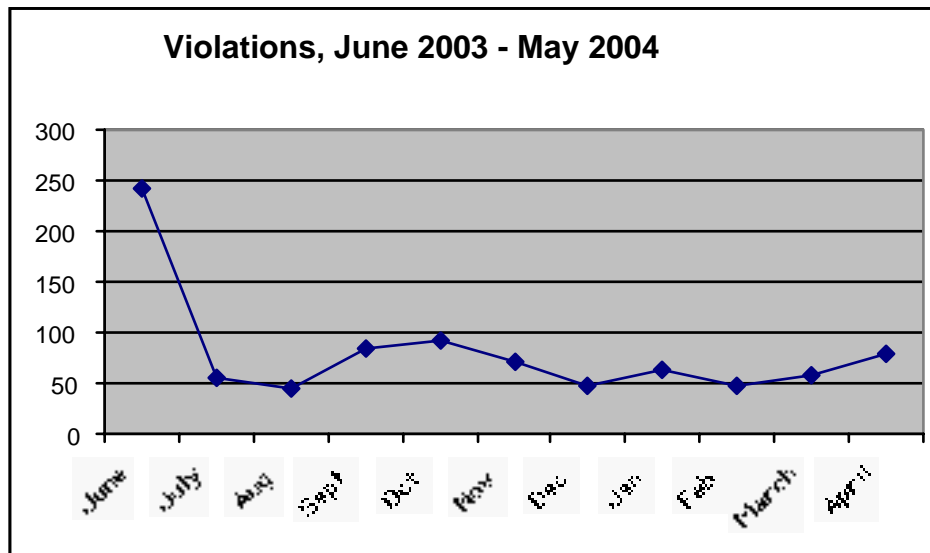
Reports of illegal detention also increased in the past twelve months. In this reporting period, 86 cases of illegal detention were reported to the Commission; in the prior year, only 9 illegal detention cases were filed with the Commission.

Reports of murder, however, declined. This year 99 murders were reported to the Commission, compared with 161 between June 2002-May 2003.

#### Human Rights Violations Reported to AIHRC

	June 2003-May 2004	June 2002-May 2003
Complaints	881	775
Violations	974	1076
Murder	99	161
Forced Marriage	26	21
Confiscation of Land	286	39
Property Destruction	149	57
Illegal Detention	86	20
Other Violations	328	298

## Stopping Property Violations



The AIHRC has been the leading voice confronting property violations in Afghanistan. These violations include property confiscation, property destruction, setting property on fire, and forced possession of immovable property such as agricultural land, houses, shops, and apartments. Most often, the violations are committed by commanders or government authorities abusing their power.

These are the example of those cases that AIHRC investigated:

### Shirpoor

On September 3, with 100 armed police officers and bulldozers, the Chief of Security for Kabul Police began the destruction of 30 homes in the Shirpoor section of Kabul affecting 250 people. The area is adjacent to land owned by the Ministry of National Defense. The government land and the land upon which these homes stood were distributed to senior government officials and their relatives.

The Kabul Mayor, who authorized the destruction, said, “Since these families are poor and disadvantaged and cannot build luxury houses, their properties should be distributed for rich people.” Residents were not even given time to remove their belongings. Some residents, including women and children, were still in their homes when the destruction began and received injuries.

Upon learning of the destruction of homes, the Afghan Independent Human Rights Commission, working with the UN Special Rapporteur on Adequate Housing Miloon Kothari, intervened and stopped the destruction. The AIHRC obtained the list of the names of the government ministers and commanders who were to receive the properties in Shirpoor and released this list at a press conference. The AIHRC actions kept the issue of “land grabbing” in the media for weeks.

The AIHRC’s intervention resulted in the creation of an Independent Investigative Commission to examine the Shirpoor cases, which included AIHRC Commissioner Hamidi. This Commission has recommended that the families either be

able to stay in Shirpoor or that they be given land for another house and materials to build the houses. Until the government reaches its final decision, no further destruction is allowed and the families cannot be removed. The Kabul Chief of security also was fired, although he was given another job in Wardak.

### **Saripul Province**

In another property seizure case, 200 residential houses were destroyed in Saripul. The residents were given 5-15 days notice and received no compensation or relocation assistance. Residents were threatened if they resisted. The government argued that the houses were removed in order to bring electricity to the area. However, other solutions would not have resulted in families with elderly and child members losing their shelter prior to a cold winter. The Commission investigated the Saripul case. The Commission, along with UNHCR, UNAMA, and the IRC, raised the issue with Afghan Vice President Khalili. A delegation was sent to the province to solve the problem and help the people relocate. As a result, the Saripul governor was replaced.

