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**ANNUAL REPORT OF THE UNITED NATIONS HIGH COMMISSIONER
FOR HUMAN RIGHTS AND REPORTS OF THE OFFICE OF THE HIGH
COMMISSIONER AND THE SECRETARY-GENERAL**

**Report of the 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***

* There was a delay in the submission of the report in order to reflect the latest information.

Summary

The present report, submitted pursuant to Human Rights Council decision 2/113, contains recommendations to address the situation described as well as ongoing human rights concerns raised in previous reports. Further, this report features highlights from the mission of the High Commissioner for Human Rights to Afghanistan from 15 to 21 November 2007.

With the intensification of armed conflict, protection of civilians has become a major human rights concern. Insurgency-related violence has cost hundreds of civilian lives and created new groups of displaced persons. Coupled with increased criminality, it has hindered aid delivery and further constrained humanitarian access. Poverty, lack of access to food, medical care and education persist, particularly affecting women, children and the disabled. Despite advances in women's rights, they still face severe social, economic and political discrimination. Laudable efforts in the rule of law, police and governance reform are yet to produce institutions that systematically protect human rights. Arbitrary detention remains commonplace and reports of torture persist. Impunity remains entrenched and there is little progress in transitional justice. Journalists face increased levels of threats and intimidation, undermining the vibrant media that has flourished in recent years.

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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). The report builds on my previous reports and my mission to Kabul, Khost and Mazar-i-Sharif undertaken from 15 to 21 November 2007. During my mission, I met with President Karzai, various Government ministers, the Chief Justice, the Speaker of the Parliament and other parliamentarians, commanders of the International Security Assistance Force (ISAF), representatives of the diplomatic community, members of the Afghanistan Independent Human Rights Commission (AIHRC), as well as human rights defenders, civil society activists and victims' groups.
2. Security and respect for human rights seriously deteriorated in Afghanistan in 2007 owing mainly to the deepening conflict, setbacks in institutional reform, persistent poverty, and the continued inability of government to effectively deliver essential services, security and justice. Alongside corruption and insufficient institutional capacity, these factors have heightened physical, economic and social vulnerability. The unprecedented increase of opium production in 2007 also posed a grave threat to the rule of law and security.
3. Human rights and their defenders have come under attack by those who view human rights as a Western-imposed concept, as counter to local religious and cultural traditions, and as a luxury that Afghanistan cannot afford. Yet, insecurity in Afghanistan generally emanates from failure to address ongoing human rights concerns and violations, including effectively addressing past violations. During my visit to Afghanistan, I found Afghans from all walks of life claiming their rights to food, shelter, education, a livelihood, health, justice and physical security. The creation of new institutions to protect human rights is not, and should not be perceived as an attack on traditional systems, but seeks to complement and build upon the latter's strengths.
4. Regrettably, progress in implementing the Action Plan on Peace, Reconciliation and Justice, adopted by the Government in December 2005 and slated for completion by end of 2008, has been extremely limited. Significant political opposition to transitional justice in Afghanistan, exemplified by the adoption by Parliament of the National Reconciliation Charter, or amnesty law, in March 2007, seriously undermines the Action Plan.

I. POVERTY AND OTHER ECONOMIC, SOCIAL AND CULTURAL RIGHTS ISSUES

5. This year, the Government of Afghanistan is submitting a periodic report on implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). According to the Afghanistan Independent Human Rights Commission's (AIHRC) second report on economic, social and cultural rights, published in August 2007, the Government is failing to meet its minimum core obligations under ICESCR. The Afghanistan Human Development Report 2007 (AHDR) confirms that the Government continues to struggle to deliver essential services consistently to rural, urban and remote areas and to spur development of the official economy, which is critical to promoting these rights.

6. One consequence of the limited progress in ensuring reliable access to safe drinking water, food, health care, education and sanitation is that Afghanistan continues to suffer from high mortality rates across all segments of the population. The average life expectancy in Afghanistan is 43.3 years for women and 43.4 years for men.

7. Despite some progress, the AIHRC found that provision of and access to adequate health care, particularly for women and children, remains a serious concern. Afghanistan's under-five and maternal mortality rates are amongst the highest in the world at 257 per 1,000 live births and 1,600 deaths per 100,000 live births, respectively. The maternal mortality rate stems from insufficient awareness and access to prenatal care (14.3 per cent receive such care) and to skilled attendants during childbirth (12 per cent receive this care). While immunization programmes have increased recently, one third of children do not receive vaccinations against tuberculosis. At the same time, although its child mortality rate is the third highest globally, Afghanistan has managed to reduce its child mortality rate by 25 per cent since 2001. This reduction illustrates the positive effects in some sectors of concentrated efforts at the local level to realize social rights.

8. Health is also affected by access to sanitation, safe drinking water, food, and education. AHDR reports that the Government remains unable to ensure reliable and equal access to these, particularly to safe drinking water. Urban households (64 per cent) are about three times more likely to enjoy safe drinking water than rural households (26 per cent). Only 2.6 million Afghans have access to safe sanitation.

9. Government has improved children's access to formal education. Ministry of Education statistics for the second half of 2007 show more than 5.6 million children enrolled in schools, compared to a little more than 1 million five years ago. More than 35 per cent of these students are girls. Despite this progress, half of Afghan children - predominantly girls - still do not attend school and Afghanistan continues to suffer from a 72 per cent adult illiteracy rate, with the lowest female literacy rate in the world, estimated at between 10-19 per cent. Low school attendance and high dropout rate of girls can be attributed largely to traditional perceptions, poverty, lack of facilities and transportation in remote areas, and security concerns. Early marriage also tends to deprive girls of the opportunity to receive secondary education. Poverty also means that children drop out to work, often in dangerous, exploitative or hazardous conditions.

