Submission on the combined initial and second periodic report of Afghanistan to the United Nations Committee on the Elimination of Discrimination against Women
June 23, 2013

We write in advance of the Committee on the Elimination of Discrimination against Women’s upcoming initial and second periodic review of Afghanistan to highlight areas of concern. We hope our submission will inform your consideration of Afghanistan’s compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Afghanistan’s record of complying with CEDAW is very poor, and the country’s human rights situation, especially for women, is showing signs of deterioration as international engagement in the country wanes. Expanded Taliban control and violence related to the ongoing conflict are major factors in human rights abuses. However, the Afghan government is also failing in many areas to comply with its obligations under international human rights law, especially for women.

Background
A period of intense international involvement in Afghanistan since the US-led invasion to topple the Taliban regime in October 2001 is now winding down. That international presence has subjected the Afghan government to heightened scrutiny in terms of its compliance with women’s rights obligations. The international community has also provided funding for services and development of Afghan institutions that have been crucial in helping to improve the human rights situation for Afghan women. Those services and institutions include the Afghanistan Independent Human Rights Commission (AIHRC), Afghan nongovernmental human rights organizations, schools, clinics, hospitals, shelters, and legal services. As international engagement with Afghanistan steadily decreases, the Afghan government’s willingness and ability to deliver on its obligations to respect, protect, and fulfill the rights of women has become increasingly vulnerable.

Extreme forms of discrimination remain part of the day-to-day experience of most Afghan women, and violence against women is common and largely unpunished. Half of all girls are still not in school and female literacy remains extremely low. Child marriage and forced marriage are common, with 39 percent of girls married before age 18, according to data from the UN Population Fund.¹ Harmful marriage practices, including the swapping of daughters in marriages between two families (badal) often through an agreement made when the children are very young, the giving of girls to resolve disputes (baad), polygamy, and the sale of women through marriage agreements continue mostly unchecked. Other frequent abuses that the Afghan government has failed to effectively address include the “honor killing” of women and girls viewed as having brought shame upon their families

(of which the AIHRC in June 2013 reported 240 cases for the previous two years); forced prostitution including cases in which married women are forced into sex work by their husbands or in-laws; the segregation of women in the home; and the requirement that women be chaperoned by a male relative (mahram).

Maternal mortality remains among the highest in the world. Afghan law regarding marriage and divorce explicitly discriminates against women. Women in public life, or women working outside the home, are subject to frequent threats and all too often assassinated by attackers, including the Taliban, opposed to women’s autonomy.

President Hamid Karzai’s own actions and those of his government have sometimes directly harmed Afghanistan’s effort to comply with its obligations under CEDAW, and there have been several incidents since the last UPR when the government has undermined women’s rights. Several of these incidents have focused on shelters, with the Ministry of Women’s Affairs seeking to take control of and impose strict new rules on shelters in 2011 and the minister of justice in 2012 denouncing shelters as the site of immoral behavior and prostitution. In 2012 President Karzai himself dramatically undermined women’s rights when he publicly endorsed a set of guidelines issued by a religious council that described women as “secondary” to men, called for full segregation of the sexes in public and in education and employment, and implied that violence against women can sometimes be justified.

**Failure to Take Serious Action to End Violence Against Women**

Family violence is a regular experience for many Afghan women and girls, and Afghan government efforts to address the problem have fallen far short of what could be reasonably expected. In 2009, President Karzai signed into law Afghanistan’s Law on the Elimination of Violence Against Women (EVAW Law). This law imposed tough new penalties for a range of abuses against women, including rape, domestic violence, sale of women, underage marriage (marriage below the legal minimum age of 16 for girls, or 15 under special circumstances), and forced marriage. The law represented an important step forward for women, but so far it is largely an unfulfilled promise, as the government has done a very poor job of enforcing it. Enforcement of the law is hampered not only by a lack of leadership and political will, but also by practical problems that the government has failed to take adequate measures to address.