### **Logar Province**

In Logar Province, a commander who was a department director for the National Security Service has repeatedly confiscated houses. In one case, he seized a house from its legal owner who had rented it to another person. The landlord had to pay his tenant's money back and lost his house. AIHRC sent letters to the Ministry of Interior Affairs, President's Office, and National Security Service, but thus far no action has been taken to remedy the situation. In another case in Khairkhana, the same commander confiscated another house. However, in this case, the Commission's intervention resulted in the eviction of the person who confiscated the land.

Another type of property violation involves children's inheritance. In one case, the father of a 7 year old girl died and left her some land. An uncle tried to take the girl from her mother in order to obtain the land. The AIHRC went to court and told the judge that it was against the law for the uncle to take the land. The judge, who had no knowledge of property law, eventually accepted the AIHRC's legal arguments. The land was put in trust until the girl turned 21 years of age and could determine what she wants to do with it.

Another Commission strategy to improve transparency and accountability in land dispute cases has been to press for improvements in the Property Dispute Resolution Court. For the most part, the Court of three judges has ignored land documents and ruled in favor of those who pay money. The Commission complained to President Karzai. As a result, the court in late 2003 was converted from a one-stage court to a two-stage court. The Commission is hopeful that an appeals process will better enable the protection of human rights.

## AIHRC Recommendations on Housing and Land Disputes

- The right to adequate housing is one of the fundamental rights of all citizens. The state has to fulfill its obligation regarding rights to adequate housing and has to respect this right.
- Confiscation of the lands should not be allowed unless it is proved to be for the public interest and there should be land distributed to those who are being affected and their lands confiscated.
- To resolve the crises of the housing, land and property-related issues in the country, the Judicial Commission should draft a law on housing, land, and property related issues.
- The land and housing disputes are being solved by the special court of property, which is a one-level court. The AIHRC identified that most of the violations are due to this systemic problem. The AIHRC recommends an increase in the levels of the special property courts to primary, appeal, and high court.
- The forced selling of houses and land cases should be treated as crimes and should be investigated by police. Those who force civilians to sell their property should be punished by court.

## **Stopping Abuse of Women**

Between June 2003 and June 2004, the Commission received 26 complaints of forced marriage. Although Afghan civil code requires mutual consent for marriage, forced marriages are prevalent. One of the major causes of violence against women is forced marriage.

### **Forced Marriage**

In one case, a girl in Balkh Province, Sultan Bibi, was forced to marry a 50 year old man. Sultan had been engaged to marry one man, but that man died before the marriage took place. His brother proposed marriage to Sultan. Sultan's family twice refused because of the age difference between the brother and their daughter and because the brother's first wife threatened to kill Sultan if the marriage occurred. The brother, with the help of a local commander, kidnapped Sultan's father. Sultan's family hid her in a secure place and contacted the Mazar office of the Afghan Independent Human Rights Commission to help win the release of her father. The Commission urged an official of Jamiyat-e-Islami to prevent the commander from assisting the brother. As a result, Sultan's father was released.

However, a few days later, the brother and the local commander's armed followers kidnapped Sultan from her home. Later the Commission learned that Sultan had been killed and her body found buried near the brother's house. She had been badly abused and was four months pregnant. The Commission intervened to secure the release of Sultan's body to her family and the arrest of her murderers. The case is still under investigation.

### **“BAD”**

The exchange of women and girls to resolve disputes relating to murder, robberies, and rape – called BAD – continues throughout Afghanistan. The Commission has tried to resolve some of these cases through mediation and conciliation. In the Surkh Parsa district, a man divorced his wife on the grounds that she had engaged in immoral behavior. However, he could not prove his charges. The tribal elders forced the man to give his 8-year old sister to his wife's brother as punishment. The wife's brother planned to marry the girl. The girl's mother sought help from AIHRC. AIHRC, with support from the police, provided security for the girl and her mother and successfully prevented the girl from being given as BAD.

In Kabul, a young girl's family fought with another family over property. A member of the other family was injured. Police arrested the girl's father and two sons. The father and sons were to be released after three months. However, the other family demanded that the girl be given to them as “bad,” a tribal practice in which girls are exchanged to settle crimes and disputes. AIHRC won the release of the father and sons and prevented the daughter from being given in “bad.” The AIHRC also succeeded in getting the police to provide security for the girl and her family.

Domestic violence also is a human rights violation. In one case in which AIHRC intervened, a woman who suffered from epilepsy was beat by her husband repeatedly over the course of two years every time she collapsed as a result of the disease. He burned her three times. In May 2004, the woman, who is hospitalized with severe burns to her leg and stomach, sought help from AIHRC. The AIHRC has contacted the Kabul family court to help the woman obtain a divorce.

