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#### Technical assistance and capacity-building

## **Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Afghanistan and on the achievements of technical assistance in the field of human rights**

### *Summary*

The present report, submitted pursuant to Human Rights Council decision 2/113, reviews the current human rights situation in Afghanistan and contains recommendations to address diverse human rights problems. This report further provides an update on the achievements of technical assistance in the field of human rights.

The year 2009 was a difficult one for Afghanistan as hard-won gains, particularly in relation to human rights, were put in jeopardy. Confidence in the state-building project diminished as many Afghans questioned the commitment of elected authorities and their international partners to safeguarding their core rights and freedoms.

The escalation and spread of armed conflict resulted in the highest number of civilian casualties recorded since the fall of the Taliban regime in 2001 and in the further erosion of humanitarian space. While the armed opposition was responsible for the majority of civilian casualties, deaths as a result of air strikes by international forces continued to be a high-profile and contentious issue. However, new tactical directives, adopted by the international forces to reduce civilian casualties, appear to have had a positive impact. Attacks by anti-Government elements (AGEs) produced high levels of violence including, in particular, around the presidential and provincial council elections held in August 2009. The presidential election, widely regarded as a deeply flawed process, further weakened support for, and confidence in, the Government and its international partners, as well as the post-Bonn Agreement state-building project.

While greater numbers of women stood for election to public office, threats against women in public life and crimes of sexual violence remained serious human rights concerns. The adoption of the Shia Personal Status Law, which legitimizes discriminatory practices against women, represented a setback for women's rights. Widespread impunity continued to undermine effective governance in Afghanistan and little progress was achieved in terms of accountability for crimes that are directly associated with a long history of abuse of power. Journalists and media workers continued to be harassed for

exercising their profession. Conditions of extreme poverty, which affect one third of the Afghan people, were further exacerbated by the intensifying conflict, abusive power structures and corrosive impunity.

The Office of the United Nations High Commissioner for Human Rights (OHCHR) supported the Ministry of Foreign Affairs with respect to its submission under the universal periodic review of the Human Rights Council. The high-quality report was praised by other States as a frank account of the human rights situation that gave a balanced view of progress, as well as the persistent challenges in Afghanistan. OHCHR was engaged in other technical assistance initiatives detailed in this report, including with the Ministry of Justice and the Afghan Independent Human Rights Commission.

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## **I. Introduction**

1. This report is submitted pursuant to Human Rights Council decision 2/113 and has been prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA). Since my last report, the human rights situation in Afghanistan has become more challenging, particularly in terms of the intensifying armed conflict, deeply entrenched impunity, an electoral process lacking credibility and tainted by allegations of fraud, and enduring discrimination against women. Afghans confront serious obstacles to the enjoyment of their human rights, as the country struggles with the legacy and continuing reality of armed conflict and limited achievements in the democratization and state-building process.

2. In 2009, Afghanistan was engulfed by levels of political violence not experienced in the recent past. Notwithstanding important initiatives to address the issue of civilian casualties, the highest civilian death toll since the ousting of the Taliban regime in 2001 was recorded. Spiralling violence surrounding the contentious presidential election gave rise to heightened insecurity and disillusionment with the ability of the Government to protect its citizens. The flawed elections also dealt a serious blow to confidence in the democratic process, undermining the credibility of the Government and support for its international allies.

3. The combination of poor governance, lawlessness, and intensifying conflict has exacerbated the extreme levels of poverty that characterize 36 per cent of the Afghan population. Afghans' expectations have not been met: there is a pressing need for fair, effective and accountable governance to bring about an end to abusive power structures and impunity, so that Afghans can enjoy such basic fundamentals as the right to health, food, education and shelter.

4. The adoption of the Shia Personal Status Law was a regressive step for women's rights in Afghanistan. States have a responsibility, based on international law, to eliminate violence against women and this law is inconsistent with the international treaty obligations of Afghanistan and other more progressive legislation the Government has recently adopted on violence against women. For this reason, I have strongly recommended that this law be repealed. There has been little meaningful progress in strengthening the judicial system and respect for the rule of law, an essential precondition for countering the deeply engrained culture of impunity in Afghanistan, delivering justice, and restoring confidence in public institutions. Also lacking has been the pursuit of a credible official transitional justice agenda to secure accountability for, and bring an end to, a long history of egregious human rights violations. Also apparent in 2009 was the critical need for improved mechanisms and procedures to exclude abusive power brokers and alleged human rights violators from public office. Until such measures are taken, efforts to address the many human rights challenges facing Afghanistan, including abuse of power and impunity, injustice and poverty, are liable to failure.

## **II. Protection of civilians**

5. The armed conflict intensified significantly in Afghanistan in 2009, with a corresponding rise in civilian casualties, the destruction of property, loss of livelihood and the continuing erosion of humanitarian space. The spread of the conflict has greatly impacted on vulnerable individuals, such as women and children, thereby restricting their access to basic services, including in the health and education sector, particularly in areas that were once considered relatively stable.

6. OHCHR/UNAMA was engaged in the protection cluster established by the humanitarian community in 2008, both as the deputy co-chair and as the primary entity responsible for protection work focused on the immediate and direct impact of the war on civilians. As a key member of the protection cluster, OHCHR/UNAMA has sought to mainstream protection within other sectors, and has been actively involved in the prioritization of protection-related projects for the Humanitarian Action Plan (HAP).

