

# **Law on the Structure, Duties and Mandate of the AIHRC**

**Islamic Republic of Afghanistan**

**No. 3471**

**Date: 24/02/1384 (14 May 2005)**

**Dear Sarwar Danish  
Minister of Justice,**

**The Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, covering four chapters and thirty-five articles, which was adapted by the Supreme Meeting of the Cabinet Ministers, and endorsed by my decree No. 16 dated 22/2/1384, sent to you herewith this letter for printing in the official gazette.**

**Hamid Kerzai  
President of Islamic Republic of Afghanistan**

## **Decree**

**President of Republic of Afghanistan**

**on**

### ***Enforcement of The Law on Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission***

**Decree No. 16**

**Date: 22/02/1384 (12 May 2005)**

**Article No. 1**

**I hereby endorse the Law of Structure, Duties and Mandate of the Afghanistan Independent Human Rights Commission, covering four chapters and thirty-five articles, which was adapted by the Supreme Meeting of the Cabinet Ministers in its resolution No. 7, dated 12/2/1384.**

**Article No. 2**

**This decree is enforceable effective from the date of endorsement, and shall be printed in the Official Gazette.**

**Hamid Kerzai  
President of Islamic Republic of Afghanistan**

***IN THE NAME OF GOD THE MOST COMPASSIONATE***

**Law on the Structure, Duties and Mandate of the AIHRC**

**Chapter One  
General Provisions**

**Foundation**

**Article 1:**

This Law is made pursuant to Article 58 of the Constitution of Afghanistan; and Resolution 134 of 20 December 1993 of the United Nations General Assembly, in order to monitor the observance of human rights, to promote and protect human rights and to regulate the affairs related to the structure, duties, powers and method of work of the Afghanistan Independent Human Rights Commission.

**Establishment**

**Article 2:**

1. The AIHRC has been established, as an independent body, within the framework of the State of the Islamic Republic of Afghanistan and it shall function independently.
2. The AIHRC shall comply with the provisions of the Afghan Constitution, this law and other laws enforced in the country during the performance of its duties.

**Abbreviated Name**

**Article 3:**

The Afghanistan Independent Human Rights Commissions, hereinafter, shall be referred to as the “*the Commission*”.

**Definition of Human Rights**

**Article 4:**

According to this law, human rights shall mean the fundamental rights and freedoms of Afghan citizens which are enshrined in the Afghan Constitution, declarations, covenants,

treaties, protocols, and other international human rights instruments ratified and acceded to by Afghanistan and to which Afghanistan is a party.

Equal and fair access to social welfare and other services provided by the State are also considered human rights of the citizens.

### **Objectives**

#### **Article 5:**

The Commission shall have the following objectives:

1. Monitoring the situation of human rights in the country;
2. Promoting and protecting human rights;
3. Monitoring the situation of and people's access to their fundamental rights and freedoms;
4. Investigating and verifying cases of human rights violations; and
5. Taking measures for the improvement and promotion of the human rights situation in the country.

### **Cooperation with other State Organs**

#### **Article 6:**

Judicial and prosecutorial organs, ministries, governmental organizations, civil society groups, Non-Governmental organizations and all citizens are obliged to cooperate with the Commission in achieving the objectives set up by this law.

## **Chapter Two The Structure of the Commission**

### **Composition**

#### **Article 7:**

- 1- The Commission shall be consist of nine members, female and male, who are appointed by the President for a period of five years.
- 2- The President shall appoint the Chairperson of the Commission from among the members.

### **Title of the Members**

#### **Article 8:**

The members of the Commission shall be called, "*Commissioners.*"

## **Election of the Deputy**

### **Article 9:**

1. The Commission shall have a Deputy Chair who will be elected from among the members of the Commission.
2. The terms of reference and the mandate of the Deputy Chair shall be determined by the Chairperson of the Commission.

## **Board of Professional Advisors**

### **Article 10:**

The Commission may create a Board of Professional Advisors to support the performance of the duties of the Commission. The number of this board shall not exceed 10 persons.

## **Conditions for Appointment of Commission Members**

### **Article 11:**

Members of the Commission and the Board of Professional Advisors shall have the following qualifications:

1. Afghan Citizenship;
2. Twenty five years of age;
3. Not being deprived of political and civil rights by a competent court;
4. Higher educational background in law, human rights law Islamic Jurisprudence or an academic background in other fields of study with practical experiences in the field of human rights;
5. Not being accused of national treason or crimes against humanity;
6. , Shall have a good reputation, be independent, hold popular trust and a commitment to human rights;
7. Shall not be a member of any political party during their term of office at the Commission.

## **Activities of the Commissioners**

### **Article 12:**

Commissioners shall not hold any other offices or run any other organizations during their term of office. Teaching at educational institutions is not subject to this provision.