**Threats to the EVAW Law and a Failure to Enforce the Law (Convention Article 2(c))**

The mere existence of the EVAW Law has recently come under threat due to its introduction for debate in May 2013 in the Afghan Parliament, where many members are hostile to women’s rights. The debate was cut short after only 15 minutes, after a number of parliamentarians, ignoring Afghanistan’s history of child marriage, forced marriage, domestic violence and the prosecution of rape victims, argued that provisions of the law were in violation of the country’s religious and cultural values. In the days that followed, protesters gathered in several Afghan cities calling for the repeal of the law.
This is a crucial moment for President Karzai and his government to speak out clearly in defense of the EVAW Law, including by explaining the law’s necessity as part of Afghanistan’s CEDAW commitments. Not only has the government been largely silent on the parliamentary challenge to EVAW, but women’s rights activists have informed Human Rights Watch that Karzai has indicated to them that he “has done all he can to support them [on pushing for reforms to strengthen women’s rights] and he can’t do any more.” These activists told Human Rights Watch that Karzai has advised them that the EVAW Law has become increasingly well-known in Afghan society and increasingly disliked, and he advised them to stop advocating for the full enforcement of the law.

Regardless of the parliamentary protest against the EVAW Law, it remains valid law at this writing. Therefore, the government’s focus should be on strengthening the law’s enforcement. The UN has documented serious failures by the government to enforce the law. Worse yet, many women and girls who flee forced marriage and domestic violence are often treated not as victims but as criminals accused of “moral crimes.”

**Abusive Use of Vaginal Examinations and Wrongful Imprisonment of Victims (Convention Articles 2, 16)**

Women arrested for “immorality,” that is, *zina* (sex outside of marriage) or “running away” from home without permission, are forced to undergo invasive vaginal examinations by government doctors that purport to provide findings on the woman’s sexual history including “virginity.” The results of these examinations, despite being scientifically meaningless, often serve as the basis for conviction for “moral crimes.” In practice, the tests can be ordered by any police officer or prosecutor, and are sometimes administered multiple times to a woman, without valid consent and for no justifiable reason.

A modified form of such examinations that exclude unscientific and degrading “virginity tests” could, if administered with full consent, serve as valid forms of evidence collection in rape cases. But the reality in Afghanistan is that women and girls who are raped are often treated not as victims but as criminals. Afghan law makes *zina* a crime punishable by up to 15 in years in prison, and women who are believed by police and prosecutors to have participated extramarital sexual relations are often prosecuted under this law, worse yet often without regard to whether sexual relations were consensual. Even when women and girls allege rape, they are often not believed or are treated as deserving of blame of committing *zina* because of actions that are seen as having led to the rape (for example leaving the home without permission, or voluntarily being in a location that is not secure).

In the past women and girls were frequently imprisoned for the crime of “running away” from home without permission. This act is not actually a crime under Afghan law, and as documented in a 2012 Human Rights Watch report, these women and girls are typically trying to escape abusive home

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Advocacy efforts over the past year have resulted in key Afghan government officials confirming that “running away” is not a crime and women should not be charged with or convicted of this offense. Rather than dropping these cases, however, police and prosecutors appear to be going forward and charging women with “attempted zina” instead. In May 2013, Human Rights Watch documented a 50 percent increase in the number of women imprisoned in Afghanistan for “moral crimes” over the previous 18-month period.5

Recruitment and Retention of Female Police Officers (Convention Article 11(f))

The government has taken some meaningful preliminary steps toward enforcement of the EVAW Law, but needs to do much more. A key part of the effort should include recruitment and retention of female police officers. Afghan cultural norms make it extremely difficult for many women to speak with a male police officer who is not related to them, let alone regarding sensitive personal issues such as domestic violence or sexual assault. The government has created special Family Response Units designed to be staffed by female police officers and to make it easier for female crime victims to access police assistance. However, that initiative has been undermined by a lack of female police officers to staff such units. Government data on the number of women in the Afghan police is inconsistent, but indicates that they constitute no more than 2 percent of the entire police force. That percentage is far too low to permit the majority of Afghan women to seek assistance from female officers, especially because that small number of female officers is concentrated in urban areas.