7. Anti-Government elements (AGEs) and pro-Government forces (PGF) have increasingly conducted operations that put the lives of civilians at risk. The 2009 civilian death toll is the highest since the fall of the Taliban regime in 2001; August proved to be the deadliest month in the year as a result of election-related violence, with 333 civilian conflict-related deaths recorded. This reflects a trend of increasing insecurity as well as election-related violence. Under international humanitarian law, parties to a conflict have an obligation to spare civilians from the effects of armed conflict. Both parties to the conflict must respect the rules of war so that civilians do not bear the brunt of the fighting.

8. Of the 2,186 casualties recorded from January to November 2009, 69 per cent were attributed to AGEs and 23 per cent to PGF. The remaining 8 per cent could not be attributed to any of the conflicting parties as some civilians died as a result of undetermined causes. This figure represents an increase of 8 per cent over the deaths recorded in the same period in 2008.

## **A. Anti-Government elements**

9. Anti-Government elements accounted for 69 per cent of civilian deaths from January to November 2009. Sixty-six per cent of all civilian deaths attributed to AGEs were brought about by indiscriminate suicide and improvised explosive device (IED) attacks, continuing the use of asymmetric attacks that accounted for the highest death toll among Afghan civilians. Also of great concern was the rate at which AGEs continued to systematically intimidate, abduct and conduct targeted assassinations against civilians associated with the Government and/or the international military forces (IM Forces). Health-care workers, teachers, journalists and construction workers were amongst other groups who were consistently targeted by AGEs.

10. Although the IM Forces and Afghanistan National Security Forces (ANSF) continued to be the primary target of AGE activities, many of these attacks were carried out in crowded civilian areas, for example in bazaars and on busy roads, with apparent disregard for civilian life and damage to civilian property. On 29 September 2009, at least 30 individuals were reportedly killed and 19 injured when their bus struck an IED on a commercial road in Maywand District of Kandahar Province. Kabul City witnessed a number of suicide-bomb attacks against IM Forces in which civilians were killed, including a deadly September 17 attack on an International Security Assistance Force (ISAF) convoy on the road to Kabul International Airport, reportedly killing 20 civilians and injuring 45. The Taliban acknowledged responsibility for the incident. AGE military operations carried out in villages and other locations where civilians reside, also put civilians at serious risk.

11. There were conditions of heightened insecurity around the presidential and provincial council elections in August 2009, as AGEs stepped up attacks, threats and intimidation against candidates and election workers, aimed at derailing the election process and discouraging voter participation, even in areas that were previously less affected by the conflict. Some 300 security incidents alone were registered on election day. On 15 August, 7 civilians were reportedly killed and at least 90 injured in a suicide-bomb blast outside ISAF headquarters in Kabul, while 7 were reportedly killed and at least 50 injured in a vehicle-borne IED (VBIED) attack near Camp Phoenix in Kabul on 18 August. In the latter attack, two United Nations staff members were killed and one injured. In late

October, amid political tensions arising from the protracted delays in announcing the presidential results, AGEs attacked a commercial guest house in Kabul, killing eight civilians, five of whom were United Nations staff members, and injuring numerous others. This was the worst and most deliberate attack perpetrated on the United Nations in Afghanistan since the beginning of the armed conflict.

12. The worsening security situation in the south and south-east of the country and the spread of the conflict into various provinces of the centre, north-east and west, had serious humanitarian consequences. In addition to civilian death, injury, loss of livelihood, destruction of property, displacement and disruption of access to basic services, many aid agencies curtailed their humanitarian operations in the face of spreading insecurity and lawlessness.

13. Despite various appeals to the Taliban, following the visit of the Special Rapporteur on extrajudicial, summary, or arbitrary executions in 2008, to respect international humanitarian law, there was a marked increase in indiscriminate attacks in 2009.

## **B. Pro-Government forces**

14. Pro-Government forces were responsible for 23 per cent of civilian deaths from January to November 2009; air strikes accounted for 60 per cent of PGF actions, or 14 per cent of the total number of civilians killed. The use of air strikes continued to prove the most deadly tactic used by PGF and provoked strong public reaction, especially in the wake of strikes that resulted in a high loss of civilian life, particularly of women and children.

15. There continues to be a need for greater transparency by IM Forces when investigating these incidents. There were two particularly high-profile incidents of air strikes that led to a large number of civilian casualties. Several high-ranking German officials, including the Chief of Staff of the Army and a Government minister, resigned amid allegations of a cover-up over the number of civilian casualties resulting from an IM Forces air strike against two fuel tankers hijacked by the Taliban, in the north-eastern province of Kunduz on 4 September 2009. This air strike claimed the lives of 74 civilians, many of them children. On 4 May, an air strike in Bala Baluk district in western province of Farah claimed 64 civilian lives. Although the United States of America military acknowledged that it had failed to comply with internal military guidelines, a proper assessment prior to the attack could have determined whether civilians would have been disproportionately harmed and whether it was appropriate to use air strikes in a residential area.

