

Decree of the Presidency of the Interim Administration of Afghanistan on the Establishment of an Afghan Independent Human Rights Commission

Date: 6/June/2002

Whereas, the Agreement on Provisional Arrangements in Afghanistan Pending The Re-Establishment of Permanent Government Institutions (hereinafter, "the Bonn Agreement") provides that: "The Interim Administration shall, with the assistance of the United Nations, establish an independent human rights commission, whose responsibilities will include human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions,"

Now therefore and to these ends,

1. There shall be an Afghan independent human rights commission (hereinafter "the Commission") established in Afghanistan, in accordance with the provisions of the Bonn Agreement, and the terms, conditions and membership set out in Annexes One and Two, attached.
2. The present decree shall enter into force on the date of its adoption, and shall thereafter be published in the official gazette, together with its annexes.

Wasalam

Hamid Karzai,

Chairman of the Interim Administration

Annex One of Decree

Terms of Reference of the Afghan Independent Human Rights Commission

Article One

There shall be an Afghan independent human rights commission (hereinafter "the Commission") established in Afghanistan, with the support of the United Nations. The Commission shall serve for a fixed term of two-years from the date of its appointment, subject to the provisions of Articles Fourteen and Fifteen, below.

Article Two

The Commission shall be charged with developing a national plan of action for human rights in Afghanistan, and with human rights monitoring, investigation of violations of human rights, development and implementation of a national programme of human rights education, undertaking of national human rights consultations, and development of domestic human rights institutions, in accordance with the terms of the Bonn Agreement, applicable international human rights norms, standards, and conventions, and the provisions of this decree and annex. It shall carry out these functions in all of Afghanistan.

Article Three

The Commission shall be composed of 11 (eleven) full-time members appointed on the basis of their individual human rights expertise, personal and professional integrity and competence, demonstrated independence, commitment to the cause of human rights, and public credibility, one of whom shall be designated as Chairperson by the Interim Administration. The membership of the Commission shall include Afghan women and men, persons drawn from each of the principal ethnic and religious groups of Afghanistan, both from inside the country and in the Afghan Diaspora, and from Afghan refugee and internally displaced communities. All members shall be Afghan nationals.

Article Four

The members of the Commission shall be appointed by the Chairman of the Interim Administration, in close consultation with relevant ministries of the Interim Administration, members of the Special Independent Commission for the Convening of the Emergency Loya Jirga, and representatives of Afghan civil society, including Afghan human rights organizations.

Article Five

Members of the Commission shall serve for a term of two years from the date of their appointment. During their tenure, they shall not be subject to removal by any external authority. The Commission shall promulgate its own internal disciplinary rules, regulations and procedures, including requirements for a quorum and procedures relating to the preservation of confidentiality.

Article Six

The Commission shall have its headquarters in Kabul, and shall as well establish and maintain regional satellite offices in Qandahar, Herat, Mazar-i Sharif, Faizabad, Jalalabad, Gardez and Bamiyan. The Commission shall determine whether, when and where to open additional offices, with a mind to ensuring the widest possible national coverage and public accessibility within available resources.

Article Seven

The Commission shall be supported by a full-time professional secretariat, staffed by Afghan human rights specialists and qualified support staff. The Commission shall appoint a Director to head the staff and be responsible for the daily management of the work of the Commission and its offices. The Director shall, in turn, be responsible for the appointment of all other staff, in accordance with criteria, terms and procedures to be developed by or under the authority of the Commission.

Article Eight

All Commission members and staff shall be immune from all criminal prosecution and civil liability for words spoken, acts performed or omissions committed in the good faith performance of their mandated professional duties for the promotion and protection of human rights. Persons appearing before the Commission in order to offer evidence or testimony shall be entitled to immunity from civil or criminal liability only for the act of providing such evidence or testimony, except where that person is charged with giving false testimony or fabricating evidence. All national authorities and official institutions shall be required to afford full cooperation to the Commission, and to facilitate its work in carrying out its mandated functions. The national authorities shall be responsible for providing adequate security for the members, staff, witnesses, premises, materials and property of the Commission, wherever these may be found.