Recruitment and retention of female police officers is undermined by factors ranging from a near-total lack of woman-only toilets and changing facilities in police stations, to a failure by the government to respond to multiple allegations of sexual assault and harassment of female police officers by male colleagues. In spite of these allegations of abuse and rape, government officials in discussions with Human Rights Watch have been unable to point to a single case where male police officers have been successfully prosecuted for abuse or assault of a female colleague. The Afghanistan government does not have any law or program to deal with workplace sexual harassment including for the police.

Specialized Prosecutors and Access to Shelter (Convention Articles 2(a), 14(2))

Prosecution units specializing in violence against women cases established in eight provinces show some promise in protecting the rights of women, and should be expanded. In late 2012, the attorney general announced plans to establish such units in each province, but there has not yet been further progress on this.

The number of shelters for women fleeing violence has expanded to 18 country-wide, with shelters present in 16 provinces. However, this number of shelters, which are entirely funded by foreign donors, is far too few in a country of 34 provinces and an estimated 35 million people. The Afghan government’s support for shelters and the vital services they deliver is also questionable. In 2011 the government attempted to take over their operations and impose draconian restrictions on their

4 Ibid.
use through a draft regulation that could have led to the closure of some shelters, restrictions on women’s freedom of movement, compulsory forensic examinations, a likely reduction in protection of shelter residents from abusers, and the possible expulsion of women still in need of safety. In 2012 the minister of justice alleged that the shelters were “sites of immorality.” This lack of government support and dependence on international donors raises the possibility that shelters may face closure as international aid decreases in the years ahead.

**Violence Against Women by Government-Backed Armed Groups (Convention Article 2(d))**

While much violence against women in Afghanistan occurs within families, armed groups are also a source of violence against women. These include both anti-government armed groups and armed groups that operate under government control or with government support. Numerous cases of violence against women, including rape, by the Afghan Local Police have been documented. The Afghan Local Police are a network of local defense forces created by the Afghan government in partnership with the international military. Human rights organizations including Human Rights Watch have raised serious concerns about vetting, command/control, and accountability of Afghan Local Police forces.

**Suggested Questions to the Government of Afghanistan**

- What steps does the government plan to take in the immediate future to improve enforcement of the EVAW Law across all 34 provinces?
- What steps is the government taking to eliminate child marriages and increase the legal minimum age of marriage from 16 to 18?
- What steps is the government taking to end the use of medically unscientific and degrading “virginity examinations”?
- What steps is the government taking to increase recruitment and retention of female police officers?
- When will the government open specialized violence-against-women prosecution units in the remaining 26 provinces that do not currently have such units?
- What is the government doing to promote the development of additional shelters for women fleeing violence in the 18 provinces where there at present are no shelters, especially in the southern half of the country?
- Can the government cite examples of cases where members of the Afghan National Police or Afghan Local Police have been successfully prosecuted for violence against women?

**Suggested Recommendations to the Government of Afghanistan**

- The government should identify provinces in which there have been few or no prosecutions under the EVAW Law and investigate whether the police and prosecutors in those provinces are handling cases of violence against women appropriately.
- The government should introduce age 18 as the minimum age of marriage for all.

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• The government should immediately end the use of vaginal examinations in all criminal cases, except where a woman has made an allegation of rape and consents to the use of a medico-legal examination, which might involve an ano-genital examination for the purpose of evidence collection.
• The government should take immediate steps to put in place law, policies, and programs to prevent and respond to workplace sexual harassment and investigate all allegations of sexual harassment and assault of female police officers by male colleagues, and provide full protection from threats and retaliation for women who make such allegations.
• The government should make a detailed plan with a timeline for the establishment of specialized violence against women prosecution units in all 34 provinces.
• The government should develop a detailed plan with a timeline for the establishment of shelters in the 18 provinces where there is no shelter, and should seek donor support for this effort.

Discriminatory Laws and Lack of Access to Justice (Convention Articles 2(f), 2(g), 14, 16)

Article 22 of the Afghan constitution, ratified in 2004, states: “Any kind of discrimination and distinction between citizens of Afghanistan shall be forbidden. The citizens of Afghanistan, man and woman, have equal rights and duties before the law.”