16. The presence of IM Forces bases situated in urban areas, such as Kabul and some provincial capitals, continues to be a major concern. The location of such bases in residential areas may conflict with the international humanitarian law principle of precaution, which aims at protecting the civilian population from the dangers arising from military operations.<sup>1</sup> Many smaller bases are often co-located with the ANSF, and sometimes with provincial civilian authorities, that are situated in busy civilian areas. For example, concerns have been expressed about the United States marines co-located with the District Administrator in a smaller base in Delaram bazaar in Nimroz province. This has led to more intrusive searches against community members visiting the District Governor, a greater risk of a suicide attack being directed against the base and increased the likelihood

<sup>1</sup> It should be recalled that in the *Kupreskic* case, the International Criminal Tribunal for the former Yugoslavia stated that this principle is part of customary international law. See case No. IT-95-16-T, judgement of 14 January 2000, para. 524 available at <http://www.icty.org/x/cases/kupreskic/tjug/en/kup-tj000114e.pdf>.

of the community being targeted by AGE as “spies” for the IM Forces. It is important that ISAF and government officials engage with affected communities with respect to their concerns over the effects these bases have on the civilian population and the increased possibility of them being targeted by the AGEs.

17. Some positive steps geared to the reduction of avoidable civilian deaths have been taken by the IM Forces. These have included efforts to improve the transparency of command structures between ISAF and Operation Enduring Freedom (OEF) – the latter now operating under the Commander of ISAF, and the establishment of both ISAF and United States Forces-Afghanistan (USFOR-A) civilian casualty tracking cells aimed at investigating claims of civilian casualties attributed to ISAF and USFOR-A. Additionally, a new tactical directive issued on 2 July 2009, designed to reduce civilian casualties and maintain support by the Afghan population, specifically limits the use of force, such as close air support, in residential areas and other populated areas in situations in which there is no imminent threat to international troops. Such safeguards reflect the call by the Special Rapporteur on extrajudicial, summary, or arbitrary executions for the need to verify information prior to air strikes and house raids in order to minimize harm to civilians and public reaction to such tactics.

18. Amongst other concerns related to civilian casualties, is the lack of harmonized policies between various troop-contributing countries regarding the issuance of solatia payments to victims, as well as civilians’ lack of access to, or awareness of, various condolence payment schemes.

### **C. Conflict-related detention**

19. Conflict-related detention policies in Afghanistan continue to be a major concern given the lack of a legal framework which complies with Afghanistan’s obligations under international and national law. OHCHR/UNAMA have continued to invite relevant special procedures mandate holders to look into the question of the transfer of detainees from detention facilities controlled by various military forces to detention facilities under Afghan control. In the Afghan justice system, detainees are often denied fair trial guarantees and are often prevented from meeting their lawyers. There have also been continuing allegations of physical abuse by Afghan security forces. All this could constitute a violation of Afghanistan’s human rights obligations. The United States administration recently indicated that it is to review United States policy regarding detainees at the Bagram Theatre Internment Facility (BTIF), notably the provision of an opportunity for detainees to challenge the basis for their detention before the Detainee Review Board, including by submitting evidence and summoning witnesses. These new improvements to United States detention policies are welcome, but they must be matched with genuine guarantees to ensure detainees are provided with a meaningful way to challenge the allegations against them. It would also be beneficial to the welfare of detainees and the legitimacy of United States detention policy for the United States to grant the Afghanistan Independent Human Rights Commission (AIHRC) access to its detention facilities.

## **III. Women’s rights**

20. Women stood in greater number as candidates in the August 2009 presidential and provincial council elections than in previous elections. However, the responsibility of the State to protect and promote women’s rights and, in particular, to address the problem of violence against women and girls, remains a serious challenge. A prominent issue during 2009 was the variance between new legislation and Afghanistan’s constitutional guarantees and international legal obligations for the protection and enforcement of women’s rights.

21. The Shia Personal Status Law regulates the personal affairs of the Shia community on matters such as marriage, divorce and inheritance rights and is based on article 131 of the Constitution of Afghanistan. The Shia community comprises around 20 per cent of the population and the adoption of the law was widely interpreted as a trade-off by the President to gain the support of conservative elements for the then upcoming presidential election. Signed by the President in March 2009, the law underwent review following domestic and international criticism of certain articles which clearly contravened constitutional guarantees (articles 24 and 54 of the Afghan Constitution) and violated international legal obligations enshrined in the Convention on the Elimination of All Forms of Discrimination against Women, ratified by Afghanistan in 2003, as well as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, to which Afghanistan acceded in 1983. The contentious articles included the obligation that a woman obeys her husband in sexual matters; unequal rights regarding divorce, guardianship of children, inheritance and enjoyment of property; and limitations on women's freedom of movement.

22. The amended law, as endorsed by presidential decree in July 2009, retained some of the contentious provisions that had given rise to criticism. For the most part these provisions were not omitted but merely reworded. For example the controversial article requiring a wife to provide for the sexual enjoyment of her husband was removed. However, Afghan legal experts are of the view that article 162 of the amended law could be used by a husband to effectively deny maintenance to a wife if she denies him what he perceives as his conjugal rights.

23. The Shia law, rather than challenging harmful traditional and customary practices, has only served to legitimize practices that disadvantage women. While this law directly affects the rights of Afghan Shia women and girls, it potentially paves the way for further restrictions on the rights of all Afghan women, and jeopardizes hard-won gains in the context of efforts to counter violence and discrimination against Afghan women.

