AFGHANISTAN (1)

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19/5-05

# AFGHANISTAN COUNTRY REPORT

**April 2005**

**Country Information & Policy Unit**

**IMMIGRATION AND NATIONALITY DIRECTORATE**
**HOME OFFICE, UNITED KINGDOM**

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# 1 Scope Of Document

**1.1** This Country Report has been produced by Immigration and Nationality Directorate, Home Office, for use by officials involved in the asylum/human rights determination process. The Report provides general background information about the issues most commonly raised in asylum/human rights claims made in the United Kingdom. It includes information available up to 1 March 2005.

**1.2** The Country Report is compiled wholly from material produced by a wide range of recognised external information sources and does not contain any Home Office opinion or policy. All information in the Report is attributed, throughout the text, to original source material, which is made available to those working in the asylum/human rights determination process.

**1.3** The Report aims to provide a brief summary of the source material identified, focusing on the main issues raised in asylum and human rights applications. It is not intended to be a detailed or comprehensive survey. For a more detailed account, the relevant source documents should be examined directly.

**1.4** The structure and format of the Country Report reflects the way it is used by Home Office caseworkers and appeals presenting officers, who require quick electronic access to information on specific issues and use the contents page to go directly to the subject required. Key issues are usually covered in some depth within a dedicated section, but may also be referred to briefly in several other sections.

Some repetition is therefore inherent in the structure of the Report.

**1.5** The information included in this Country Report is limited to that which can be identified from source documents. While every effort is made to cover all relevant aspects of a particular topic, it is not always possible to obtain the information concerned. For this reason, it is important to note that information included in the Report should not be taken to imply anything beyond what is actually stated. For example, if it is stated that a particular law has been passed, this should not be taken to imply that it has been effectively implemented; rather that information regarding implementation has not been found.

**1.6** As noted above, the Country Report is a collation of material produced by a number of reliable information sources. In compiling the Report, no attempt has been made to resolve discrepancies between information provided in different source documents. For example, different source documents often contain different versions of names and spellings of individuals, places and political parties etc. Country Reports do not aim to bring consistency of spelling, but to reflect faithfully the spellings used in the original source documents. Similarly, figures given in different source documents sometimes vary and these are simply quoted as per the original text.

**1.7** The Country Report is based substantially upon source documents issued during the previous two years. However, some older source documents may have been included because they contain relevant information not available in more recent documents. All sources contain information considered relevant at the time this Report was issued.

**1.8** This Country Report and the accompanying source material are public documents. All Country Reports are published on the IND section of the Home Office website and the great majority of the source material for the Report is readily available in the public domain. Where the source documents identified in the Report are available in electronic form, the relevant web link has been included, together with the date that the link was accessed. Copies of less accessible source documents, such as those provided by government offices or subscription services, are available from the Home Office upon request.

**1.9** Country Reports are published every six months on the top 20 asylum producing countries and on those countries for which there is deemed to be a specific operational need. Inevitably, information contained in Country Reports is sometimes overtaken by events that occur between publication dates. Home Office officials are informed of any significant changes in country conditions by means of Country Information Bulletins, which are also published on the IND website. They also have constant access to an information request service for specific enquiries.

**1.10** In producing this Country Report, the Home Office has sought to provide an accurate, balanced summary of the available source material. Any comments regarding this Report or suggestions for additional source material are very welcome and should be submitted to the Home Office as below.

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**Advisory Panel on Country Information**

**1.11** The independent Advisory Panel on Country Information was established under the Nationality, Immigration and Asylum Act 2002 to make recommendations to the Home Secretary about the content of the Home Office's country information material. The Advisory Panel welcomes all feedback on the Home Office's Country Reports and other country information material. Information about the Panel's work can be found on its website at www.apci.org.uk.

**1.12** It is not the function of the Advisory Panel to endorse any Home Office material or procedures. In the course of its work, the Advisory Panel directly reviews the content of selected individual Home Office Country Reports, but neither the fact that such a review has been undertaken, nor any comments made, should be taken to imply endorsement of the material. Some of the material examined by the Panel relates to countries designated or proposed for designation for the Non-Suspensive Appeals (NSA) list. In such cases, the Panel's work should not be taken to imply any endorsement of the decision or proposal to designate a particular country for NSA, nor of the NSA process itself.