## **Suspension of Members**

### **Article 13:**

1. Members of the Commission shall be suspended in the following circumstances:
  1. Death, resignation or retirement;
  2. Convicted of treason or crimes against humanity by a competent court;
  3. Suffering from a refractory bodily or mental disease that hinders the performance of duties;
  4. Assignment of the members to other duties by the President for a period of more than 6 months;
  5. Removal by the Commission
2. The Commission can, under the conditions described in the first paragraph of this article, propose to the President a new competent person within one month to fill the vacant post.

## **Conditions for Removal of the Members**

### **Article 14:**

1. Members of the Commission shall, based on sufficient documents available and clear reasons, be removed from the membership of the Commission for any of the following reasons:
  - a. Lack of competency in performing assigned duties;
  - b. Violating the confidentiality of the commission;
  - c. Violating the provisions of this law;
2. Removal of a member of the Commission, as set out in the paragraph 1 of the present Article, shall happen based on the existence of clear, documented reasons and upon the proposal of two thirds of the members of the Commission and the approval of the President.

## **Resignation**

### **Article 15:**

Members of the commission shall submit their letter of resignation to the Commission. The resignation shall be subject to approval by the President.

## **Immunity**

### **Article 16**

Members and all staff of the Commission, while carrying out their activities under their legal mandate, are immune from prosecution.

## **Conditions for Legal Prosecution of Commission Members**

### **Article 17:**

If a member of the Commission is accused of a crime, the responsible authority shall inform the Commission and the suspect shall be prosecuted.

If a crime is witnessed, the responsible authority may arrest and prosecute the accused without the permission of the Commission.

In both cases, if the judicial prosecution requires legal detention, the responsible authority, shall immediately inform the Commission of the matter and obtain its consent.

## **Location of the Central Office and the Establishment of Regional Offices of the Commission**

### **Article 18:**

The Central office of the Commission shall be located in Kabul. **When required to improve the implementation of the** objectives under the present Law, the Commission shall be able to establish temporary or permanent Regional and Provincial Offices.

## **Secretariat**

### **Article 19:**

1. The commission shall have a secretariat to carry out its administrative tasks. The Executive Director leads the secretariat. The secretariat carries out its duties according to the provision of this law and the procedures set-up by the commission.
2. The Executive Director and staff members shall be recruited in accordance with the Labor Law and Civil Servant Recruitment Law, with due consideration to their professionalism, competency, personal expertise, commitment to human rights and a fair ethnic, gender and linguistic composition.

## **Sessions of the Commission**

### **Article 20:**

1. Regular meetings of the Commission shall be held once a week. Extraordinary sessions shall be convened upon the decision of the Chair or upon the request of one third of the members of the Commission.

2. The quorum for the session of the Commission shall be completed by the presence of two third of the members of the Commission and the decisions shall be made by the majority vote of the members present.

In case of a tie in the voting, the vote of the Chairperson shall be the deciding vote.

## **Chapter Three**

### **Duties and Mandate of the Commission**

#### **Duties and Power**

##### **Article 21:**

The Commission shall have the following duties and power to achieve the following objectives set-up by this law:

1. Monitoring the human rights situation;
2. Monitoring the implementation of the provisions of the Constitution, other laws, bills and regulations, and Afghanistan's commitment to human rights standards;
3. Monitoring the performance of those administrative systems, legal and judicial institutions, and national and international profitable and non-profitable organizations in the country that effect human rights.
4. Monitoring the performance of state authorities and Non- Governmental organizations concerning the fair and accessible distribution of services and welfare.
5. Monitoring the situation of citizens' access to their human rights and freedoms;
6. Visiting detention centers to monitor the implementation laws on the treatment of prisoners;
7. Investigation of cases of human rights violations;
8. Collecting documents, evidence and testimonies of witnesses on cases of human rights violations;
9. Referring the results of investigations of the cases of human rights violation to relevant authorities and following up on cases in order to address violations and prevent future violations;
10. Formulating and implementing of a national human rights education plan and public awareness programs;
11. Cooperating with relevant institutions on improving human rights awareness in educational curriculum;
12. Planning and implementing programs that include the investigation of crimes and human rights abuses as part of the transitional process;
13. Providing advice to the National Assembly/Parliament and the government to legislate, adopt, and amend laws in support of human rights promotion and