10. Afghanistan, the fifth poorest country in the world according to ADHR, continues to struggle to tackle poverty. AIHRC reported that 60.3 per cent of interviewees earned less than one United States dollar per day - the World Bank's benchmark for "absolute poverty". Economic vulnerability and widespread poverty most severely impact upon women, children, the disabled, elderly, and the landless, and are significant factors in the deterioration of the security situation throughout the country. It also generates economic migrants, as evidenced most visibly in the deportation by the Islamic Republic of Iran in 2007 of more than 360,000 such persons back to Afghanistan.

11. The Afghan economy remains dependent on international aid and is held back in part by the inability of the Government to protect property rights. AIHRC reports illicit land seizures, particularly in rural areas, among the most prevalent human rights violations. According to UNAMA, difficulties in resolving disputes over land persist because of lack of coherent legal

framework, policy, administration, and enforcement. Given the often volatile nature of property disputes, failure to address the issue not only threatens security, but also undermines the rule of law and economic development. Government must take concrete measures to address deficiencies in the protection and administration of property rights, building upon constructive elements of traditional mechanisms.

12. The economic, social and political consequences of the illicit narcotics trade, which is said to account for almost 50 per cent of Afghanistan's gross domestic product (GDP), hamper the Government's ability to promote and protect economic and social rights. The consequent land-grabbing, subversion of rule of law and insecurity caused by the illicit narcotics trade further undermine the Government's ability to deliver services and implement development programming.

13. During my mission to Afghanistan, I emphasized the need for an integrated approach to human rights encompassing civil and political rights as well as economic, social and cultural rights. Respecting the right to development is critical to progress, and requires the participation of the most vulnerable groups in the development process on the fundamental basis of equality. I strongly call for such an approach to be reflected in the final Afghanistan National Development Strategy (ANDS).

II. DISCRIMINATION

14. Although the Constitution formally recognizes equality and the principle of non-discrimination, in reality discriminatory practices based on sex, religion, ethnic, tribal, family and political affiliation exist throughout Afghanistan. Discrimination against women and girls remains pervasive, ingrained and extremely deleterious. Other forms of discrimination, while present, cannot be fully analysed due to absence of systematic data.

15. Women and girls in Afghanistan have continued to make gains in the workplace, education and government, but progress remains tentative, with social, political and economic discrimination against women still pervasive. With the Government beginning to implement projects taking into account gender, its current reliance on the Ministry of Women's Affairs to tackle women's issues must shift to obliging each element of government to promote women's rights.

16. Women's continued exclusion from formal and informal public policy and decision-making processes (women hold only 9 per cent of formal positions, well below the international benchmark of 30 per cent) deprives them of the necessary tools to advance women's rights. The Minister for Women's Affairs is the only female Minister in the Government, down from three female Ministers in 2005. There is no female Supreme Court justice. Women currently comprise 26 per cent of the overall civil service, although a significant proportion of these derive from the Minister for Women's Affairs staff. Women account for approximately 5 per cent of prosecutors and judges, and only 0.4 per cent of the police force. To compound matters, women serving in the Government, particularly in sensitive positions such as provincial heads of the Minister for Women's Affairs and in the police, frequently are subject to threats, intimidation and sometimes murder.

17. The President's support for the campaign against gender violence is encouraging and hopefully will be matched by actions. Just as critical are the President's endorsement of the National Action Plan for Women in Afghanistan (NAPWA) and his active support for its realization.

A. Violence against women and discrimination in the criminal justice system

18. High levels of violence against women and girls remain of grave concern. UNAMA, AIHRC and the Minister for Women's Affairs received more than 2,000 cases in 2007, likely only a fraction of cases due to limited access and awareness.

19. The caseload confirms that harmful customary practices such as honour killings, *ba'ad* (the exchange of girls to settle disputes), trafficking in women, under-aged and forced marriages and severe domestic violence continue. Of 450 cases received by UNAMA between January and September 2007, a large proportion involves young women or girls who claim forced engagement or marriage coupled with domestic violence. Forced couplings often are financially motivated, with the bride-price alleviating debt or immediate economic hardship of the bride's family. Between 40 and 57 per cent of all marriages involve girls under the age of 16.

20. In most documented cases, the perpetrators of violence against women are close family members though non-family members known to the victim, or State officials, in many cases policemen, also are perpetrators. Many cases involve more than one perpetrator, or a series of violations, often in connection with attempts of the victims to seek protection or redress.

21. The judicial and law enforcement systems still fail to protect and provide justice to women. This emanates from entrenched cultural attitudes and practices, the absence of female lawyers and judges, and the inability of many women to physically access the judicial system without a male escort. This amplifies rights issues caused by the weak judiciary. The few women lawyers, prosecutors and judges in the legal system frequently suffer from discrimination and marginalization by male colleagues. Social practices relegating women to the home, particularly in remote areas, often restrict them from joining the police and judiciary, rendering it difficult to increase female representation.

22. Women also continue to be criminalized unfairly. Victims, particularly of sexual offences, often find themselves accused and detained illegally on charges of immorality. An alarming number of women are detained for allegedly "running away" (elopement), which is not a crime under the Criminal Code, or for *zina* (adultery) as to which the penal provisions are ambiguous. Reportedly, in this context, women and girls are occasionally convicted of non-existent offences in order to provide justification for their detention.