Women are also attacked for exercising their rights. On International Women's Day, a woman who worked for the government's bus company was beaten by a deputy after speaking out for women's rights. The AIHRC sent letters to the Office of the President. The deputy was dismissed from his job. The woman still works for the bus company.

### **Retired Military Officers**

The Commission's assistance also has been requested by retired military officers who have not received their salaries and were not given other suitable posts after they lost their jobs with the Ministry of Defense.

In response to protests by military officers, AIHRC Chairperson Dr. Sima Samar and other commissioners raised the issue with the Afghan President, Minister of Defense, and other parties. They promised to give the officers 50% of their salaries, but this decision was not implemented.

To increase pressure, AIHRC in March 2004 organized a meeting of the retired military officers with Commissioners and deputies from the Ministry of Defense, Ministry of Interior, Ministry of Finance, and the Office of the President. The Commission also invited media representatives to attend the meeting. The deputies promised to make a proposal to the President's office to provide salaries to the officers. As of press time, the proposal had not yet been submitted.

### **Children Deported from Saudi Arabia**

In June 2003, Saudi Arabia announced plans to deport 700 Afghan children from Saudi Arabia to Afghanistan. The children lacked legal immigrant status. The Afghan Ministry of Labor and Social Affairs assumed responsibility for reunifying these children with their families.

After the first group of children were brought back to Afghanistan, the Afghan Independent Human Rights Commission visited the northeastern area of the country where many of the children were from and in which they were to be relocated. AIHRC found that many of the children either had never returned or were no longer there. The children may have traveled to Pakistan in order to return to Saudi Arabia.

As a result of concerns about the children's welfare, the AIHRC signed an agreement with UNICEF through which AIHRC would be able to inform families and authorities, accompany the children to their place of residence, and monitor the children's progress. AIHRC hired five monitors. The Ministry of Labor and Social Affairs hired an additional five. Jointly with the Ministry, AIHRC has assessed the reunification of 122 children out of the 320 departed so far. The AIHRC also worked with the Ministry to establish a committee to counter child trafficking in Baghlan Province, where a high number of the deported children originated.

## Ending Illegal Detention

Illegal detention is another frequent human rights violation. Innocent people are held in jail without charges. Often, they are held for the purpose of getting bribes. In many cases, people are detained because of property disputes.

Private prisons run by commanders and other authorities remain throughout Afghanistan. The Commission so far has verified the existence of 18 such prisons and then appealed to commanders directly and to government officials to stop these illegal detention centers. The Commission has succeeded in some cases in closing 6 of these jails.

Some authorities also use prisons as their private jails. The AIHRC also has found that Badakshan, Herat, Kandahar, Mazar-e-Sharif, and Jalalabad have prisons used as private jails.

In Logar Province, an eighth grade student his father, and another family member were detained over a land dispute. They were tortured by the district security chief and his soldiers. Once the case became public, other students at the school of the imprisoned boy demonstrated. The security chief ordered that the students who protested be beaten, injuring 10 other students. With AIHRC's intervention, the security chief was dismissed.

Also, in Ghazni 69 people are detained in the provincial prison. But only 35 of them are registered in the prison record book. The rest of the prisoners are illegally imprisoned.

The AIHRC investigated one case where a man spent almost two years in jail in Faizabad without charges being filed. The prosecutor repeatedly asked the prisoner for money and said he would not be released unless he paid. However, in another case, a commander who committed murder in a public place was released after only 25 days.

In a Kabul case, a shopkeeper was hospitalized as a result of beating by an intelligence officer. The intelligence officer had driven a car into the generators in front of the man's shop. The man asked the officer why he had hit the generators. The officer took the man to a private jail where he beat him. The man's father contacted AIHRC, which won his release and assurances from police that some security would be provided for the man and his shop.

The AIHRC has won the release of over 162 prisoners from government jails this year. In addition, following the assassination of Minister of Planning \_\_\_\_\_, the son of Herat Governor Ismael Khan, fighting broke out in Herat. Hundreds of opponents of Khan were arrested. AIHRC sent a mission to Herat that won the release of 149 prisoners.

2. Has your Commission conducted research on the issue of torture? If so, please provide the results of this research.

Not yet

3. Has your Commission undertaken awareness and education campaigns relating to torture? If so, please provide details of these campaigns, identify the individuals or groups who have been trained and estimate how many people have been trained.