- protection, and to abolish laws that are not in compliance with international human rights standards;
14. Providing advice to the National Assembly and the government regarding signing and acceding to international human rights conventions and treaties;
  15. Providing advice to the government for better implementation of Afghanistan's commitments to international human rights conventions;
  16. Carrying out research to find effective ways of harmonizing principles and mechanisms of international human rights instruments with Afghan culture and national traditions and making suggestions in this respect;
  17. Providing advice and necessary information to the government to prepare Afghanistan's reports which fulfill its treaty obligations;
  18. Cooperating with government and non-governmental authorities and other organisations to improve the implementation of human rights standards and raise the level of human rights observance in relevant areas;
  19. Cooperation for implementation of administration reforms to ensure, support and improve human rights in Afghanistan;
  20. Cooperating with the United Nations, and regional and international organizations within the scope of its mandate and power;
  21. Conducting public consultations and surveys to find practical ways of promoting and protecting human rights and develop relevant programmes;
  22. Providing advice and submitting recommendations to the national, provincial and district councils and other relevant authorities for promotion and protection of human rights;
  23. Building the capacity of civil society groups and local human rights organizations and supporting their activities;
  24. Releasing and publishing of public declarations and official statements on important issues of human rights;
  25. Demanding officials to explain the causes of non-observance of human rights principles;
  26. Dissemination and promotion of human rights for public awareness;
  27. Submitting annual reports to the President on the human rights situation;
  28. Releasing and publishing reports and statements on human rights situation in Afghanistan;
  29. Providing guidance and advise to the President on how to address human rights violations and abuses;
  30. Managing and administering headquarters, regional and provincial offices and monitoring the performance, activities and the behavior of the staff members;
  31. Building relations at the national and international level in the field of human rights activities and better implementation of the provisions of this Law;
  32. Securing necessary facilities and opportunities to promote the activities of the Commission;
  33. Regulating the reporting on the human rights situation for scientific and practical use;
  34. Adopting bills and regulations to regulate the affairs relating to the rights, responsibilities, privileges and insurance for the staff members of the Commission;
  35. Having responsibility to implement the present Law.

## **Attending the Annual Sessions of the United Nations Commission on Human Rights**

### **Article 22:**

The Chairperson or the senior representatives of the Commission may attend the annual sessions of the United Nations Commission on Human Rights and other regional and international gatherings and conferences.

## **Investigation of Complaints on Human Rights Violations**

### **Article 23:**

1. The Commission shall investigate all complaints on human rights violations received by the Commission.
2. The Commission shall assess and analyze the complaints, collect information and evidence as required, and shall cooperate with the concerned authorities in finding remedial solutions for these cases.

If it is required, the Commission, in accordance with the paragraph 9 of Article 21 of this Law, may refer the case to the relevant judicial and non-judicial authorities.

## **Commission's Power to Collect Evidence**

### **Article 24:**

During the investigation of complaints, the Commission may request individuals or relevant responsible officials to provide documents and testimonies

## **Revealing and Publishing Evidence and Documents**

### **Article 25:**

The Commission shall not be coerced to disclose evidence, documents or testimonies that it has in its possession

## **Human Rights Situation of Children, Women and Persons with Disabilities**

### **Article 26:**

The Commission shall provide the Government and civil society groups with recommendations for providing social services and to promote and protect the rights of the child, women, people with disabilities and other vulnerable groups

## **Duties and Responsibilities of the Commission's Chairperson**

## **Article 27:**

The Chairperson shall have the following duties and responsibilities:

1. Guiding the overall activities of the Commission
2. Chairing the Commission's meetings
3. Monitoring the implementation of the Commission's budget
4. Issuing instructions and guidance in order to implement the provisions of this law

## **Individual and Collective Responsibilities**

### **Article 28:**

The Chairperson of the Commission and members shall be individually responsible for carrying out their duties in the specific areas, but have a collective responsibility regarding the general performance and decisions made by the Commission

## **Miscellaneous**

### **Budget**

#### **Article 29:**

1. The Commission shall prepare its budget and present it to the Cabinet Ministers as a part of the National Budget.
2. The Commission shall implement its budget independently according to pertinent regulations.

### **Financial and Technical Support**

#### **Article 30:**

The Commission may, in accordance with the present Law and relevant regulations, receive financial and technical support from the United Nations and other international donor institutions to improve the conduct and effectiveness in the performance and implementation of its development programmes.

### **Establishing a Transparent Financial Management System**

#### **Article 31:**

The Commission shall establish a transparent financial system to administer the financial affairs, maintenance of its premises, equipment and to monitor the flow of income and expenditures of the Commission.

## **Reports**

### **Article 32:**

1. The Commission shall submit its general annual report, including its financial expenses, to the Lower House of the Parliament (Ulisy Jirga) within one month after the opening of the annual session of the National Assembly. The report shall include all the activities of the Commission and a report on the overall human rights situation in Afghanistan along with its views and recommendations about human rights.
2. The Commission may present separate reports to Ulisy Jirga along with its views and recommendations on issues related to human rights monitoring, protection, promotion and improvement.
3. The Chairperson and the members of the Commission shall participate, upon the request of Ulisy jirga, in the session in which the Commission's general annual report is examined.

## **Security**

### **Article 33:**

The Ministry of Internal Affairs and other pertinent security authorities shall take the necessary measures to ensure the safety of the members of the Commission and its offices.

## **Publication, emblem and stamp**

### **Article 34:**

The Commission shall have a special publication, emblem and stamp.

## **The date of entry into force**

### **Article 35:**

The present Law shall enter into force from the date of endorsement and shall be published in the official gazette.