23. These failures lead to attempts to resolve violence against women cases by non-judicial means, which may not adequately protect the victim. Generally, where the police's Family Response Unit, the Department of Women's Affairs, or a traditional council of elders intervenes, the victim is usually returned to her husband's or parents' home with a written undertaking from the perpetrator that he will desist from further abusive action. Putting aside the absence of remedy in respect of abuse suffered, without adequate monitoring, it is unclear if these undertakings as to conduct in the future are honoured.

III. ARMED CONFLICT AND VIOLENCE

24. Armed conflict in Afghanistan has intensified significantly throughout 2007. The Southern, South-Eastern and Eastern regions of the country have seen regular fighting, but violence has also increased notably in other areas, including in the North-Eastern, Western and Central regions. The impact of the conflict on civilians, including non-combatant casualties, destruction of civilian property, loss of livelihoods, displacement, and severe limitations or complete denial of access to essential services, has become a pre-eminent concern. When UNAMA's mandate was renewed in March 2007, an explicit mandate was given to it to monitor the situation of civilians affected by the conflict. Continued cooperation has been sought and maintained with International Security Assistance Force (ISAF), Operation Enduring Freedom (OEF) and Afghan national forces to ensure they are cognizant of their responsibilities under international humanitarian and human rights law and that they also understand and respect the United Nations role to investigate impartially and independently cases involving civilian casualties. Similar efforts must also be made with anti-Government elements (AGEs) that are party to the armed conflict.

25. Operations by international and national security forces and AGEs have killed and injured large numbers of non-combatants. In 2007, almost 1,500 Afghan civilians were killed as a result of such operations. The death of non-combatants amounts to a violation of international humanitarian law unless rules of proportionality, necessity and targeting are fully respected. Thus, while not all civilian deaths during the reporting period are in violation of international humanitarian law, serious violations can be substantiated in several incidents.

26. Protection of civilians was a key focus of my Afghanistan mission. In meetings with both national and international authorities and in press statements, I stressed the need for all sides of the conflict to strictly respect human rights and international humanitarian law principles. I also emphasized that certain international and Afghan military operations resulting in civilian casualties, even if they are not, strictly speaking, in breach of international law, are nonetheless liable to erode support amongst Afghans for the Government and the international military presence, as well as public support abroad in contributing States, for continued international military engagement in Afghanistan. To help bridge the distance between individual and victims and those who bear responsibility, forces involved in such incidents need to be more responsive and accessible to victims and their families and communities, and ensure appropriate and comprehensive redress. Achieving this requires a systematized and consistent approach to investigation of incidents and to compensation, with the latter ideally administered by a competent, impartial third-party backed by a trust fund.

27. Another concern is that the Afghan National Police (ANP), instead of being able to focus on their civilian law-enforcement duties, frequently are compelled to engage in combat and, when attacked, may be left without military support for a prolonged period of time. ANP also are being targeted by anti-governmental elements through suicide attacks, improvised explosive devices (IEDs) and abductions. The Ministry of Interior registered around 900 insurgency-related deaths of police officers in the last nine months of 2007, which is significantly higher than the number of Afghan army casualties in the same period. ANP are not mandated, trained or

equipped for such a role and are therefore more susceptible to casualties. Combat engagement by the police moreover hampers achieving the long-term goal of developing a strong, responsive civilian police force dedicated to law enforcement and points to a serious security gap that needs to be filled by alternative mechanisms.

A. Attacks by anti-Government elements (AGEs)

28. AGE attacks accounted for over half the non-combatant casualties registered by UNAMA in 2007. Of particular concern are tactics that directly target Afghan civilians, in clear breach of basic norms of international humanitarian law. AGEs frequently issue threats and carry out direct attacks against civilians, including children, perceived to be cooperating with the Government and its international supporters. Regular and well-publicized hangings and beheadings of alleged “spies” in conflict areas terrorize the civilian population and create a feeling of insecurity. Consequently, in some areas of the country, fear of reprisals has notably reduced active support for the Government.

29. UNAMA monitoring shows that suicide attacks and IEDs detonated in public areas by AGEs have caused a high number of civilian casualties. While most of these attacks were directed primarily against military or government targets, many were carried out in crowded civilian areas, causing extensive civilian casualties. Such attacks are in violation of international humanitarian law if they inherently cannot discriminate between the legitimate military target and non-combatants.

30. Furthermore, the perpetrators of suicide bombings and other armed attacks tend to use perfidious or other tactics that violate international humanitarian law. They do not usually distinguish themselves from ordinary civilians, and in some cases actively use civilian guise. AGEs also violated international humanitarian law repeatedly when they carried out operations from inside civilian locations and used non-combatants as human shields. Those responsible should be held to account for such crimes.

B. Operations by international and national security forces

31. Combat operations by national and international security forces have led to almost half of the non-combatant casualties recorded by UNAMA in 2007. Although Afghan national and international forces have increased efforts to minimize harm to non-combatants, there remain allegations of the use of disproportionate force in some cases, particularly in relation to defensive air strikes and force-protection incidents. Force-protection incidents are those in which military forces fire at individuals who come too close to military convoys or fail to follow instructions at checkpoints. Some AGE tactics, which constitute violations of international humanitarian law, have contributed to development of these force-protection protocols and other defensive tactics. Even if the AGE tactics are in breach of international humanitarian law, this does not absolve military forces of their own responsibility to avoid or at least minimize harm to civilians and their property. There also have been a few incidents in which serious misconduct by international and national security forces could be substantiated.