Despite this commitment, and in spite of Afghanistan’s ratification of CEDAW, discrimination against women is often explicitly written into some of Afghanistan’s laws. A particularly glaring example is the Shia Personal Status Law, signed by President Karzai in 2009, which includes provisions that strip Shia Afghan women of the women’s rights enshrined in Afghanistan’s constitution. The law gives a husband the right to withdraw basic maintenance from his wife, including food, if she refuses to obey his sexual demands. It grants guardianship of children exclusively to their fathers and grandfathers. It requires women to get permission from their husbands to work. It also effectively allows a rapist to avoid prosecution by paying “blood money” to a girl who was injured because of the rape.

In addition to the Shia Personal Status Law, there are deep inequities based on gender in the Afghan Civil Code that governs matters including marriage and child custody. The marriage age is lower for girls than boys -- 16, or 15 in special cases for a girl, versus 18 for boys. Men are able to divorce their wives at will and without any bureaucratic process, while women may seek divorce only through the courts, based on a limited set of grounds that they must prove in court.

Beyond the discriminatory nature of the law, there are also enormous difficulties for women in gaining the rights they do have under the law. The law permits women to seek divorce from their husbands when they have legal grounds for doing so. However, in practice the fact that a single specialized family court exists only in Kabul, combined with the extreme scarcity of legal representation for women on family law matters, means that this is for the vast majority of Afghan women a right in theory, not in practice. Similarly, the law permits decisions about custody of children to be made based on the best interests of the children. However, lack of access to the courts, and, to a lesser but still important extent, discrimination within the courts, means that in
reality many women in abusive relationships do not consider divorce because they know that if they do so, they will immediately lose custody of and access to their children.

Suggested Questions to the Government of Afghanistan

- What plans does the government have to amend the Civil Code or replace it with a new law in order to remove provisions of Afghan law that discriminate against women?
- Does the government plan to amend the Shia Personal Status Law to remove provisions that violate Afghanistan’s obligations under CEDAW?
- Does the government have plans to open family courts outside of Kabul?
- How does the government plan to make it easier for women fleeing violence who need legal assistance to seek divorce to obtain that assistance?

Suggested Recommendations to the Government of Afghanistan

- The government should act immediately to remove from Afghan law, including but not limited to the Shia Personal Status Law and the Civil Code, all provisions that discriminate against women.
- The government should develop a plan for the establishment of a family court in every province.
- The government should develop a plan for providing affordable and quality legal assistance to women on civil matters in all provinces and should seek donor support for this effort.

Undermining of Key Institutions Responsible for Protection of Women (Convention Article 2)

While every Afghan government institution has an important role to play in complying with Afghanistan’s obligations under CEDAW, there are two institutions of particular importance – the AIHRC and the Ministry of Women’s Affairs. Both institutions, in different ways, are deprived of the government support they require to fully perform their functions in regard to women’s rights.

The AIHRC

The Afghanistan Independent Human Rights Commission’s responsibilities include monitoring the general human rights situation in Afghanistan, making recommendations to the government on human rights, investigating specific human rights violations, and assisting individual Afghans whose rights have been violated. One of the areas of particular strength for the AIHRC has been its work on women’s rights, where it not only assists thousands of individual women, but also documents trends in relation to the rights of women and girls and advocates for other parts of the government to work steadily toward compliance with CEDAW.

The Afghan government’s approach to supporting the AIHRC has over time gone from negligent to openly obstructive. The government, in spite of promises to donors and to the United Nations via the Universal Periodic Review process, has failed to fund any of the AIHRC’s operating budget.

Furthermore, President Karzai’s failure to ensure timely and appropriate appointment of commissioners to the AIHRC has greatly undermined the agency’s effectiveness. The AIHRC for a year and a half from December 2011 to June 2013 had several empty commissioner positions, a situation which left the entire body in limbo during this period. The vacancies occurred when the
five-year terms of all nine commissioners expired in December 2011. At that time, Karzai announced his plans not to reappoint three of the commissioners. A fourth position had been vacant since the commissioner responsible for children’s rights, Hamida Barmaki, her husband, and their four children were killed in a suicide bombing at a Kabul supermarket in January 2011.