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# 2 Geography

## General

**2.1** The Central Intelligence Agency (CIA) World Factbook 2004, updated on 16 December 2004, gives the conventional long form of the country name as the 'Transitional Islamic State of Afghanistan' and the conventional short form as 'Afghanistan'. [23] (p4) A UNHCR paper of July 2003 records that "Afghanistan is a land-locked country covering 647,500 square kilometres. It shares borders of 5,529 kilometres with six neighbouring states: Iran (936 km), Turkmenistan (744 km), Uzbekistan (137 km), Tajikistan (1,206 km), China (76 km) and Pakistan (2,430 km)." [11i] (p4) In January 2005, Afghanistan Online showed the number of provinces as 34. [46]

**2.2** Europa Regional Surveys of the World: South Asia 2005 recorded that the five largest towns are Kabul (the capital), Kandahar, Herat, Mazar-i-Sharif and Jalalabad and gave a 2003 estimated population figure of 23,897,000. [1] (p74-75) The CIA World Factbook 2004 recorded an estimated July 2004 population figure of 28,513,677. [23] (p3)

## Languages/Main ethnic groups/Religions

**2.3** In July 2003, a UNHCR paper recorded that the official languages are Dari (a Persian dialect) spoken by more than 50% or the population and Pashtu (spoken by an estimated 35%). Hazargi, Uzbek, Turkmen and other Turkic languages and dialects are spoken by about 11% of the population. [11j] (p5) Europa 2005 records that Dari and Pashto [Pashtu/Pakhto] have been the official languages of the country since 1936, using an augmented Arabic script. Pashto, one of the eastern group of Iranian languages, is also spoken across the border in Pakistan. [1] (p50) The Ethnologue: Languages of the World 2004 records that the formal style of Dari is closer to Tehrani Persian (Farsi) and the informal style in some parts of Afghanistan is closer to Tajiki of Tajikistan. Phonological and lexical differences between Iran and Afghanistan cause little difficulty in comprehension. [16]

**2.4** Article 16 of the new Constitution, approved and signed in January 2004, recognised six additional languages, besides Dari and Pashtu, as official languages in the regions where they are spoken by the majority of the population. These are Uzbeki, Turkmani, Baluchi, Pashai, Nuristani and Pamiri. [81b]

**2.5** In July 2003, UNHCR noted that "The ethnic composition of the people living in Afghanistan is as follows:

- The Pashtuns are the largest group (about 38%) and are divided into two main subgroups: Durrani and Ghilzai (as well as other sub-groups and tribes). While most of the Pashtuns are settlers, some of them, the Koochis [Kuchis], lead a semi-nomadic or nomadic life based on animal husbandry;
- The Tajiks (about 25%) are Persian speaking Afghans;
- Afghans of Hazara (about 19%), Turkmen, Aimaks and Baloch ethnicity and many other smaller ethnic groups (12%), and Uzbeks (about 6%).

The official religion in Afghanistan is Islam. The great majority of the population, about 80 per cent, is Sunni Muslims. They are followed by the Shi'a (including a smaller group of the Ismailiyya Shi'a), comprising an estimated 20% of the population, and by an insignificant number of Hindus and Sikhs.

Despite the existence of sectarian differences and variations in interpretations of the Koran and law, Islam is one of the few commonly shared aspects of Afghan society. As noted above, scattered minorities of Hindus and Sikhs, originally arriving as traders from India, inhabit Afghanistan. A small Jewish community could once be found in urban centres, but by 1985 virtually all of them had emigrated." [11j] (p5-6)

For further information on geography, refer to Europa 2005 source [1]

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# 3 Economy

**3.1** On 9 September 2004, the World Bank published their first Economic Report on Afghanistan in a quarter of a century. The report noted that