The AIHRC education staff always put the issues of torture into discussion in every education/awareness session and also in its publications. In addition, the education staff have gotten the following achievement :

- 700 policemen were received awareness on human rights and provided with honour cards where the ten principles of humanelly treatment and some articles of the UDHR written in.
- The AIHRC education staff facilitated education sessions in the Faculty of Journalism and awareness workshops that totally 700 persons were benefited.
- A human rights ToT workshop was held for police, army and security intelligence officers.
- Organizing awareness workshops for prison officers that 150 officers were benefited.
- One workshop was convened for police chief commanders on child trafficking.
- As a result of the AIHRC intervention, Human Rights has included into the curriculum of training the National Police staff and officers.
- Every month the commission distributes 1500-2000 copies of its monthly journal to the police, army and intelligence departments.
- The commission launches its 15-20 minutes biweekly TV programme via national TV. The private media (TV, radio, and print media), based on their cooperation with AIHR, always include human rights awareness in their programme.

4. Has your Commission monitored the conditions in and visited centres of detention to assess the conditions in which detainees are kept and the treatment they receive? If so, please provide details of any findings.

**This is a part of the commission annual report 2003/2004 on monitoring human rights where the people's liberty is restricted:**

### ***Monitoring Human Rights***

The Afghan Independent Human Rights Commission is mandated to monitor the situation of human rights, where the liberty of people have been denied, restricted, or violated such as police custody, detention centers, prisons, juvenile prisons and other situations where human rights are vulnerable. The Commission also monitors freedom of speech and the status of women and children.

#### **Monitoring of Prisons, Detention Centers**

Between July 2003 and May 2004, AIHRC made more than 134 monitoring trips to prisons and detention centers through its central and regional offices. During these trips, the Commission staff examine facilities and ask prisoners about the status of their cases and their treatment. AIHRC assesses whether imprisonments are arbitrary and whether or not prisoners have experienced torture during their detention.

Among the prisons regularly monitored are women's prisons in Kabul, Jalalabad, Mazar-e-sharif, Herat and Kandahar. The Women's Rights Unit is preparing

a list of Afghan women prisoners inside and outside of Afghanistan in order to assess and monitor the crimes for which women are being imprisoned, their sentences, and their treatment.

## **Torture**

Torture continues to take place in place as a routine part of police procedures. AIHRC has found torture to particularly take place at the investigation stage in order to extort confessions from detainees. Forced confessions are clearly in violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Torture was found to be especially prevalent in the investigation process in Herat Province.

Two brothers in Herat were imprisoned on the charge of stealing bicycles. They were beaten. The prisoners were hidden from AIHRC investigators, who eventually found them in the Herat Criminal Office. As a result of the torture, the brothers were unable to walk. AIHRC filed complaints against the Herat Criminal Officer with the Herat deputy governor, chief of police, and Ministry of Interior Affairs. As a result, the criminal officer was removed from his post.

## **Bad Conditions, Lack of Legal Aid**

The poor conditions within prisons are another concern of the AIHRC. Prisoners suffer from a lack of space, lack of sunlight, and overcrowding. Food and clean water also are scarce. In Parwan Prison, for example, water is brought in by tankers and stored in an open pool which is used for drinking and washing. Prisoners are routinely denied medical care or only treated within the prison. Female prisoners have had to give birth in detention centers.

In 2004, the Kabul Monitoring and Investigation Unit, with cooperation from the Ministry of Justice, installed complaint boxes in Kabul male and female prisons. Of the 35 female prisoners, 28 had submitted complaints; 136 of 623 male prisoners registered complaints. Most of the prisoners complained about treatment by police and judicial officials, about delays in their cases, and about their lack of legal representation. Corruption in the judicial system is a common complaint. To preserve the confidentiality of the complaints, the key to the complaint boxes remains with the AIHRC.

The Commission also has identified the lack of prisoner access to legal services as a major factor in their incarceration and are working with other organizations to provide defense attorneys to prisoners who cannot afford to hire their own.

The Monitoring and Investigation Unit shares the results of its monitoring with other human rights and legal aid organizations. Some monitoring visits are conducted in coordination with UNAMA.

In the past year, AIHRC has won some improvements in the prisons, including better staff behavior towards prisoners, regular food, separate facilities for child and adult prisoners, and visitation rights for the families of prisoners. AIHRC also has ended the practice of shackling prisoner's ankles in Kabul detention centers. In woman's prisons, in particular, the AIHRC has pressed successfully for literacy and vocational training programs and for kindergartens for the children of women prisoners.

However, little improvement has been seen in overall prison conditions and the handling of prisoners' cases by the judicial system. In August 2003, by presidential decree, the Ministry of the Interior handed over the administration of prisons and jails to the Ministry of Justice. While the AIHRC supports this transfer of prison administration as a positive step in reform of the prison system, the transfer process was not well planned and resulted in chaos and cutoff of food rations.