On June 15, 2013, Karzai announced the appointment of five new commissioners to the Afghanistan Independent Human Rights Commission (AIHRC), most of whom appear to have little or no record defending human rights. The United Nations Officer of the High Commissioner for Human Rights responded on June 18, 2013, expressing “deep concern” about the appointments.

Karzai has also damaged the work of the AIHRC through his suppression of the release of the AIHRC’s 1,000 page report mapping war crimes and crimes against humanity committed from 1978 to 2001. This report, prepared over the course of several years with assistance from international experts, was designed to provide a foundation for further steps to promote justice for the many serious human rights violations that have occurred in Afghanistan, many of which disproportionately affected women.

Despite these significant challenges, the AIHRC has proven to be one of the most important and effective institutions created since 2001. It has provided assistance to thousands of individual Afghans, many of them women experiencing abuse. It has documented human rights abuses on a systematic level, played a courageous role in documenting past abuses, and been the leading voice on human rights issues in Afghanistan. However, the government-imposed uncertainty about its leadership has hobbled its effectiveness. The human rights situation in Afghanistan is extremely fragile and the national human rights commission should be at full strength to do its part to protect all Afghans.

**The Ministry of Women’s Affairs and the shelter system**

The other key institution responsible for promoting women’s rights in Afghanistan is the Ministry of Women’s Affairs. This ministry’s effectiveness is also hampered by its focus and on-the-ground operations.

In 2011, the ministry’s effort to take over the operations of internationally funded and NGO-run shelters for women fleeing violence raised serious concerns about the government’s commitment to providing shelter. The government’s proposed conditions for operating the shelters would have resulted in the closure of some facilities, restrictions on the freedom of movement of women who used the shelters, compulsory forensic examinations, a likely reduction in protection of shelter residents from abusers, and the possible expulsion of women still in need of safety.

Although an outcry from foreign donors prompted the government to back away from this effort, with the shelters remaining in the hands of NGOs and the regulation significantly improved, the government’s weak commitment to providing women’s shelters is demonstrated by the government’s failure to allocate government funds for their operations. As a result of a likely decline in foreign aid in the years ahead and the absence of government support to fill the gap, shelters may be forced to close due to lack of funding.
In addition to policy-making at the central level, however, the ministry also operates offices, known as the Department of Women’s Affairs or DoWA, at the provincial level across the country. These offices are extremely important as they are sometimes the only resource for women fleeing abuse in some areas of the country as the AIHRC does not have offices in all provinces and shelters exist in only 16 of Afghanistan’s 34 provinces.

Unfortunately, heads of the DoWA offices struggle to perform their crucial functions due to lack of government support including security assistance. In July 2012, Hanifa Safi, head of the DoWA in eastern Laghman province, was killed by a car bomb as she left for work one morning in the provincial capital of Mehtar Lam. In December 2012, gunmen killed Safi’s replacement, Najia Sediqi, as she travelled to work in a rickshaw in the absence of a replacement for the car that was blown up when Safi was killed. These are only two examples of a broader pattern of frequent threats and not-infrequent attacks against women in public life, especially women working in insecure areas. In spite of these two murders and subsequent calls by women’s rights activists for greater protection for DoWA staff, the Afghan government does not appear to have taken meaningful steps to protect these crucial government representatives.

Suggested Questions to the Government of Afghanistan

- How does the government plan to provide greater support for the effectiveness of the AIHRC?
- When will the government release the AIHRC conflict mapping report?
- What is the government doing to improve security arrangements for MoWA representatives working at the provincial level, especially in insecure provinces?

Suggested Recommendations to the Government of Afghanistan

- The president should identify potential candidates for vacant positions on the AIHRC immediately and should move quickly to hold a full and meaningful consultation with human rights groups to ensure that the nominees are fully qualified before making new appointments.

Access to Education and Healthcare (Conventions Article 10, 12(1))

It is very difficult to get clear figures on indicators such as access to education as government data collection in Afghanistan is patchy and often unreliable. It is clear, however, that while there have been some significant improvements since the abysmal situation of 2001 in these areas, the overall situation remains very poor and the government should be doing more.