"Afghanistan's economy has been devastated and distorted by more than two decades of protracted conflict, capped by a severe nationwide drought in 1999-2001, but has bounced back in the last two years. The strong economic recovery is attributable to the end of drought and major conflict and initiation of reconstruction, and has been supported by sound, conservative Government macroeconomic policies, a highly successful currency reform, and structural reforms most notably in trade and the financial sector. Nevertheless Afghanistan remains one of the poorest countries in the world, and numerous people suffer from low food consumption, loss of assets, lack of social services, disabilities (e.g. from land-mine accidents), disempowerment, and insecurity. Moreover, daily life is still shaped by the consequences of almost a quarter century of conflict. One of these is "informality" – most economic activities do not follow, and are not protected by, official and legal rules and some of them, such as cultivating opium poppy and the arms trade, are criminal. This has important implications for economic structure, policies, and reforms." [69a] (para. 1.01)

**3.2** The World Bank further noted that "Afghanistan currently produces three-quarters of the world's illicit opium. The impact of the drug industry on Afghanistan's economy, polity [sic], and society is profound, including some short-run economic benefits for the rural population and macro-economy but major adverse effects on security, political normalization, and state-building." [69a] (para. 7.01) The report noted that opium production had risen to 3,600 tons in 2003. [69a] (table 7.1) In October 2002 the Government had established the Counter Narcotics Directorate (CND), which reports to the National Security Council and the National Drugs Control Strategy (NDCS) was promulgated in May 2003. [69a] (para. 7.01) The September 2004 report also noted that "The recent establishment of a Counter Narcotics Steering Group, chaired by the Government and including the main domestic and external agencies, is encouraging." [69a] (para. 33i)

**3.3** On 16 February 2005, the Afghan News Network reported that President Karzai had launched the Government's Counter Narcotics Implementation Plan for 1384 (2005). "This implementation plan reflects a new determination by President Hamid Karzai and the Islamic Republic of Afghanistan to tackle the cultivation, production and trafficking of drugs in Afghanistan." [79b]

**3.4** The World Bank report noted that the Government and donors had started the reconstruction process. The report stated that

"US$1.1 billion of external assistance was disbursed in late 2001 and 2002, mainly for humanitarian purposes and not through Government channels. The Government presented its National Development Framework (NDF) in April 2002, which formed the basis of the National Development Budget. Subsequently the Securing Afghanistan's Future (SAF) report detailed medium-term investment and recurrent expenditure requirements and external financing needs and was presented at a major donor conference in Berlin in March 2004. The composition of external assistance, which increased to US$2.5 billion in the 2003/04 financial year, has shifted in favor [sic] of reconstruction, with increasing Government leadership." [69a] (para. 1.15)

**3.5** The same World Bank report also noted that "The Afghan economy is dominated by agriculture (32% of estimated total GDP in 2003), mainly cereal crops (27%), and by the opium economy (an estimated 35% of GDP). Other sectors are relatively small (see Figure 1.2 [in World Bank report]), including manufacturing (9%) – most of it small-scale agricultural processing and other small-scale activities, construction (3%), and public administration (3%)." [69a] (para. 1.16)

**3.6** On 27 January 2005, the World Bank reported that it had approved a US$27 million grant to strengthen the Afghan Government's administrative functions.

> "It will support ongoing work to improve public procurement, financial management and accountability system. Afghanistan's economy has performed strongly in the past two and half years with non-drug GDP reaching US$4.6 billion in 2003-04 (corresponding to a GDP per capita of about US$200 per year), an increase of almost 50 percent, albeit from a very low base. This is mainly attributable to the recovery of agriculture from the drought, revival of economic activities after major conflict ended, and the commencement of reconstruction efforts. This solid performance has been supported by the government's sound macroeconomic polices-a highly successful currency reform in late 2002, a prudent no overdraft policy prohibiting domestic financing of the budget deficit, conservative monetary policy, and good management of the exchange rate." [40b]

**3.7** A booklet by the Department for International Development (DFID) dated 1 April 2004 noted that 70% of the Afghan population earn less than US$1 per day. [51] In August 2004, UNICEF reported that the average monthly wage for unskilled workers in Afghanistan was $100. [44a]

**3.8** The exchange rates on 27 January 2005 indicated that one pound sterling was equal to 80.47 Afghan Afghanis. [58]

(See also Section 6C Humanitarian Situation paragraphs 6.304 to 6.320)