### **Judicial Corruption**

AIHRC also monitors human rights violations within the judicial system. Individuals are often arrested and detained without cause by district attorney offices. In Panjshir, the district attorney held four people in prison for 45 days with no evidence. AIHRC intervened and won the release of all four prisoners. Prisoners are sometimes held for a year or more before courts issue rulings.

Disposition of cases often is decided by bribes. Those who pay the bribes are released; those who do not remain in prison. The commission has documented cases where murders are released because they paid money. People with no money, power, or favoritism are still in prison.

### **Coalition Forces**

Long before evidence of human rights abuses against prisoners in Iraq at the hands of the U.S. military emerged, the Afghan Independent Human Rights Commission received and brought to the attention of U.S. military officials similar allegations in Afghanistan.

The Commission has received 44 complaints of human rights violations committed by international coalition force. Eleven of the complaints were related to the bombing of civilians. The other 33 complaints include cases of beatings, detention of innocent people, and damage to houses, injuries to people, and a lack of respect for Afghan culture during coalition raids.

In the fall of 2003, Sayed Nabi Siddiqui, a former Afghan police colonel, filed a complaint with the Commission detailing the beatings, kicking, sleep deprivation, taunts, and sexual abuse that he was subjected to during 40 days in custody at U.S. military bases in Gardez, Kandahar, and Bagram. Like prisoners in Iraq, Siddiqui was repeatedly photographed, often without clothes. He was taken prisoner in July after being accused of being affiliated with the Taliban. In August, he was released after he was found to be no threat.

Following an interview with Siddiqui, AIHRC informed U.S. military officials of his complaint on 9<sup>th</sup> of May. However, to the Commission's knowledge, no action was taken. Since Siddiqui's story appeared on the front page of the New York Times, the U.S. military says it has launched an immediate investigation. The results of an investigation of two deaths in American custody at Bagram in December 2002 also have yet to be released. One of the commissioners of the AIHRC together with one complaint assistance interviewed Mr. Sediqi on 13 May in Gerdiz so as to verify the abuse. Mr Sediqi explained about all abuses he had been faced with, as he had told to the News week Reporter, in Gerdiz, Kandahar and Bagram.

The AIHRC thus far has not been allowed to monitor coalition detention centers. In May 2004, AIHRC Chairperson Dr. Sima Samar formally requested access to

detention centers in Bagram and Kandahar. The Commission also has requested the appointment of a U.S. military liaison to deal with human rights abuses. In addition, AIHRC Chirperson, while officially requested the President support in visiting the detention centres of the Coalition force in Bagram and elsewhere in Afghanistan, asked him, during her visit, to support AIHRC in this matter.

### **Detained Children**

On a monthly basis, AIHRC Child Protection Unit visits detention centers for children which are called “rehabilitation centers.” AIHRC monitors children’s detention centers in Kabul, Herat, Parwan, Kapisa, Gardez, and Jalalabad.

Through visits to children’s detention centers, the Unit has been able to identify some of the main problems and to bring some improvements in the conditions. For an example, through our regular monitoring, the quality of education and health care for children in the detention center has improved. The Unit also successfully established a kindergarten for the children of women held in the Kabul women’s prison.

The Child Protection Unit assisted in the release from the detention centers of more than 85 children who were illegally detained or had committed petty offences. In nine provinces, the AIHRC won the separation of children offenders from adult offenders in prisons in Mazar-e-Sharif and Kandahar. In Kabul and in most of the regional offices, AIHRC has held training and sensitization programs for the police to try to stop the torture and illegal detention of children.

### **Monitoring Missions**

In response to complaints about the behaviour of commanders and other authorities, the Afghan Independent Human Rights Unit has undertaken a number of monitoring missions to assess the human rights violations in the regions and to make recommendations. In many cases, the victimization of local residents is the result of the involvement of commanders with poppy cultivation, seizure of natural resources, and other illegal activities. Poverty and the lack of reconstruction activity have further exacerbated these problems.

In August 2003, AIHRC received complaints about the appointment of Haji Abdurrahman as Governor of Kijran District of Uruzgan Province. The complaints alleged that Abdurrahman had recruited soldiers and established military posts at the citizen’s expense, that bribes were being taken to settle disputes that he had opium business dealings with the Governor of Uruzgan, and that taxes on opium production were too high. A former governor, Toren Aman, also was accused of torture and collecting illegal taxes and ransoms from residents.