24. New legislation also included the Law on the Elimination of Violence against Women (EVAW), which represents a critical development in the protection and promotion of women's rights. Endorsed by presidential decree in July 2009, it has yet to be adopted by parliament. This law explicitly criminalizes rape, as well as under age and forced marriage, and other forms of violence against women. Analysis by both international and domestic observers, however, reveals that from a technical perspective the law could fail to meet many of its stated aims. Ambiguities relating to unclear definitions that are gender-neutral, as well as inadequate reference to existing law such as the Penal Code, could lead to problems in its implementation. UNAMA and the United Nations Office on Drugs and Crime conducted a thorough analysis of the law and, together with national partners, proposed a number of amendments that would better serve to prevent violence against women. At the time of writing, parliament was still reviewing these proposals.

25. OHCHR/UNAMA, in its report entitled "Silence is Violence: Stop the Abuse against Afghan Women and Girls" published in July 2009, found that violence against women, in both the public and private sphere, continues to be pervasive and widespread. Such violence is deeply rooted in Afghan customs, attitudes, and practices (such as *baad*, the giving away of girls as a form of dispute resolution, honour killings, and forced and under age marriage) which both compound and legitimize this violence. A culture of impunity for crimes against women means that perpetrators are rarely punished; as a consequence, violence against women is rarely perceived as criminal conduct which, in turn, seriously undermines efforts to prevent it.

26. Women's participation in public life remains restricted and the political space for women to advocate for their rights has contracted. Insecurity due to the escalating conflict, coupled with traditional attitudes towards women's role in society, discourage many



women from exercising their right to participate fully in all aspects of public life. This includes employment, especially with regard to work perceived as countering traditional roles and transgressing social norms. Women with a public profile are often accused of immoral behaviour, a message frequently transmitted by conservative religious leaders, including those with vested political interests. Attacks, threats and harassment against women in public life, often at the hands of AGEs, are a frequent occurrence and in most cases go unpunished.

27. Sexual violence against Afghan women and girls has, in all probability, continued to be underreported. Afghan women have repeatedly reported a loss of faith in law enforcement and judicial institutions, which they consider ineffective, dysfunctional, and corrupt. The misplaced stigma of sexual violence falling on the victim rather than the perpetrator, as well as lack of access to any form of justice or remedies for victims, has ensured that sexual violence remains a taboo subject largely unaddressed either by Afghanistan's law enforcement institutions or by Afghan society.

#### IV. Transitional justice

28. Re-establishing the rule of law and ending impunity for egregious human rights violations remains crucial to the realization of justice and the enhancement of peace and stability in Afghanistan. The time frame for the Action Plan for Peace, Reconciliation and Justice (APPRJ) expired in March 2009 with most of its proposed actions not yet implemented. The Joint Coordination and Monitoring Board (JCMB), a body responsible for implementation of the Afghanistan National Development Strategy (ANDS) in which the Action Plan is a benchmark, failed to address the issue and did not take decisive steps to envisage a comprehensive strategy to fight against impunity for past and current human rights violations.

29. Perpetrators of human rights violations and abuses not only enjoy impunity, but were also elected to public office. The effort to vet candidates based on their human rights record failed largely due to the inability of the Afghan judicial system to effectively meet the provision of the Electoral Law (art. 14). This stipulates that the disqualification of candidates for past crimes should be made on the basis of article 62 (3) of the Afghan Constitution which states that: "Presidential candidates should not have been convicted of crimes against humanity, criminal act, or deprivation of civil rights by a court." The provision of this article also applies to the Vice President. Article 85 extends this provision to members of parliament. The need to change and improve vetting mechanisms became evident when persons with credible allegations of human rights violations and abuses against them stood for election or were appointed to senior positions in the Government. Their presence greatly undermined the legitimacy and credibility of the election process, and cast a shadow over the democratic future of the country.

30. In July 2009, the Transitional Justice Coordination Group (TJCG), composed of 20 representatives of human rights organizations, media and victims' groups, issued a joint press statement calling on presidential candidates to include the Action Plan for Peace, Reconciliation and Justice in their presidential campaigns. The group also called upon candidates not to negotiate with individuals alleged to have committed human rights violations and abuses. UNAMA spoke out against the anticipated presence of these alleged perpetrators in the Government both before and after the election.

31. UNAMA worked with the Government, as well as with civil society and victim groups, to identify strategies to move the transitional justice agenda forward. OHCHR/UNAMA, for example, widely distributed the video "Healing Tears" which contains the testimonies of victims. It proved effective in raising awareness and in creating

a space for civil society to demand justice for egregious human rights violations. In addition, UNAMA, jointly with the TJCG, facilitated a three-day workshop in October 2009 to equip civil society with advocacy skills related to the promotion of human rights and justice. Many representatives expressed frustration with the lack of political support, both national and international, for the Action Plan, recommending its urgent revision to reinvigorate its agenda, with particular emphasis on specific key actions, such as vetting and justice reform, to reinforce the rule of law.

32. UNAMA supported the setting up of victims' groups, in particular the establishment of the Yakawlang Association of Victims in the central highlands, and provided technical support to broaden understanding of transitional justice processes.