32. Concern has been repeatedly expressed regarding house searches by Afghan national and international forces, with allegations ranging from cultural insensitivity to excessive use of force to gain entry into compounds and potentially serious misconduct leading to the loss of life. Communities throughout conflict regions have reported particular concerns about night-time raids. Civilian casualties resulting from operations conducted by international forces have generated outrage amongst the population in affected areas and several demonstrations have taken place, most notably in the Eastern region. Killings of civilians by AGEs have tended not to result in similar public reaction. Concerns have also been expressed about cases of alleged mistreatment and prolonged arbitrary detention of some persons detained by international forces.

33. Throughout 2007, the Afghan Government and international military forces have adjusted tactics in response to many of the above concerns, and have supported internal and external independent investigations and reviews, including establishing structures in collaboration with UNAMA to facilitate information-sharing and remedial action. While positive, the effectiveness of these initiatives still needs to be assessed more fully. Notably, many of these developments resulted from a workshop on the protection of civilians held in August led by the United Nations in collaboration with AIHRC. Senior ISAF officials participated in this workshop which reviewed the most pressing protection challenges and discussed developing a collaborative protection framework. The lack of access to other parties to the conflict, however, is a continuing concern.

C. Humanitarian access

34. Humanitarian access has become increasingly impaired in conflict-affected areas. At least 78 districts are now rated by the United Nations as extreme risk areas, and are therefore inaccessible to United Nations agencies. According to the Afghanistan NGO Security Office (ANSO), the number of attacks against the personnel and property of non-governmental organizations (NGOs) and humanitarian workers in 2007 is the highest since 2001.

D. Internally displaced persons

35. There are 120,000 long-term displaced people in Afghanistan. In 2007, the Government estimated that approximately 37,000 individuals were displaced as a result of growing insecurity and recent violence linked to armed conflict in their areas of origin. While reports indicate that the nature of recent displacement is temporary, in some cases, there has been limited or no access to displaced populations. The operational capability of the Office of the United Nations High Commissioner for Refugees (UNHCR) is now limited to approximately 55 per cent of the country.

E. Children in armed conflict

36. Many children have been victimized in AGE attacks, sometimes as direct targets, and in military operations. Attacks against schools continue, threatening students and teachers. The United Nations has also documented high-profile cases in which children are used to perpetrate attacks and as human shields in blatant breach of international human rights and humanitarian law. In the light of Security Council resolution 1612 (2005), a task force on children in armed conflict is being set up in Afghanistan.

IV. IMPUNITY

37. Re-establishing the rule of law, and ending impunity for past and present crimes, remains a key to securing peace and stability in Afghanistan. Individuals suspected of committing grave violations of human rights, including war crimes, have not been held to account. Some continue to hold high-ranking positions of authority, fundamentally compromising the confidence of the population in the integrity of its Government.

38. Impunity for current crimes also remains a problem. In two major incidents, senior government officials have not been held to account for potentially serious violations despite substantial evidence suggesting their culpability.

A. Transitional justice

39. During my mission, I reminded all stakeholders that transitional justice is a multifaceted process which focuses on the victims' right to truth, compensation and rehabilitation. It should not be reduced to the single, though obviously important, issue of prosecution of those with responsibility for past crimes. While the commitment to ensure individual criminal accountability remains vital, there must also be a recommitment by the Government and the international community to advance the broader dimensions of the transitional justice agenda.

40. In response to a Human Rights Watch report republished in December 2006 in which the names of suspected war criminals and violators of human rights holding seats in the Wolesi Jirga (Lower House of Parliament) were listed, the Wolesi Jirga and the Meshrano Jirga (the Upper House of Parliament) passed the "National Reconciliation Charter" by a majority vote. Under this Charter all political parties and other belligerent groups associated with the two and a half decades of conflict in Afghanistan would be granted full immunity from prosecution. It called on all parties, including present AGEs, to strive towards national reconciliation and offered to grant immunity from prosecution to all those endorsing the process. Refusing to sign the Charter, President Karzai stressed that under Islamic principles he was constitutionally bound to respect the principle that only the victims of human rights violations had the right to forgive the perpetrators. I have since repeatedly expressed my concern that this Charter could lead to past serious human rights violations going unpunished and that it would undermine the process towards securing long-term peace and construction of durable institutions of the Government.

41. In general, both national and international efforts to address past abuses have been limited and are hampered by growing hostility to the transitional justice process. The deadlines for the benchmarks established under the Action Plan for Peace, Reconciliation and Justice have mostly passed without any significant progress being achieved, thus putting compliance with the envisaged overall time frame for the Action Plan in serious doubt. The only benchmark on which substantial steps were taken was the establishment of a "clear and transparent national appointments mechanism for all senior level appointments". The Senior Appointments Panel was set up by September 2006 and showed initial promise. Rules of procedure were adopted in October 2007, but these did not establish clear operational guidelines nor provide guarantees or requirements for impartiality or independence.

42. There are encouraging signs that civil society actors are beginning to mobilize on transitional justice. Following the passage of the Charter through the houses of Parliament, civil society actors issued a resolution condemning any attempt by the Parliament to grant amnesty to persons who had committed human rights violations. On 10 December 2007, the day officially designated by the President as National Remembrance Day, demonstrations took place in front of the premises of AIHRC, UNAMA and the President's Office by a group of 350 women representing the mothers of war victims. They demanded that the Government and other relevant actors take action to uncover the fate of the disappeared and denounced the Parliament's adoption of the Charter.