After being unable to obtain information from a government mission to the area, AIHRC made the decision to send its own mission to investigate the situation. The AIHRC team found that the primary source of the conflict and human rights violations in the area was the illegal collection of taxes on opium production.

As governor, Abdurrahman had requested that in the Kijran District farmers pay one-fourth of their opium harvest to him as a tax. Toren, who was governor of neighboring Charchina District, made the same request of his residents. However, the residents of the Charchina district refused to pay the tax and Toren was dismissed from his job. Toren and his troops took Abdurrahman’s share of opium and then attempted to

take control of Kijran. Residents complained to President Karzai about both governors. Attempts by the Governor of Kandahar to broker an agreement failed and fighting broke out, resulting in 30 people being killed and 20 injured, including a pregnant woman and her daughter. Looting and subsequent arrests occurred. Toren escaped from the area. Abdurraham remained and resumed governorship of the Kirjan District.

Following the mission, the AIHRC recommended that neither Abrurraham nor Toren be allowed to hold office in order to restore stability to the area. AIHRC also found that water shortages, lack of education and health care, and lack of job opportunities in Kijran district had contributed to the dependence of the population on opium production. AIHRC recommended that humanitarian organizations and the government address these needs. The outcome of the mission recommendation was that both Toren Aman and Abdurahman were dismissed from their jobs.

Another mission to the Kahmard District of Bamiyan took place after the AIHRC received reports that local residents were protesting check points set up by Commander Haji Ahmad, Chief of Police. Residents also were concerned about the use of a local coal mine by commanders, lack of competent administration, instability, poppy cultivation, trafficking, and non-payment of police salaries. This mission was conducted as a joint effort by AIHRC, UNAMA, UNHCR, Bamiyan PRT, and the Bamiyan Governor's office to examine controversies surrounding the Ministry of Interior's appointment of Haji Ahmad as Commander and Allah Bomani as Kahmard District Governor.

After conducting numerous meetings and interviews with residents, the mission concluded that the majority of people held Haji Ahmad responsible for human rights violations and harassment. While most people were happy with Allah Bommani, they felt that his administration of the district was very weak. The mission recommended that checkpoints established by Ahmad be removed and that both Ahmad and Bommani be dismissed. AIHRC also recommended the acceleration of reconstruction in the area.

An appalling human right violation took place in Herat on 21 of March 2005, resulted killing of Mr. Mirwaise Sadiq, Minister of Civil Aviation of ATA, and Zahir Nawabzadah, Chief Commander of Military Base 17 was displaced to Badghis area. The incident ignited from a car accident driving by the Deputy-chief of Intelligence department of Herat Military Base No 17, who was Loyal to Governor Ismail Khan. In addition that five high officials including Mirwaise Sadiq, another 17 people who were policemen and Police officers were killed and 10 persons were injured. The houses of 16 police/military officers were looted or burned up. Soldiers loyal to Gov. Ismail Khan also burned the house of Mawlawi Khuda Dad, Chief of Clergy Shura and Head of courts in Herat. The investigation revealed that 296 persons were missing or disappeared, but the authority in Herat says that 40 of them have been killed and the remaining are disappeared.

It was said that the bodies have been buried in remote areas out of the city by soldiers of Ismail Khan. As a result of the efforts of the joint government and AIHRC delegation, 149 arrested persons were released, but 35 persons released before the delegation of Kabul arrived in Herat.

In October 2003 Watan Bibi, mother of Sultan Bibi made a compliant to the Commission office in Mazar-i-Sharif. Sultan Bibi has married with Saifuddin at very high bride price three years ago, but he got TB and died. Later on Ziauddin, 50, brother of Saufuddin requested Sultan Bibi 's father to agree about his marriage with Sultan

Bibi. Ziauddin is one of the soldiers of Ustad Atta, a powerful local commander ruling Mazar. In the time being, Ziauddin's wife threatened Sultan to death if she agree to marry with Ziauddin. Sultan Bibi's father also denied. Bibi's father was kidnapped by Ziauddin and badly tortured. Then Ziauddin together with other soldiers looted the house of Bibi and took sultan Bibi with themselves.

It was reported to the Commission office in Mazar. As a result of the commission intervention, her body was found in a bag, buried near Ziauddin's house. According to Bibi's mother and other evident, there was no doubt that Ziauddin was the murder, but the Chief Police Commander saying that they are not capable to catch the murder because he has strong affiliation with local commanders. Lastly after putting direct pressure on Ustad Atta by the investigation officer of the commission's headquarter, who was assigned to investigate the case, he assigned his soldiers to catch Ziauddin. He then confessed that he has killed Bibi. His confession was shown on Balkh TV. The Police Department also assured the Commission for protection of Sulatn Bibi's mother and other relatives.