33. The issue of securing mass graves was an important focus of the work of UNAMA during 2009. The AIHRC has registered more than 200 alleged mass graves in various regions of the country. Yet there is no effective system in place to secure these sites once uncovered, and official institutions mandated to protect and investigate them have not taken decisive action to date. UNAMA has endeavoured to promote mechanisms to fill this vacuum. As part of the follow-up to a memorandum of understanding signed in 2007 between UNAMA and the Ministry of Interior (MoI) and the Criminal Investigation Department (CID) of the MoI, training was provided to strengthen the forensic capacity of a select number of officers assigned to the CID.

34. Numerous challenges constrain the protection of mass graves but in April 2009, financed and supported by OHCHR, UNAMA facilitated a mission by Physicians for Human Rights (PHR) to conduct a preliminary assessment of a grave uncovered at the MoI compound. Subsequent to this experience, a project aimed at enhancing para-forensic capacity in Afghanistan, entitled "Securing Afghanistan's Past: a Forensic Program to Enhance Transitional Justice and Promote Dialogue" was submitted to the United States Department of State and approved in October 2009.

35. Mass graves in Afghanistan remain at high risk of destruction. In 2009, of the four mass graves uncovered in the provinces of Bamyán, Kunduz and Kabul, three had been tampered with. In some cases, the victims' families exhumed the remains of presumed relatives without any official oversight or control. In others, alleged perpetrators or their powerful allies attempted to destroy the evidence reportedly associated with these crimes. In July 2009, the United States Administration announced an investigation into the alleged killing of Taliban prisoners of war by forces of the United States-backed Northern Alliance at the end of 2001 in Dasht-e-Leili. PHR has previously reported findings of malicious destruction of this mass grave site, apparently aimed at destroying evidence of a war crime.

36. Within the reporting period, discussions were under way on the issue of national reconciliation and how to engage moderate elements of the Taliban in a negotiation process as part of the strategy to secure and stabilize Afghanistan. However, any negotiation process with the armed opposition should take full account of the principles enshrined in the Afghan Constitution and obligations which derive from international human rights treaties and customary human rights law, which preclude amnesty for grave crimes.

## **V. Poverty and human rights**

37. Afghanistan remains one of the poorest countries in the world with an estimated one third of its population living in absolute poverty and a further 37 per cent precariously situated just above the poverty line. Afghanistan was ranked 181 out of 182 countries in the 2009 Human Development Index. Poverty is a complex and multidimensional problem, compounded in the Afghan context by numerous factors, including conflict, weak governance, abuse of power, lack of accountability, and discrimination against women.

38. Poor Afghans experience sustained deprivation of the resources, choices, security and power that are necessary for the enjoyment of their human rights. Poverty reduction needs to focus on abusive structures and institutions of power, opportunities for choice and inclusion in decision-making processes, equitable resource allocation, and improved security. Deprivation of the enjoyment of human rights is well demonstrated by, for example, Afghanistan's high child mortality rates and low life expectancy, and by the limited progress achieved in access to health care. In this regard, Afghanistan has the second highest maternal mortality rate in the world (1,600 maternal deaths per 100,000 live births), which points to the failure of the health system to provide care for women.

39. The Afghanistan National Development Strategy (ANDS), while highlighting human rights, does so in a limited way by mainly focusing on civil and political rights. The Afghanistan Compact, the outcome of the 2006 London Conference on Afghanistan, established the framework for international cooperation with Afghanistan for the following five years. However, human rights were grouped with governance and rule of law, thus failing to acknowledge the cross-cutting nature of human rights, particularly in the area of economic and social development. Similarly, the Compact benchmarks on human rights, against which progress is measured, are civil and political rights-oriented, while the benchmarks in the economic and social development pillar that have human rights relevance are not framed as legal entitlements.

40. In October 2009, the Afghanistan United Nations Country Team (UNCT) launched the 2010–2013 United Nations Development Assistance Framework (UNDAF). Human rights perspectives guided the United Nations analysis of development challenges in each of the three priority areas: (a) governance, peace and stability, (b) sustainable livelihoods, and (c) basic social services covered by UNDAF. UNDAF provides an opportunity to refocus development understanding of human rights to include economic and social rights, such as education and health. UNDAF recognizes that a key challenge is the collection of data that is disaggregated by, at a minimum, sex, age and main population groups, in order to have a better understanding of which groups are vulnerable and marginalized. Consistent with the human rights-based approach (HRBA) principles of accountability and transparency, the United Nations is supporting government efforts to generate disaggregated data so that findings from such data are available to inform policy and subsequent programming.

41. OHCHR collaborated with UNCT in two specific areas in 2009. The first area of collaboration was the involvement of UNCT with the reporting process to treaty bodies, specifically the Committee on Economic, Social and Cultural Rights. The report of the State party will be considered by the Committee at its May session in 2010. The second was the questionnaire of the Special Rapporteur on the right to food concerning the response of United Nations entities in Afghanistan to the global food crisis. Positive steps include improved mapping of the food security situation and the Government's ownership of the National Risk Vulnerability Assessment, which is used to identify food insecure households. Food insecurity is still very high, despite an increase in agricultural production in 2009. This indicates the need to move away from an exclusive focus on increasing agricultural production towards finding options for increasing the ability of Afghans to access the means of procuring food. Three key barriers to procuring adequate food were identified: the lack of alternative livelihood options; the numerous land conflicts preventing access to available land; and the absence of formal social safety nets.