43. According to AIHRC, 84 mass grave sites have been identified throughout the country. However, there is currently no effective system of verification or documentation of the sites or witness testimonies, nor is there forensic capacity to investigate the graves, identify victims and preserve evidence for possible future criminal proceedings. There is no security in place to protect alleged gravesites and some, such as those in Faizabad and Dasht-i-Chamtala, have been destroyed through uncontrolled digging.

B. Impunity for current crimes and general lack of accountability

44. Drug-related criminal gangs, warlords and AGEs continue to pose serious threats to security and the rule of law. UNAMA received several complaints concerning police failure to conduct proper investigations or to act impartially and independently. There continue to be allegations of police corruption leading to the release of suspects without proper investigation or charges being laid, as well as cases where police are alleged to have failed to act when confronted with traditional practices or powerful local interests.

45. Both a demonstration in Sheberghan in May and a suicide bombing in Baghlan in November resulted in the bodyguards of government officials opening fire on unarmed civilians, killing and injuring scores of people on both occasions. While the Government commendably initiated independent investigations into both incidents, neither has made any substantive findings public. Further, even in the face of a detailed AIHRC report documenting serious wrongdoing by the governor in the Sheberghan case, the Government has taken no action to ensure his accountability.

V. DEFICITS IN DEMOCRACY

46. Significant achievements in democratic institution-building have so far happened primarily in government structures. Institutions such as the Provincial Councils and Parliament need continued support, including technical assistance in integrating human rights in their legislative agendas. However, civil society groups, which play a critical role in bridging the gap between Government and the Afghan public, remain underdeveloped and need more sustained and generous support from the international community. This role becomes particularly important as the country moves towards an electoral year in 2009.

A. Freedom of expression

47. A new media law adopted by both houses of Parliament was rejected by President Karzai at the end of 2007. The law generally represents an important step forward, but contains provisions which may be used or interpreted in a manner that would breach international standards concerning freedom of expression. For example, it contains broad provisions requiring freedom of expression to be in accordance with Islamic principles, banning published materials that are deemed immoral, and requiring prior approval for distribution of publications by international and intergovernmental agencies. These provisions are not clearly defined and are open to diverse interpretations which give rise to rule-of-law concerns as to possibilities for arbitrary censorship.

48. The media, which has flourished in recent years, faced increased levels of violence and serious threats in 2007. Numerous complaints have been received concerning violent attacks against journalists across the country with 20 verified cases reported in the Central and the Eastern regions alone. Two of these cases concerned the murder of female journalists. In most cases, no action was taken by the relevant authorities.

49. In June 2007, the National Directorate of Security (NDS) distributed to Afghan journalists a list of restrictions intended to curtail their reporting of the deteriorating security situation. The Ministry of Information and Culture also issued a circular in November 2007, asking all electronic media to refrain from broadcasting content that might disturb the public.

VI. INSTITUTIONAL CAPACITY

50. Particularly at the district level, the Government's capacity to deliver essential services, law enforcement, justice and security requires significant additional attention. Corruption, insecurity and inadequacy of legal and regulatory frameworks, qualified personnel and physical infrastructure severely undermine executive, judicial and law enforcement institutions' functionality and promotion of the rule of law, and in turn diminish confidence in Government. These dynamics also hamper access to Government by civil society.

51. This lack of capacity has encouraged utilization of alternative dispute resolution and security mechanisms. The traditional justice system remains strong and generally responsive, however it can be problematic, particularly its accessibility to and treatment of women and other vulnerable groups.

52. In the security sector, private security companies (PSCs) have grown rapidly in recent years, with up to 10,000 armed and organized employees in Kabul alone. Until now, PSCs have operated in Afghanistan with ad hoc registration or under arrangement with the Ministry of Interior. Legal accountability for human rights violations committed by these employees continues to remain unclear.

53. To meet its human rights obligations, the Government of Afghanistan needs to more actively integrate human rights considerations into its analysis, policy, and programming. The ANDS process provides a unique opportunity to do so and ensure institutions' capacities to fulfil

obligations are developed. Encouragingly, the Ministry of Justice has agreed to take up the mantle as lead agency in respect of human rights vis-à-vis the ANDS process and it should be supported by both the Government and international community.

54. Within ANDS, human rights have been subsumed under governance and public administrative reform rather than being treated as a separate cross-cutting sector. Of particular concern is that some authorities critical to realizing human rights and transitional justice-related benchmarks, such as the Ministry of Justice, the Supreme Court, the Ministry of Interior, the Ministry of Education, the Ministry of Housing and Urban Development and the Ministry of Culture and Information, were not listed as responsible for implementing the sector strategy.

A. Administration of justice

55. The Afghan justice system still struggles. A conference on rule of law in Afghanistan, held in Rome on 2 and 3 July 2007, achieved greater donor commitment and coherence of reform efforts. After the conference, the national justice sector strategy and national justice programme were finalized. Their implementation is expected to begin in the first quarter of 2008. These commitments build upon discussions about key problems facing the Afghan justice system, including low salaries; inadequate facilities for courts and prosecutors; prisons which fail to meet internationally accepted standards; lack of formal training and education of judicial personnel; and inadequate access to basic resources, including copies of Afghan laws.

56. Many of these problems as well as others were confirmed by two monitoring programmes, the joint AIHRC-UNAMA Arbitrary Detention Verification Campaign (ADVC) and UNAMA's Legal System Observation Project (LSOP), which also enjoyed OHCHR technical support. ADVC monitored more than 1,100 detentions nationwide between November 2006 and September 2007, while LSOP observed 110 criminal proceedings in five regions between March and June 2007. They both confirmed widespread arbitrary and illegal detentions often resulting from ineffective judicial and law enforcement institutions, discriminatory and illegal practices and the absence of oversight and accountability mechanisms. While there are allegations of prolonged and arbitrary detention in non-Afghan run facilities, the campaigns did not cover these facilities. It is hoped that UNAMA and AIHRC will be granted access to them promptly and unrestrictedly.