It reveals that the commission role was very efficient in this case, putting pressure on local commanders and government authorities to protect the rights of people.

5. Has your Commission intervened in court proceedings on the issue of torture? If so, please provide details of the cases, the role of the Commission and the outcome of the cases. Please provide copies of any submissions and court decisions.

Last year the commission monitored the trial process of the Case of Mr. Abdullah Shah who was finally received death penalty as a result of court consent. He was accused for several cases of murdering and persecution. During the court hearing he was complaining from being tortured, as beating and given him electric shocks, by police, but the judges didn't consider it. The commission then prepared a report and submitted to the president. Unfortunately it was not considered at all.

6. Has your Commission addressed the issue of torture in its annual reports? If so, please provide a copy of the relevant sections.

When the Commission monitors take visit to detention centres, ask the detainees if they have been torture, then record it and report to the relevant police department and also use it for its advocacy activities, Or if the commission is reported about a case of torture case by individuals or by media offices, the commission sends a monitor to investigate the case. Under the protection chapter of the commission's annual report , June 2003-June 2004, you read as follow:

### **“Torture**

Torture continues to take place in place as a routine part of police procedures. AIHRC has found torture to particularly take place at the investigation stage in order to extort confessions from detainees. Forced confessions are clearly in violation of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Torture was found to be especially prevalent in the investigation process in Herat Province.

Two brothers in Herat were imprisoned on the charge of stealing bicycles. They were beaten. The prisoners were hidden from AIHRC investigators, who eventually found them in the Herat Criminal Office. As a result of the torture, the brothers were unable to walk. AIHRC filed complaints against the Herat Criminal Officer with the Herat deputy governor, chief of police, and Ministry of Interior Affairs. As a result, the criminal officer was removed from his post.”

7. If your government has ratified the International Covenant on Civil and Political Rights, Convention Against Torture and/or Convention on the Rights of the Child, has your Commission been approached by the government to contribute to the periodic reports to the relevant Committees, or has your Commission provided a shadow report to the relevant Committees? If so, please provide copies of the sections relevant to the issue of torture.

Afghanistan has ratified the abovementioned treaties, but has not provided the periodical report within the last twenty years. The AIHRC has not produced any shadow report so far relevant to the treaties. The Canadian government is assisting the treaty Reporting Project within the Ministry of Foreign Affairs through UN.

8. Does your Commission have regional offices and are these offices involved in torture issues? If so, in what way?

The AIHRC has set up seventh regional and three provincial offices. All of these offices regularly monitor the police custody, detention centres and prisons for monitoring the rights of detainees and prisoners including the cases of torture. They also investigate the complaints about torture.

9. Does your Commission work in collaboration with civil society including the private sector, government or UN agencies or multilateral donors such as the World Bank on the issue of torture? If so, in what way?

The AIHRC has close cooperation and collaboration with civil society organizations, UN offices, and government departments. AIHRC has provided small grant for the capacity building of those local NGOs, work in the area of human rights promotion and protection in Afghanistan. In addition, a NGO consortium of human rights has been established in Afghanistan that several local and international NGOs and AIHRC are members to the consortium. Developing a network of human rights NGOs has been initiated by the Danish Institute for Human Rights in Kabul that the AIHRC fully supported the network.

The AIHRC has cooperation with UNHCR, NRC, ARC, IOM, UNICEF, UNIFEM, and UNDP country offices in Kabul.

The AIHRC has established good cooperation with the Ministry of Interior in briefing the young policemen and police officers with human rights principles. And also the commission has regular briefing sessions with the student in the Faculty of Journalism and Education University in Kabul.

Torture is one of the important issues that the commission always raises with the government departments, UN agencies, and NGO community.

10. Has your Commission identified laws/policies/practices in your country that impact on torture?

In the new Constitution, the Article 29<sup>th</sup> prohibited torture and confession as a result of torture, and the Article 30<sup>th</sup> invalidated compulsory confession. Also none of the official laws in Afghanistan allows torturing.

11. Has your Commission proposed legislation relating to torture, or helped develop a national policy?

The Commission unfortunately so far has not proposed legislation related to torture, but it plans to propose such legislation and request trial and different sentence for those governmental staff, who are committed torture.

## **Documentation**

Please send the following documentation to the APF Secretariat by e-mail or by mail:

Constitutional provisions relating to:

- torture, including references to other ill-treatment and refoulement or extradition; and
- relevance of international law in the domestic jurisdiction. NA

Relevant legislation referring to:

- torture and other forms of ill-treatment; ?
- the treatment of individuals in all forms of detention; ?and
- legal and other safeguards aimed at the prevention of torture. ?