42. The right to food is not explicitly contained in relevant national strategies such as the ANDS, the National Health and Nutrition Strategy, or the National Agriculture Development Framework; although certain elements such as adequacy and availability have been addressed. The right to food is also not expressly included as an obligation in the

Constitution. Concern was also raised about the Government's ownership of national policies because of its high dependence on aid.

43. An OHCHR/UNAMA right to food survey conducted in 2009 found that access to adequate food in poor communities is frequently affected by connections to those in power. Corruption in food aid limits access for those who cannot afford to pay a bribe or who do not receive food aid because it has been diverted elsewhere. There was a marked difference in response between men and women, with women disproportionately and negatively impacted in accessing adequate food.

44. These findings, as well as additional research, contributed to a larger study on the human rights dimension of poverty in Afghanistan. This research has shown that abuse of power is a critical factor in the marginalization and disempowerment of Afghans living in abject poverty. In sum, poverty is neither accidental nor inevitable, but rather reflects the way Afghan society is organized, how resources are allocated and used, and the accountability, or lack thereof, of decision makers.

## **VI. Deficits in democracy**

### **A. Elections**

45. The presidential and provincial council elections took place against a backdrop of worsening security conditions, violation of women's rights and widespread electoral fraud and irregularities, which tainted the legitimacy of the electoral process and its outcome. The apparent interest shown by Afghans in the electoral process that was witnessed during the campaign did not quite yield the expected level of participation on polling day. UNAMA Human Rights collaborated with the AIHRC in a political rights monitoring exercise of the election process, producing three reports covering the nomination phase, campaign period, and polling day and the audit process.

46. The nomination and challenge period complied with electoral laws and regulations, and proceeded according to the timetable established. The campaign period, by and large, was also conducted in a dignified and engaged manner and stimulated vibrant political debates. A greater number of candidates stood for election as compared to previous elections. In particular, female candidates running for provincial council seats accounted for 10 per cent of all candidates, representing an overall increase of 20 per cent compared to the previous provincial council elections.

47. This situation was in contrast to election-related killings, attacks and threats, mainly carried out by AGEs and unknown perpetrators, against candidates, civic educators and election officials. Insecurity also severely limited freedom of movement and constrained the freedom of expression of candidates and supporters, hampering their ability to campaign openly in public gatherings and canvass door-to-door throughout their constituencies. These restrictions in turn created significant limitations on freedom of association and peaceful assembly.

48. Shortcomings in the vetting mechanism led to perceptions that some candidates with suspected links to armed groups were not excluded from the final candidates list. In addition, the weak system of administration of justice prevented many candidates, believed to be responsible for serious crimes, from being investigated and prosecuted.

49. Election day was marred by the highest number of recorded security incidents (300) in any single day for some 15 years. These included rocket attacks in the vicinity of polling centres and against nearby ANSF checkpoints, IEDs, small-scale armed clashes and stand-off attacks that were reported in the south, south-east and certain parts of the central and

north-eastern regions. Thirty one civilians, including 11 election officials, were reportedly killed on polling day.

50. Many Afghans were not able to exercise their right to vote due to insecurity. Coupled with dissatisfaction with public institutions, only one third of registered voters, a figure which is significantly lower than for the 2004 and 2005 elections, are understood to have gone to the polls. Voter participation was regionally diverse: turnout was low in the conflict-affected areas in the south and south-east, and higher in more secure areas such as the central highlands, northern, western and north-eastern regions. The freedom of voters to choose a candidate was inhibited by the conduct of candidates, their agents and local commanders, as well as some officials from the Independent Election Commission (IEC) and the Government, directing or intimidating voters at polling centres.

51. Women's right to vote and to stand for election to public office was severely limited due to social and cultural norms, and the insecure environment. Some female candidates received death threats, and in the more conservative areas were unable to move beyond their home base to campaign, restricted instead to door-to-door canvassing in private groups and using business cards instead of photographs. Female candidates also had limited access to funds for their campaign activities. On polling day itself, there were considerably fewer women than men at polling stations. Threats, harassment and attacks on women participating in public life and the discriminatory Shia Personal Status Law, which came into force prior to the elections, are examples of the impediments facing women in Afghan society.

52. Most public rallies were concentrated in provincial capitals and there was unequal media coverage of presidential candidates by Radio Television Afghanistan (RTA), the public service broadcaster. A National Security Council order to domestic and international media agencies to refrain from reporting any violence on polling day, coupled with the arrest of a number of journalists also restricted media coverage.

53. Despite a series of anti-fraud mitigating measures prepared in advance of 20 August, and the deployment of independent observers throughout the country, allegations of fraud and irregularities were overwhelming on polling day. These included allegations of ballot box stuffing, proxy voting, under age voting and voters using multiple registration cards. Insecurity prevented observers from going to a number of polling stations in the southern, south-eastern, eastern and central regions from which a large number of the complaints of fraud and irregularities emanated.

54. The high level of insecurity, extensive fraud and protracted delays in announcing the results damaged the integrity of the 2009 elections, and increased disillusionment among Afghans with both the electoral process and their Government. A large number of voters and candidates did not regard the elections and their results as credible. Many voters, in particular women, were, in effect, disenfranchised.