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# 4 History

### Overview to December 2001

**4.1** Freedom House recorded on 9 September 2004 that

> "Located at the crossroads of the Middle East, Central Asia, and the Indian subcontinent, Afghanistan has for centuries been caught in the middle of great power and regional rivalries. After besting Russia in a contest for influence in Afghanistan, Britain recognized the country as an independent monarchy in 1921. King Zahir Shah ruled from 1933 until he was deposed in a 1973 coup. Afghanistan entered a period of continuous civil conflict in 1978, when a Communist coup set out to transform this highly traditional society. The Soviet Union invaded in 1979, but faced fierce resistance from U.S.-backed mujahideen (guerrilla fighters) until troops finally withdrew in 1989.

The mujahideen factions overthrew the Communist government in 1992 and then battled each other for control of Kabul, killing more than 25,000 civilians in the capital by 1995. The Taliban militia, consisting largely of students in conservative Islamic religious schools, entered the fray and seized control of Kabul in 1996. Defeating or buying off mujahideen commanders, the Taliban soon controlled most of the country except for parts of northern and central Afghanistan, which remained in the hands of the Tajik-dominated Northern Alliance coalition. Pakistan and Saudi Arabia were the Taliban's main supporters, while Iran, Russia, India, and Central Asian states backed the Northern Alliance.

In response to the terrorist attacks of September 11, 2001, the United States launched a military campaign in October 2001 aimed at toppling the Taliban regime and eliminating Saudi militant Osama bin Laden's terrorist network, al-Qaeda. Simultaneously, Northern Alliance forces engaged the Taliban from the areas under their control. The Taliban crumbled quickly, losing Kabul to Northern Alliance forces in November [2001] and surrendering the southern city of Kandahar, the movement's spiritual headquarters, in December [2001]." [41b] (p1-2)

**Post Taliban**

**4.2** Europa Regional Surveys of the World: South Asia 2005 records that

"Because the US-led coalition had been slow to exercise the 'southern option' – troops were not sent into southern Afghanistan until late November 2001 – a great number of Taliban members, possibly as many as 18,000 were able to flee to Pakistan, where they could find refuge among the frontier tribes. Many al-Qa'ida members also escaped. Two major operations against al-Qa'ida – in the Tora Bora mountains south of Jalalabad in December [2001] and in the Shah-i-Kot mountains east of Gardez in March 2002 – achieved meagre results. As of 2004 the al-Qa'ida leadership remains largely intact, while Mullah Mohammad Omar [leader of the Taliban] has also managed to evade capture." [1] (p61)

**4.3** Europa also records that

"Following the defeat of the Taliban, there were two urgent requirements. One was that Kabul should be protected from any repetition of the infighting between the mujahidin groups that had devastated the capital prior to the Taliban occupation. The other was to fill the dangerous political vacuum that had been created by the Northern Alliance's seizure of the capital. A 5000-strong International Security Assistance Force (ISAF) was accordingly deployed, under UN authorization, in Kabul and at Bagram airbase to help maintain security in the area... To deal with the political exigencies, a conference of representatives of various Afghan groups assembled in Bonn, Germany, at the end of November 2001. After several days of intense negotiations, and after former President Burhanuddin Rabbani had been quietly sidelined by his own Tajik associates, an agreement [the Bonn Agreement] was reached on the composition of a 30-member broadly-based multi-ethnic interim government under a Pashtun chief, Hamid Karzai. The Interim Authority was inaugurated on 22 December [2001] and comprised 11 Pashtuns, eight Tajiks, five Hazaras, three Uzbeks and three members of smaller tribal and religious groups.

Preparations were also launched for the convening of a loya jirga, to meet within six months and carry the process forward." [1] (p61)

**4.4** The Bonn Agreement stated that "The Emergency Loya Jirga shall decide on a Transitional Authority, including a broad-based transitional administration, to lead Afghanistan until such time as a fully representative government can be elected through free and fair elections to be held no later than two years from the date of the convening of the Emergency Loya Jirga." [39b] (p2)