57. Specifically, law enforcement and judicial officials continue to detain and convict people on arbitrary grounds for customary practices, breach of sharia law (see chapter II above) and civil disputes, and pressure suspects to surrender. Detainees are rarely informed of their rights or given access to legal counsel, and few defence lawyers mount active defences.

58. In fact, the right to legal representation is systematically misunderstood and denied by the judiciary in criminal cases. While the absence of a traditional legal representation for accused persons or suspects is likely the cause, the effect is to erode rights protections. One consequence of the broad denial of legal counsel during interrogation is that reports of torture and ill-treatment of detainees and prisoners continue. Less than one quarter of those interviewed, though, claimed to have been ill-treated or tortured while in detention.

59. Another effect is that, despite relevant provisions in the Afghan Interim Criminal Procedure Code and ratification of the International Covenant on Civil and Political Rights (ICCPR), defence lawyers are given inadequate or no notice of hearings, and are often criticized or intimidated by judges, prosecutors and police for defending their clients. The principle of presumption of innocence is also not systematically respected. Courts convict without providing defendants the opportunity to challenge evidence, using evidence such as police reports and witness statements. Encouragingly, the Advocates Law, which establishes the Afghan Bar Association and strengthens legal aid, was passed recently. I hope that, with its passage, rights protection will improve in both the criminal and civil systems.

60. Prosecutors and the courts systematically breach legal time limits leading to widespread illegal detention. Significant numbers of cases are backlogged for months, sometimes years, at the Appeals and Supreme Courts. Reasons for these delays include active disregard for or ignorance of legal time limits, and under-resourcing. Breach of time limits balloons the population in detention centres. With the judiciary unable to deal with those arrested expeditiously, 50 per cent of persons in detention centres are awaiting trial. Absence of model bail rules also contribute to an excessive population of pretrial detainees.

61. Overall, the population of detention centres has increased exponentially. As of March 2007, 10,400 detainees and prisoners were incarcerated; slightly more than 300 were female. In 2001, only 600 people were in detention, though by March 2005 5,500 people were in detention.

62. Many detention centres in Afghanistan still fail to meet minimum internationally accepted standards for condition of detention. In general, conditions are worse for women than for men. Women in detention often have a poorer level of food, clothing, heating and health care. Despite being required by law, adequate separate housing for female detainees and prisoners with children remains an issue, with the number of children accompanying their mothers almost equal to the total number of females in detention. Where there are no detention facilities for women, normally at the district level, women are often detained in private homes, under ill-defined custodial arrangements where they are vulnerable to abuse.

63. Private homes or facilities also continue to be used to detain parties in an effort to settle private disputes rather than seeking redress from the formal law enforcement and justice systems. During 2007, in Spinghar district of Nangarhar alone there were 10 reported cases of such private detentions related to the narcotics trade. Other verified cases of detention of individuals in private prisons include those detained for personal disputes, disputes over property, timber, gems, vehicles and other personal property. Powerful tribal elders and commanders often are linked to private detention with local authorities frequently acquiescing, failing to take action or at most limiting their intervention in securing the release of the persons detained.

64. The application of the death penalty in Afghanistan is of grave concern. On 7 October 2007, the Government ended an unofficial three-year moratorium by carrying out death sentences against 15 men. The men were executed by firing squad following the constitutionally required presidential endorsement. According to witnesses interviewed by UNAMA, the inmates were denied last religious rites, had their hands and feet tied, and some were reportedly shot seven or eight times, including in the head. The executions were carried out

secretly and their relatives were not informed. None of the 15 appeared to have had a fair trial and strong doubts exist concerning the guilt of at least 4 of them. All these elements are inconsistent with Afghanistan's obligations under the International Covenant on Civil and Political Rights. In my discussion with the President I raised my deep concern regarding this matter and I hope that the Government will remain within the emerging international consensus on this issue, reflected most recently by the General Assembly's adoption of a call for a general moratorium on the death penalty, and put a halt to future executions.

B. Security sector

65. Effective rule of law requires a mechanism to hold the National Directorate of Security accountable for its actions, while still respecting the complex demands of protecting domestic security. NDS conducts intelligence gathering, surveillance, arrest, detention and prosecution of those suspected of crimes against national security. Unlike the police force, which is legally mandated to identify crimes and arrest suspects, NDS operates under a presidential decree, which has not yet been made public. Apparently accountable only to the President, NDS has not been the object of reforms. NDS also operates detention centres without adequate judicial oversight with only sporadic access granted to independent monitoring bodies. UNAMA and AIHRC receive reports of torture, illegal and arbitrary arrests and incommunicado detentions by NDS. I raised these concerns with relevant authorities during my mission, and I am encouraged by their assurances that UNAMA will be given free and unrestricted access to NDS facilities, and that it will be also advised of the identities of those detained by NDS so that families of the detainees can be duly informed. I am also pleased by the Government's decision to investigate allegations of torture and ill-treatment of detainees and look forward to the publication of its findings.

66. Despite some progress, there are concerns about the Ministry of the Interior and the Afghan National Police's effectiveness and respect for human rights, including widespread allegations of corruption and factionalism at central, provincial and district levels. I am encouraged by the Ministry of Interior's development of a Human Rights Unit and look forward to its increasing effectiveness and integration in the coming year.