## **B. Freedom of expression**

55. The violence, intimidation and harassment to which journalists and media workers continued to be subjected in 2009, at the behest of the Government or at the hands of the armed opposition, impacted on freedom of expression in Afghanistan. Journalists continued to face criminal prosecution for expressing dissenting political and religious opinions: for example, six journalists from a Kabul-based newspaper were arrested after the newspaper published an article questioning the divine revelation of religion. A former journalist sentenced in 2008 to 20 years' imprisonment for publishing a translation of the Holy Koran alleged to contain errors, continued to languish in prison.

56. Journalists were at high risk of abduction when reporting from conflict-affected areas. An Afghan journalist was killed in an IM Forces operation intended to rescue him and an international journalist, both of whom were kidnapped by the Taliban at the site of the September IM Forces air strike in the northern province of Kunduz.

57. Following a protracted legislative process which began in early 2007, the Media Law finally came into force in July 2009, however copies of the new law were only made publicly available two months later. This delay was interpreted by many as a deliberate attempt to maintain full control of the public service broadcaster, RTA, for the duration of the elections. Certain provisions of the new Media Law give rise to concern. These include lack of clarity on restrictions to media content which leaves scope for violations and abuse: similar provisions in the Media Law 2004 were often used to arrest and intimidate journalists who had criticized the Government. Additionally, the composition and role of the two regulatory bodies (the High Media Council and the Media Commission) allow the Government to influence their work and decisions, putting at risk their impartiality and independence.

58. In March 2009, a multi-stakeholder consultation on freedom of expression was co-organized by UNAMA, Afghan journalist unions and media organizations, to review issues such as access to information, respect for the rule of law (media law) as well as transparency and accountability. Participants adopted the Kabul Declaration, which is a common agenda for collective action aimed at protecting freedom of expression, fostering an independent media and enhancing the safety of journalists and others who express their opinion. A committee of Afghan journalist unions and media organizations was formed to give effect to the different elements of the Declaration.

59. Sayed Pervez Kambaksh, the journalism student sentenced to death on charges of blasphemy in 2007, later commuted to 20 years' imprisonment, received a presidential pardon in August 2009 and was taken out of the country. His release was attributed to the high level of attention this case received, both inside and outside Afghanistan. It is unclear whether the release of Kambaksh signals a change that has positive value for journalists and broader issues of freedom of expression and opinion.

## **VII. Institutional capacity**

### **A. Institution-building**

60. OHCHR, in cooperation with the AIHRC, has worked with Afghan judicial and law enforcement actors since 2006 to develop measures to combat arbitrary detention. Based on the recommendations contained in the OHCHR/UNAMA report entitled "Arbitrary Detention in Afghanistan: a Call to Action", published in March 2009, a round table was organized in October 2009 to assist Afghan stakeholders to develop ways of enhancing information sharing pertinent to individual detention cases in a timely and effective manner at the provincial level.

61. OHCHR supported the Ministry of Foreign Affairs with respect to its submission under the universal periodic review of the Human Rights Council. The high-quality report was praised by other States as a frank account of the human rights situation that gave a balanced view of progress as well as the persistent challenges in Afghanistan. Recommendations included the need to adopt legislation to assist Afghanistan meet its human rights obligations and to promote and protect the rights of women, and specifically, review the Shia Personal Status Law, so that this controversial legislation conforms to international law. Also recommended was strengthening support to the AIHRC, and the promotion and protection of human rights in relation to freedom of expression, access to

justice, and prevention of child labour. Despite the call by the General Assembly for a moratorium on the death penalty, almost all the recommendations related to the death penalty were not accepted by Afghan authorities. OHCHR/UNAMA will continue to support the Government in designing an action plan for the implementation of these recommendations. This includes efforts to raise awareness on the issue of the death penalty, in particular in the light of the deficiencies in due process and fair trial guarantees in Afghanistan.

62. In relation to the drafting of the country report for the Committee on the Elimination of Discrimination against Women, OHCHR/UNAMA is providing technical support and assistance to the Steering Committee that will oversee the reporting process. This process is designed to assess the present situation of women and girls in Afghanistan and to point out the gaps and challenges in the protection and promotion of women's rights, thereby enabling OHCHR to identify further areas of support in its work on women's rights.

## **B. Afghanistan Independent Human Rights Commission mentoring programme**

63. To build further expertise in economic and social rights analysis, a core aspect of the work of the AIHRC, OHCHR undertook a mentoring programme with selected AIHRC staff based in Kabul. This technical assistance was aimed at broadening the substantive knowledge of AIHRC staff in the area of economic and social rights. In addition to its signature annual report on the implementation of economic and social rights in Afghanistan, the AIHRC submitted its first "shadow" report to the Committee on Economic, Social and Cultural Rights.

## **C. Ministry of Justice**

64. In early 2009, with the support of the Special Representative of the Secretary-General, sufficient funds were committed by donors for the first year of operation of the Human Rights Support Unit in the Ministry of Justice, for which the United Nations Development Programme is the lead agency. Technical support in the conceptualization of the structure and programming of the Unit, as well as in all stages of the hiring process, was provided by OHCHR. The Human Rights Support Unit is designed to play a major role in facilitating a comprehensive understanding and mainstreaming of human rights across line ministries.

