



## Afghanistan Independent Human Rights Commission

### Questions and issues for consideration on “Afghanistan Peace Agreement”

16 March 2021

Afghanistan Independent Human Rights Commission (AIHRC) has repeatedly advocated for a ceasefire and an end to war through negotiations. We welcome intensified efforts for reducing the violence and creating greater regional and national consensus for peace. AIHRC has also called on both sides to enhance the inclusivity of the process, create an enabling environment for public participation in the peace talks and agree on set of principles, with human rights and victim-centered justice as central values, to end the suffering and enable dignified lives for all Afghans. AIHRC received a copy of the draft “Afghanistan Peace Agreement” on March 5 and was asked for comments and reactions. We have shared questions and comments on 8th March and now that there is a public debate about the Draft Agreement, we are sharing these comments and questions to clarify our concerns and contribute to the debate about the Afghanistan Peace Process.

Below is a preliminary set of questions, comments and issues for consideration. First, we note that this exchange is **meant to reflect concerns and questions and convey comments. It is not AIHRC’s endorsement of the draft document.** Secondly, the current set of questions and comments are not exhaustive and we may send additional comments after further consultation. AIHRC, as the national human rights institution, works with a broad set of actors, is seen as the leader in the field of human rights and thus consults civil society and victims’ organizations on its positions on the peace process. Thirdly, while the draft agreement has been shared with us, we **are yet to receive any clarity on the process of negotiating this draft and also the implementation guarantees.** Thus, our questions and comments cover three sets of issues: A) Process i.e. the process of agreement on the draft, B) Content of the draft and C) Concerns and questions about the implementation.

#### A. Process

1. What are the criteria for selection of the participants of the process? To what extent is inclusivity, beyond just inclusion of different political actors, central to the process? For instance, is a minimum of 30% participation of women a condition? Will the composition truly reflect the diversity of Afghanistan in terms of gender, age, region, ethnicity, and civil society and other key stakeholders?

We would like to note that ongoing participation of the current female members of the negotiation team of the republic is the bare minimum acceptable; indeed, if the overall number of negotiators/participants increase, the number of female negotiators ought to increase, too, so that women’s participation increases to the 30%.

2. What is the level of seniority of participants from both sides of the Republic and the Taliban? Will the current negotiation teams be the key participants from both sides?
3. What is the role of civil society and the level of participation envisioned?
4. What is the role of Afghan independent media and their level of access to the discussions?
5. To what extent do the women rights movement, human rights organizations and victims’ organizations have active input in the agenda?
6. What is the role of independent (international and Afghan) observers and their level of access to the discussions?
7. Who will be present as independent observers in the discussions?
8. Will there be an independent mediator or facilitator?
9. Would the mediator be from the UN? And if so, who would the UN consult with in determining its Envoy?
10. What is the intended timeframe for discussions/deliberations? We would like to emphasize that it would be

preferable to not have a fixed timeline; the length of deliberations should be contingent on the progress.

11. What is the specific role of the US?
12. To what extent will track 2 processes be organized and accommodated, particularly on human rights issues including rights of women and victims' rights?
13. How and when will the members of commissions, joint committees etc for the Peace Government be elected/determined? What will be the mechanism and how will it be sequenced in relation to mutual agreement on other aspects of this draft i.e. general provisions, ceasefire, etc? To what extent will this mechanism be open to civil society representatives in both nominating members to commissions for instance, as well as participating in electing them.

## B. Questions and comments on the Content and Substance:

14. On all references to meaningful inclusion of women, we suggest that 'meaningful' be more precisely defined – a minimum of 30% participation should be set as the standard.
15. The first paragraph of the agreement leaves the number of months for the transition period unclear. Has any thought been given to minimum and maximum number of months and how does it correspond to other factors such as presence of international troops, length of existing aid commitments to Afghanistan, etc? What factors will determine the length of time - i.e. what are the conditions that would indicate that the transition period can end?
16. Part 1 (Guiding Principles), Point 1, refers to the establishment of a High Council for Islamic Jurisprudence. We suggest: further clarity on its mandate and authorities. Must reflect sect/religious diversity of Afghanistan (Sunni, Shia, Ismaili). Must include women. Clarity needed on its authority relative to other institutions.
17. Part 1, Point 3: We suggest explicit reference to the Afghan State honoring and upholding its international human rights commitments. We suggest explicit reference to the rights to free speech, freedom of the press and other media, freedom of movement and association (including for women), and freedom to choose political leaders – that these will be guaranteed throughout the Peace Government and enshrined in the future constitution
18. Point 4: What is the baseline for protecting women's rights? How will parties reach agreement on what this means prior to signing the deal? We suggest adding "internationally recognized women's rights" to prevent any future limitation on rights of women utilizing a narrow interpretation.
19. Point 6: What does honor and support for victims imply? Are reparations guaranteed? We also suggest adding **accountability** to truth seeking and reconciliation. Some specific questions that AIHRC would like to raise:
  - a. Who will develop the national policy on transitional justice, also known as victim centred justice?
  - b. Will victims receive due reparations and amends for the harms done to them?
  - c. How will victims participate in the process to develop the transitional justice policy?
  - d. At what point will the parties hear from victims – when will victims have the opportunity to give testimony before the parties? Will this happen prior to a deal? How will their views be included in this document?
  - e. Will parties respect victims individual and collective right to determine how the parties will make amends and / or reparations to them?
  - f. Will there be independent inquiries to establish violations and breaches of human rights carried out by international forces, including the US?
  - g. What support, financial and technical, will there be for independent investigations into war crimes and other atrocities and harms Afghans have experienced?
20. Point 9: What does the initial template imply in reference to the 2004 Constitution? Will the Constitutional Review adhere to the principles stated in the current constitution or will 2004 constitution be just used as a general blueprint? What is the baseline for the protection of rights – women, religious minorities, ethnicities, all Afghans? How can we assure that the review will not undermine rights?
21. Point 12: What exactly is the advisory role of High Council for Islamic Jurisprudence in advising the