67. The pay and rank reform, which included a merit-based selection process, has resulted in the removal of some human rights offenders from positions in the Ministry of the Interior and the police. The vetting process, however, failed to fully observe Department of Peacekeeping Operations policy and OHCHR criteria for vetting of public officials, particularly on transparency, due process and rights to appeal or for judicial review. Further, recommendations by the international community for removal of officers based on evidence were in many cases ignored or overturned by senior government officials.

68. To date, activities of both Afghan and international PSCs, now numbering more than 60 have been largely unregulated. With PSCs increasingly being drawn into military-type activities when operating in volatile areas, the need to improve regulation has been recognized by authorities. The 6 November 2007 suicide-bombing in Baghlan province, in which approximately 70 people were killed and more than 110 injured, vividly illustrated why. An official investigation suggested that, following the explosion, individually hired bodyguards

indiscriminately opened fire approximately for five minutes, adding to the number of casualties. Many PSCs have upgraded equipment since an October 2007 incident in Kandahar in which a PSC was caught in a six-hour battle, causing casualties on both sides. A draft regulation on PSCs was discussed throughout 2007 by involved government institutions and international actors, but had yet to be finalized as of December 2007.

C. National human rights institutions

69. AIHRC remains an effective and key national partner in the promotion and protection of human rights in Afghanistan. It was recently recommended to be accredited with status “A” by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. In addition to gaining international recognition, this accreditation accords AIHRC participatory and speaking rights in United Nations human rights forums. The subcommittee responsible for accreditation applications however noted with concern that funding from external sources, such as from donors, should not compose the core funding of AIHRC and that it is the responsibility of the State to set aside a minimum allocation in the national budget.

70. AIHRC often finds itself in a difficult balancing act on contentious issues, not simply to avoid risking direct attacks, but to preserve its own space for action. The worsening security situation has restricted access by AIHRC staff in conflict-affected areas, and its staff members continued to face intimidation. Hostility by some Parliamentarians towards the work of AIHRC and some of its members led to the passing of amendments to the Law on the Structure of Government, which require, inter alia, heads of all independent commissions including AIHRC to be appointed only after receiving a vote of confidence by the Wolesi Jirga. In this regard, the International Coordinating Committee stressed the need for amendments to the law not to be retroactively applied so as to ensure that AIHRC’s independence and effectiveness are preserved, both in reality and in appearance.

71. To strengthen its capacity in the field of international humanitarian law and the protection of civilians, the AIHRC, with support of UNAMA, established a new Special Investigations Team (SIT). This investigations team is responsible for supervising, coordinating and analysing AIHRC’s activities related to the most serious conflict-related violations of international humanitarian law and human rights law, as well as for conducting the investigation of and reporting on emblematic cases. UNAMA has seconded an adviser for SIT’s first year.

VII. TECHNICAL COOPERATION

72. In 2007, OHCHR funded several activities by UNAMA Human Rights Officers in the regions, including to legal aid clinics, workshops and trainings aimed at raising human rights awareness. Several events and activities were organized in conjunction with Peace Day celebrations on 21 September and Human Rights Day on 10 December. This year Human Rights and Remembrance Day was marked by victims and their families, women’s groups, and the media as a day of action to demand justice for past violations. President Karzai acknowledged

the problems associated with the role and influence of “warlords” in the Government and the weakness of institutions. At the provincial level, human rights activists, government authorities, UNAMA and AIHRC spoke about the compatibility of human rights and women’s rights with Islam.

73. The human rights treaty reporting project based in the Ministry for Foreign Affairs supported by OHCHR, UNAMA, UNDP and the Canadian International Development Agency (CIDA) successfully produced a Common Core Document for submission to the United Nations treaty bodies. The ICESCR country report also is slated for completion in January 2008. OHCHR is currently exploring options for a second phase of the project in 2008.

74. The joint project between OHCHR and the United Nations Development Fund for Women (UNIFEM) aimed at establishing referral centres for women in two regions, as well as between OHCHR and the UNDP National Programme on Action for Disability (NPAD) on media programming, concluded at the end of 2007. Another initiative intended to be implemented by several United Nations agencies in 2007, designed to raise awareness of economic and social rights among the rural population in two regions, has now been postponed until 2008.

75. In July 2007, Physicians for Human Rights (PHR) followed up its previous mission by jointly undertaking with UNAMA and the Ministry of the Interior’s Criminal Investigation Department (CID), a preliminary assessment of a mass grave discovered in Dasht-i-Chamtala in the north-west outskirts of Kabul, and an assessment of the overall situation regarding mass graves in Afghanistan. As a result of the visit, OHCHR, CID and PHR signed a tripartite agreement providing for long-term cooperation in building CID’s forensic technical capacity. The partnership established by the agreement should support the training of CID in forensic investigations and the development of a coherent approach to the investigation, documentation and securing of mass graves.

76. OHCHR is also providing technical support to the Government with the appointment in June 2007 of an adviser to help the Ministry of Interior improve the human rights performance of the police and of a consultant in October 2007 to assist developing strategies and approaches for mainstreaming human rights into the ANDS process.