## **D. Support for mainstreaming human rights in national policies**

65. As both the ANDS and the Provincial Development Plans (PDPs), designed to support ANDS implementation, have been criticized for not focusing on human rights outcomes, OHCHR/UNAMA undertook various efforts to mainstream human rights in development planning. Important requirements that were identified included additional investment in strengthening the capabilities of subnational authorities to implement policies and programmes in accordance with the human rights-based approach (HRBA); and to advocate that government, civil society, the United Nations and donors share a common human rights framework as the basis for aid coordination.

66. OHCHR/UNAMA conducted three workshops on the HRBA to development in Dai Kundi, one of the poorest provinces in Afghanistan. Because of its low development status, Dai Kundi was recommended by UNCT as a priority for United Nations development assistance and as a pilot for a comprehensive United Nations approach, where capacity-

building of local authorities is one of five core priorities. Participants were members of the Dai Kundi Provincial Sectoral Working Groups on Social Protection, Education and Health, responsible for their five-year development planning process, linked to the ANDS and the Dai Kundi PDP. While there was improvement in the capacity of the sector working groups to undertake analysis, follow-up on the planning processes will be essential to achieving a more sustainable development programme for the province.

## **VIII. Conclusions**

67. The year 2009 proved to be a challenging one, in which limited gains for human rights in some spheres were offset by reversals in others. Afghanistan now stands at a watershed. The new Government faces complex challenges to improving the human rights situation, as part of a necessary foundation for peace and prosperity in Afghanistan. Long-standing human rights concerns such as entrenched impunity, lack of accountability, justice and the rule of law, extreme poverty and discrimination against women, need to be urgently addressed as never before, if confidence in the Government is to be restored and Afghanistan transformed into a peaceful and democratic society.

68. Both the new Government and the international community must demonstrate genuine commitment to advancing human rights in Afghanistan. Human rights should be a central plank in ongoing and future strategies to bring about peace, security and democratic reform. New impetus is needed to attain the Afghanistan Compact benchmark on governance, rule of law and human rights and bring closer to realization the full respect and enjoyment of human rights for all the citizens of Afghanistan.

## **IX. Recommendations**

69. The High Commissioner recommends that:

(a) The Government of Afghanistan assumes with serious commitment its responsibilities to meet its human rights obligations, as laid down in the Constitution of Afghanistan and international human rights treaties to which it is a party. The Government and its international partners should ensure that any negotiations relating to national reconciliation and Afghanistan's institution-building process include human rights priorities as part of its central platform. The participation of women and other relevant stakeholders and representatives of Afghan civil society should also be ensured;

(b) Parties to the armed conflict should promote measures to secure compliance with international humanitarian law and respect for the protection of civilians, including women and children. Pro-Government forces should pursue and strengthen procedures in place to mitigate the impact of the conflict on the civilian population, improve systems of due process and accountability with respect to the arrest and detention of individuals in armed conflict, and harmonize and raise public awareness of condolence schemes. Influence should be brought to bear on anti-Government elements to desist from attacks on civilian targets, and against humanitarian operations and their personnel;

(c) The Government should take all necessary steps to end discrimination against women, including through public condemnation of all forms of violence against women and girls, and prosecution of crimes of sexual violence. The Law on the Elimination of Violence against Women should be strengthened so that it meets its



stated aims, avoids legal ambiguity and uncertainty, and can be better implemented. The Shia Personal Status Law should be repealed. Legal reform should be swiftly translated into national policies and programmes aimed at empowering women and promoting and protecting their rights. Women's participation in decision-making processes with respect to peacebuilding and reconciliation talks should be ensured;

(d) The Government and its international partners should demonstrate greater commitment to the pursuit of a comprehensive strategy to address impunity and to ensure the rights of all Afghans to justice, truth, reparation and guarantees of non-recurrence of egregious human rights violations. The rule of law, including the judicial system should be strengthened, and improved vetting mechanisms that exclude alleged human rights abusers from standing for election in the 2010 parliamentary elections be put in place;

(e) Efforts should continue to be made to ensure that the human rights perspective is fully integrated into the implementation of the Afghanistan National Development Strategy (ANDS), which serves as the country's poverty reduction strategy, and other development policies and programmes aimed at alleviating poverty. Measures to address corruption, abuse of authority and lack of accountability in official institutions, in addition to other factors contributing to the discrimination and marginalization of poor Afghans, should be adopted without delay. The implementation of the ANDS should comply with the Government's national and international human rights obligations;

(f) The Government should take the necessary steps to foster a free and independent media as an essential step towards promoting freedom of expression, and ensuring the right of Afghans to receive and impart information. This is also crucial to securing informed participation in, and bolstering the integrity of, the 2010 parliamentary elections. Journalists should be provided with greater protection in exercising their professional duties in an environment free from interference, intimidation and violence. The provisions of the new Media Law that could potentially restrict freedom of information should be reviewed and amended;

(g) The Afghanistan Independent Human Rights Commission (AIHRC) should be further strengthened and supported in its role as the national human rights institution responsible for promoting and protecting human rights in Afghanistan and bridging the gap between the Government and civil society. The Government should ensure substantial and sustainable funding to the AIHRC and protect its independence;

(h) The Government is strongly urged to implement the recommendations emanating from its universal periodic review by the Human Rights Council, in particular those recommendations relating to the death penalty. In the light of serious deficiencies in the criminal justice system, a moratorium should be reintroduced, as the first step to the eventual abolition of the death penalty.