- Judiciary? This seems to be in contradiction with the principle of judicial independence. It should be clarified that the High Council's advice is not binding.
22. Point 13: Will negotiating parties disclose assets, involvement in narcotics and other industries that propagate corruption, and reveal the extent and source of their arms? What concrete measures will be taken to ensure anti-corruption is at the heart of the deal, and that reconstruction and rebuilding benefits all Afghans rather than a small elite?
  23. On General Provisions, Point D) We consider it essential that the second Chapter of Constitution on the Fundamental Rights and Obligations of the Citizens remains applicable for the period of The Peace Government and that no aspect of the Agreement violate this important Chapter, i.e. bill of rights of Afghans.
  24. On E i.e prosecution for crimes. We don't have "political" crimes under the current legal system. What do "political" crimes refer to? Is there a shared understanding of this term? It could be problematic to leave the definition to the two sides.
  25. on Point E:
    - a. Joint Committees: We strongly suggest that the criteria for members of all Joint Committees, particularly transitional justice or victim-centred justice be: relevant professional experience & political independence and perception of independence. Both sides should be required to introduce women as well as men as members of the Joint Committees. Inclusivity in terms of minorities and youth is also essential.
    - b. We do not see a need for a joint committee on (vi) traditional dispute resolution as most traditional dispute resolution mechanisms are either in contradiction with international human rights law or Sharia or both (i.e. baad and badal as dispute resolution mechanisms contradict both Sharia and Human Rights). Alternatively, we suggest a Joint Committee on Housing, Land and Property Rights.
    - c. AIHRC: On expansion of AIHRC members, we want to bring it to your attention that 1) the selection mechanism for Commissioners must adhere to the UN Paris Principles relating to the Status of National Institutions; if not, AIHRC will be at risk of losing its A-Status Accreditation and its funding. The Paris Principles require Commissioners to be entirely independent of political groups, state actors, armed forces and related entities, and to act with such independence, and be selected for their character, professional competence, integrity, knowledge of and commitment to internationally recognized human rights and independence. 2) The number of Commissioners is determined by Law on the Mandate and Structure of Afghanistan Independent Human Rights Commission and an expansion will require changes in law.
  26. On the National Parliament: What will the process be for expansion of members? How will it reflect the public will? What will the percentage be for Taliban members?
  27. On IV. The Judiciary. The Afghan judiciary should be non-political and independent. Selection of members of the Supreme Court should take place through a non-politicized process that is separate from the negotiating table.
  28. On the High Council for Islamic Jurisprudence. Inclusion of women and reflecting religious (within Islam) diversity key in composition.
  29. ON V11. Sub-national government structure. Provincial Council. What will the process be for Taliban to name members? How will it reflect the will of the people? What will the percentage be for Taliban members included?
  30. On VIII: New Constitution. Must clarify the minimum number of women on the Commission for the Preparation of a New Constitution. The Commission must widely and systematically consult different stakeholders including civil society, women-led organizations and women leaders, all ethnic and linguistic groups, youth and other important stakeholders.
  31. On Part Three: Permanent and Comprehensive Ceasefire. The list of forbidden provocations should be revisited and expanded through wider consultation with women and communities.
    - a. On the harassment of the population, it needs to be clarified that limiting women's movement and social interactions, harassing people for being part of private or public mixed gender gatherings, harassing individuals for views expressed on social or traditional media, should be considered provocations.

- b. Security forces, in addition, must commit to protecting rather than damaging or destroying Afghanistan’s cultural heritage – formal and informal, including music, landmarks, sculptures, art etc.
- c. During the ceasefire, what will happen in Taliban controlled territories in terms of freedom of movement for women, equal access to rights, etc? What are the provisions for contested areas?
- d. Is it the mandate of the Joint Military and Police Board to work on the integration of forces?
- e. What provisions exist for full demilitarization of public space including integration of local militias?
- f. Will this demilitarization happen following the transition to a Permanent Government?
- g. Has any thought been given to pros and cons of a UN Peacekeeping Mission to monitor the ceasefire? If so, will it have Chapter 6 or Chapter 7 power? What other ceasefire monitoring arrangements are being considered?

### 3. Implementation

- 32. What is the role of the UN and regional countries and the US? Will they be signatories to the agreement or have a separate mechanism to support the agreement and monitor its implementation?
- 33. What will be the implications/consequences of violating the constitutional framework, particularly on human rights? Who will enforce this? For instance, can the Peace Government announce separation of workplaces for women and men? Ban women from certain positions or jobs? Prevent women from attending joint meetings, gatherings, and public performances or sports? Limit freedom of movement or other constitutional rights and freedoms of women in any way, as a temporary or long-lasting measure?
- 34. What specific measures and guarantees will be in place to protect the civic space necessary for a robust and inclusive constitutional review process under the Peace Government? What protections for independent media and civil society and women-led organizations? Again, how will these be enforced?