VIII. CONCLUSIONS

77. Throughout 2007, the Government and its international partners have increasingly concentrated efforts on military counter-insurgency and security sector reform. There is a realization that the conflict cannot be overcome by military means alone, and that an integrated, overarching civilian-led strategy is necessary to ensure Afghanistan’s long-term stability and development. It is essential that an integrated strategy effectively addresses the main human rights challenges identified in this report - growing insecurity, setbacks in institutional reform, persistent poverty and the continued inability of national institutions to effectively deliver essential services, including security and justice. It is essential to underscore that the Government of Afghanistan is ultimately responsible to uphold its human rights obligations, which also were confirmed in its Constitution. The international community’s responsibility is to provide appropriate support and assistance to the Government in fulfilling its commitments.

IX. RECOMMENDATIONS

78. In view of the situation described in this report, I make the following recommendations:

(a) The international community should ensure that international human rights and humanitarian law informs an integrated governance strategy, drawing on the strength of traditional and cultural mechanisms, with Afghans firmly in the lead. Doing so requires promoting civil, political, economic, social and cultural rights as vital interdependent foundations for progress and ensuring outreach to and meaningful participation of civil society actors as well as disadvantaged and vulnerable groups. It also requires policy and programme decisions which would enable the humanitarian community to regain and maintain critical humanitarian space;

(b) All parties to the conflict in Afghanistan must take further measures to ensure greater respect for human rights and international humanitarian law principles and thereby enhance protection of civilians. International military forces must be more responsive and accessible to families in ensuring redress and this should include a systematized and consistent approach to compensation ideally administered by a competent third party backed by a trust fund;

(c) The international community must nurture and defend civil society and freedom of expression. It must commit greater technical and financial support for the development of civil society groups, including victim groups, as a critical pillar of democratic institution-building. The Government of Afghanistan must reaffirm the constructive role of civil society and provide the necessary platform for meaningful public discourse. This must be buttressed by concrete efforts to promote the continuing growth of the media and protect freedom of expression;

(d) The Government of Afghanistan, with support from the international community, should seize the opportunity provided by the upcoming report on Afghanistan's compliance with the ICESCR and the ongoing ANDS process to develop concrete policy and programme initiatives to strengthen Government's delivery of services necessary for the enjoyment of social, economic and cultural rights. In this respect, the international community should continue to build government capacity to comply with its human rights treaty reporting obligations, which will provide key guidance for monitoring its implementation as it moves forward;

(e) The Government of Afghanistan and the international community should provide the necessary political, technical and financial support for the Ministry of Justice as the lead agency with responsibility for monitoring and reporting on State implementation of human rights-related benchmarks in the Afghanistan Compact. In this regard, the Terms of Reference of the Ministry of Justice as lead agency needs to be immediately defined and the Ministry's Unit to be created for this purpose promptly resourced;

(f) The Government of Afghanistan and the international community must reinstate women's rights at the top of policy and donor agendas. Provision of financial support and enactment of concrete policies and programmes aimed at ensuring changes at the community level, in partnership with religious leaders, elders and other local leaders as well as civil society groups, are required. The President is urged to endorse the National Action Plan for Women in Afghanistan (NAPWA), which, together with the ANDS Gender Equity Cross-Cutting Strategy, should be actively supported and mainstreamed into the work of the Government. Efforts should be made to reverse marginalization of and combat violence against women and ensure that laws and international standards are applied, rather than harmful customary practices;

(g) The Government of Afghanistan and the international community must recommit to the transitional justice agenda alongside efforts to build the rule of law sector. This should include a commitment to advance the broader and victim-centred dimensions of transitional justice, such as truth-seeking, compensation and rehabilitation. As part of the reform of law enforcement and judicial system, the Government of Afghanistan and the international community must focus on raising the accountability of police and judicial officials at the district, provincial and central levels, including through the establishment of appropriate oversight mechanisms involving key stakeholders. To promote accountability, the Government of Afghanistan is urged to publicize the reports, including findings and recommendations, of specially constituted commissions tasked to investigate allegations of abuse of power;

(h) Building on the current tripartite agreement between OHCHR, UNAMA and the Ministry of Interior's Criminal Investigation Department, the Government of Afghanistan, with assistance from the international community, is encouraged to provide a clear mandate for forensic investigation experts on the investigation of mass graves related to past abuses;

(i) With the international community's support, the Afghan National Police must fully develop as a civilian law enforcement body and the Government of Afghanistan should develop alternative mechanisms to fill security gaps. The Ministries of Justice and Interior should continue their cooperation with UNAMA and AIHRC to develop solutions to the problems identified in the ADVC and LSOP initiatives, with particular focus on preventing arbitrary arrests and detentions, promoting the role of defence counsels, and developing judicial capacity to deal with cases in a timely manner;

(j) The Government of Afghanistan is urged to promptly commence reforms needed within NDS. Reliable and non-supervised access should be granted for AIHRC and UNAMA to all detention facilities in Afghanistan so as to assist those running the detention centres in complying with international standards and its decree should be made public, enabling proper domestic and public scrutiny;

(k) The Government of Afghanistan, with support of its international partners, is urged to take the remaining measures necessary to win full "A" accreditation for the

Afghanistan Independent Human Rights Commission by the International Coordinating Committee of National Institutions for the Protection and Promotion of Human Rights. This includes earmarking a minimum allocation in the national budget for AIHRC and ensuring policy and legislation are in place to protect AIHRC's independence;

(l) The Government of Afghanistan is strongly urged to reinstate its moratorium on the death penalty and join the ever-growing community of States around the world which has opted for moratoria on the death penalty, in recognition of the problems and difficulties inherent in its application;

(m) The Government, with the support of the international community, must institute concrete efforts to address deficiencies in the system of administration and protection of property rights, and in particular should build on traditional mechanisms where these can be utilized to ensure the property rights of all affected individuals are protected in a fair and just manner.

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