According to the government, 6 million of Afghanistan’s 14 million children have no access to education. Government data, indicates even low percentages of girls in all levels of primary and secondary education. It is clear from Human Rights Watch’s research that a large proportion of girls are still not participating even in primary education, and that attendance in school by girls falls off from

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quickly after primary education. Even when girls (and boys) do attend school, the school day often lasts only about 2 to 3 hours, and the teachers often have little professional training or supervision. Finally, there appear to be many children who are on the books as being registered in school but who in fact do not attend regularly or perhaps at all. These factors raise serious questions about to what extent even those children who are counted as being in school are in fact receiving even the most basic education.

Another challenge to access to education has been security incidents that have both harmed students and frightened families from sending their children, especially daughters, to school. The government needs to not only take greater steps to protect schools, but also respond appropriately when security incidents do arise. One example of deeply unhelpful responses from the government is in the context of a large number of “school poisonings” that have occurred over the last few years. In these incidents, which have occurred predominantly in the spring and summer seasons and in the northern parts of the country, large numbers of female students have been overcome with symptoms they believed to be the result of poisoning. Hundreds of girls have been treated for the symptoms. Scientific analysis at several of these sites by the World Health Organization and the NATO mission in Afghanistan, however, has failed to find any evidence of intentional poisoning. Psychological explanations have been proposed as an alternative explanation.

In spite of a lack of evidence of intentional poisoning, however, the government in 2012 made a number of arrests of suspected “poisoners.” The head of human rights for the United Nations Assistance Mission in Afghanistan (UNAMA) subsequently raised concerns that investigators had used torture to extract confessions from the suspects. In May 2013, the minister of education announced that he would “punish” students and school employees who reported “poisonings” found not to involve a hazardous substance. He stated that any unsubstantiated allegations of poisoning that were made by government officials would be “no less than terrorism.” Neither of these responses has been helpful in addressing the anxieties created for girl students and their families by these incidents.

In regard to health services, Afghan government statistics submitted to this committee indicate that 24 percent of healthcare workers are women. If true, this is worryingly few given Afghan cultural values that make it extremely difficult for many women to seek medical care from male healthcare workers.

It is also clear that many serious healthcare needs for Afghan women remain unmet. Just one example is treatment of fistula, where UNFPA estimates that 4 in every 1000 married Afghan girls and women develop fistula, a high rate strongly linked to the prevalence of early marriage. In spite of this high rate of fistula, the Afghanistan government makes no budgetary allocation for the treatment and reintegration for girls and women with this condition and only UNFPA provides assistance for corrective surgery and reintegration for fistula patients.

The sustainability of educational and healthcare services as the international engagement with Afghanistan draws down in the context of the end-2014 deadline for the withdrawal of international combat forces is also problematic. Even the most basic of these services are largely dependent on
foreign donor funds, which are already in steep decline. The government needs to demonstrate that it has plans for how to ensure the sustainability of educational and healthcare services that are consistent with Afghanistan’s obligations under CEDAW to eliminate discrimination against women in these areas.

**Suggested Questions to the Government of Afghanistan**

- What is the government doing to increase school enrollment of girls?
- What is the government doing to increase the retention of girls in school beyond primary school?
- What is the required length of a school day in Afghanistan under government rules and are there plans to lengthen the school day?
- What is the government doing to recruit and retain skilled female teachers, especially in underserved areas?
- What is the government doing to increase the number of female healthcare workers?
- Please outline the government’s plans to protect basic education and health services for women in the context of declining donor funding.

**Suggested Recommendations to the Government of Afghanistan**

- The government should have specific targets for increases in school enrollment of girls for each year and a specific plan for achieving these targets.
- The government should have outreach programs for girls at risk of leaving school or who have already left school.
- The government should have a plan for improving and standardizing the quality of education including through ensuring professionalism of teachers and that students attend a full school day. The government should provide sufficient incentives to ensure that female teachers are available in all areas of the country.
- The government should facilitate women’s participation in higher education programs training teachers and healthcare workers.
- The government should forecast declines in donor funding and ensure that essential education and healthcare services for girls and women are protected from budget cuts.