Article Nine

The Commission shall be mandated to monitor the situation of human rights throughout the entire country, to investigate allegations of violations of human rights, and to develop recommendations for the building and strengthening of national human rights capacities and institutions. It shall work with partner institutions to develop and implement human rights education activities including through the incorporation of human rights into national educational curricula at all levels, and in the mass media. It shall as well undertake national consultations and propose a national strategy for transitional justice and for addressing the abuses of the past. It shall submit opinions, recommendations, proposals and reports to local, regional and national authorities, promote the harmonization of national law and practice with international human rights instruments to which the Afghanistan is a party, provide advice and information to the country's human rights treaty reporting processes, assist in the development and implementation of national human rights education programmes, and cooperate with the United Nations and other international organizations on all matters within the Commission's competence.

Article Ten

The Commission shall be empowered to freely consider any questions falling within its competence, whatever the source of the proposal or referral, and shall have the right to initiate its own enquiries and investigations. It shall receive, hear and consider complaints and petitions concerning both individual cases and general situations, whether brought before it by individuals, their representatives, third parties or organizations, and shall be entrusted to address such cases and situations, variously, and in accordance with its own judgement, by seeking amicable settlement through conciliation, issuing decisions, or those confidential procedures which it may see fit to adopt; by informing petitioners of their rights and available remedies within the national legal system and international mechanisms and how to access them; by referring them to the courts or transferring them to other competent authorities; and, or by making recommendations to the authorities for remedial legal or administrative reform. The Commission shall develop its own rules and procedures for these purposes, giving due regard to the need to ensure gender sensitivity and physical, social, cultural and linguistic accessibility.

Article Eleven

The Commission shall have the power to hear any person and obtain any information, evidence and documentation necessary to assess situations and cases falling within its competence. It shall further have the power to require that the evidence of any witness, whether written or oral, be given under oath or affirmation, in the manner required for the presentation of evidence before the courts of Afghanistan, and to administer such oath or affirmation. It shall have the power to summon any person resident in Afghanistan to appear before the Commission in order to give evidence, provide testimony, produce documents or deliver material evidence, to examine such persons as witnesses, and to compel them to produce documentary or material evidence in their possession or under their control. The Commission shall have the authority to admit or exclude the public from any part of an enquiry, in particular where this is necessary in order to protect the safety or reputation of any persons.

Article Twelve

The Commission shall develop and maintain cooperative working relationships with organizations and representatives of Afghan civil society, including non-governmental organizations, community based groups, and others. It shall publish a comprehensive yearly report on the state of human rights in Afghanistan. It shall as well publicize its opinions and recommendations, undertake regular public information activities, and address public opinion directly and through the media.

Article Thirteen

The Commission shall develop its own budget, as well as transparent and efficient systems for its financial management, ensuring the acquisition and maintenance of adequate infrastructure, funding, staff, premises, and materials necessary for the independent performance of its mandated responsibilities. It shall seek the technical and financial support of the United Nations and international donors for its activities during the transitional period, as defined in the Bonn Agreement.

Article Fourteen

The Commission itself shall have sole authority for determining rules and procedures for the removal of members and staff for reasons relating to capacity or actions incompatible with their duties, and for the actual removal of such members or staff in accordance with such rules and procedures. In all cases where the removal, resignation or death of a member results in a vacancy, the Commission shall itself appoint the necessary number of new members to fill such vacancies, in accordance with its own rules and procedures. Any new members appointed to fill such vacancies shall serve for the balance of the original two-year mandate of the Commission.

Article Fifteen

Prior to the termination of the mandate of the Commission, as defined in Articles One and Five, *supra*, the Commission shall develop and present to the Constitutional Commission and the Constitutional Loya Jirga a proposal and plan for the Commission's transformation into a constitutionally entrenched permanent independent Afghan human rights commission, in accordance with the United Nations Principles Relating to the Status Of National Institutions for the Promotion and Protection of Human Rights ("*The Paris Principles*," United Nations General Assembly Resolution 48/134 of 20 December 1993, annex).

Annex Two of Decree

**Persons Appointed As Members of the
Afghan Independent Human Rights Commission**

1. Amina Safia **AFZALI**
2. Suraya **AHMADYAR**
3. Hangama **ANWARI**
4. Haneef **ATMAR**
5. Ali Ahmad **FAKUR**
6. Humaira **NIAMATI**
7. Ahmed Fahim **HAKIM**
8. Zia **LANGARI**
9. Abdul Salam **RAHIMY**
10. Abdul Razique **SAMADI**
11. Masoom **STANEKZAI**