NGO Reports

- Reports by local, national or regional non-governmental organisations on torture within your country. NA

## **Issues raised in the Terms of Reference**

1. Do the police and other disciplinary forces in your country currently follow set minimum standards of interrogation?

Unfortunately not! This is one of our concern, but the commission teaches the police officers and young police students the human rights principles and the "**Ten Principle Measures of Protecting Human Rights for Law Enforcement Staff**", a manual produced by AI Secretary (AI Index POL30/04/98). The commission distributed the manual translated into Local language to a number of the police officers during training workshops organized for the police officers, prison staff and prosecutors.

If so, are you able to provide a copy of these minimum standards?

If not, please provide any information you have about these minimum standards including:

- who developed them?
- on the basis of what documentation?

- when were they developed?
- when were they last revised?
- do the staff of the disciplinary services receive specific training in interrogation methods?
  - if so, how often and who conducts the training?

Afghanistan now restructures the police departments under the National Police Scheme, which is technically and financially supported by German, USA, UK and Norwegian governments. The issues of protecting human rights are included into the training programme. The commission staff also teaches the principle of human rights to the police students in the National Police Academy

Please provide any information about complaints received by individuals or groups about the methods of interrogation used by the disciplinary forces in your country.

During 2004 the commission has received 45 complaints about torturing by police. As far as been possible, these cases, after being investigated, have been discussed with the judicial authorities, but it has not been taken seriously by the authorities. The very recent case (2<sup>nd</sup> week of November) was a death case as a result of torturing by the staff of Anti-Terrorism Police Department of the Ministry of Interior. Mr. Kachkol who was suspected for having relation with the latest kidnapers of the three UN staff, have been seriously beaten by polices who died later on. The commission investigated this case and made a press conference, which broadly covered by media and put the police authority under pressure.

2. Do your national courts recognise customary international law as a source of law to be complied with? Include any cases that refer to the rule of customary international law prohibiting torture. **No**
3. Does your constitution or national law allow for any derogation from the prohibition on torture and other forms of ill-treatment? If so, please provide the relevant sections. **No**
4. Set out any legislation, rules or practices of courts in admitting or rejecting any statement that is made by an accused as a result of torture or any other form of ill-treatment.

The Article Thirty of the New constitution reads " Any statement, testimony, or confession obtained from an accuses or of another person by means of compulsion are invalid.

Confession to a crime is voluntary confession before the authorized court by an accused in a sound state of mind."

Also in accordance with the civil law, confession by force or torturing is invalid. In reality the judge has full authority to reject forcibly confession.

5. Describe the remedies available and provided in practice to victims of torture and other forms of ill-treatment, including complaints systems, compensation mechanisms and medical rehabilitation.

Although the new Afghanistan constitution and civil law has anticipated the remedial measures for a tortured person, but it has not been implemented yet. The commission has received a number of complaint that victims are requesting remedies/compensation for their property or health damage as a result of the military operation of the Coalition forces in Afghanistan, but the Coalition force has not a clear statement in this regards and no one is provided compensation.

6. Provide information about the protections afforded to persons being forcibly returned to a country in which they may face torture or other forms of ill-treatment.

In accordance with the law, the government is responsible to protect a forcibly returned Afghan national, but since the government is not powerful enough to protect people in remote areas, and on the other hand, because of the existence of local armed commanders and lack of rule of law, deported persons are intimidated and are at risk, if he/she had hostility background in a certain area. In some cases these people are intimidated for their past political background.

7. Have the national courts been asked to consider any cases of alleged torture that have taken place outside the territory of your country and not involving citizens of your country? If so, please describe the position of national courts in exercising their jurisdiction in such cases. For example, General X was a Balkan military officer accused of torturing civilians during the regional conflict. He is currently holidaying in your country. What would the position of your national courts be if they were asked to try him for torture?

Such a case has not been taken place in the country nor the court system has such jurisdiction, and also the laws and judicial practiced in Afghanistan is very weak to try such a person.

8. Have the national courts considered the extent of their jurisdiction over international intervention forces? If so, please provide details of the cases and copies of the judgments, if possible. **No**

9. Describe the nature and extent of procedures and safeguards, both legal and practical, in place to protect against torture by non-state actors.

There are several procedures to safeguard the people against torture such as : safeguarding by laws, arrestment by police then prosecuting, regularly monitoring the police custody, detentions and prisons by the Monitoring Department of the Ministry of Justice for police custody, detentions, and prisons, and complaint submission to government offices, the AIHRC, and human rights NGOs.

This is the end of the questionnaire. Thank you for taking the time to respond.