**4.5** Europa records that

"The Emergency Loya Jirga [ELJ] duly met in May-June 2002. Showing considerable courage, the aged former King Zahir Shah returned to Afghanistan for it, but disclaimed a political role for himself. At the Jirga, Karzai was re-elected President and an agreement was reached on the formation of a transitional administration, which was charged with carrying forward the government, drafting a new constitution and preparing the country for elections in June 2004. The Transitional Authority cabinet retained most of the incumbent members of the Interim Authority. In April 2003 the Afghan Constitutional Drafting Commission, which had been meeting since late 2002, presented its draft of a new constitution to the newly established Constitutional Commission." [1] (p61)

**4.6** The UN Secretary-General reported on 3 December 2003 that "On 7 June 2003 a suicide car bomber detonated his vehicle alongside an International Security Assistance Force bus in Kabul, killing four soldiers and injuring 29 others in the deadliest attack against the Force since its deployment." [39j] (p6)

**4.7** In July 2003, UNHCR reported "The United States has deployed Provincial Reconstruction Teams (PRTs) to Kunduz, Gardez and Bamian to support reconstruction activities and help extend central government authority in those provinces." [11i] (p16)

**4.8** A North Atlantic Treaty Organisation (NATO) briefing of August 2003 noted that, on 11 August 2003, NATO had assumed control of the ISAF from Germany and the Netherlands who had taken control from Turkey in February 2003. In its first mission beyond the Euro-Atlantic area, NATO has taken over leadership of the force indefinitely, removing the need to find a new lead nation every six months. [63a]

**4.9** Europa records that in November 2003 a French refugee worker was shot dead in Ghazni by suspected Taliban members. "The killing shocked both Afghans and foreigners, and the office of the UN High Commissioner for Refugees (UNHCR) announced that it would temporarily withdraw its foreign staff from parts of southern and eastern Afghanistan as a result." [1] (p62)

**4.10** On 3 December 2003, the UN Secretary-General reported that "The primary source of instability remains terrorist activities by suspected Taliban, Al-Qaida, and supporters of Gulbuddin Hekmatyar. These groups have targeted members of the Transitional Administration and the international community. During the past year, attacks on international and national staff of the assistance community have intensified. [39j] (p6)

(See also Section 6C Anti-Coalition Forces (ACF) paragraphs. 6.335 – 6.383)

**4.11** On the same date, the UN Secretary General also reported that " On 13 October 2003 the Security Council adopted resolution 1510 (2003), authorizing the expansion of ISAF beyond Kabul, which the Afghan Government and the United Nations had been urging since early 2002. The establishment under ISAF command of a German provincial reconstruction team in Kunduz is the first deployment of ISAF beyond Kabul." [39]] (p10)

(See also Section 5 ISAF and PRTs paragraphs 5.125 - 5.150)

**4.12** Keesing's Record of World Events recorded in December 2003 that,

> "Afghan public resentment, especially amongst the Pashtun population, against US forces intensified following two separate aerial bombings of villages in the east of the country. The US-led attacks left 15 children and three adults dead. The two incidents, on Dec. 5 and 6 [2003], were a result of US attacks on suspected Taliban hideouts, but the intended targets appeared to have escaped. Six children and two adults were killed in a compound in south-eastern Paktia province in a night assault; the next day nine children and a 25-year-old man were killed in the neighbouring Ghazni province.
>
> A series of violent incidents during the month culminated on Dec. 28 [2003] when four intelligence agents, their driver, and a suspected suicide bomber were killed in Kabul, the capital, on Dec. 28 [2003]. The agents had arrested two suspects who were in possession of a bomb, but one apparently detonated explosives concealed under his clothes. The other suspect escaped." [5b] (p45740)

**4.13** Europa records that the Constitutional Commission reviewed the draft of the new constitution and submitted it to the Constitutional Loya Jirga [CLJ] in December 2003.

> "After three weeks of intense negotiations, the 502 delegates at the Loya Jirga reached an agreement on a constitution which provided for a strong presidential system of government, but with an elected bicameral legislature which would have significant powers. The divisions in the Loya Jirga lay principally between the Pashtun delegates, who wanted strong central rule, and the ethnic minorities, who wanted greater regional autonomy. It was significant that the Islamist factions were not able to dominate the proceedings: with Rabbani's eclipse, this might mark the end of their ambitions to recreate Afghanistan in an Islamist mould. However, the compromises reached by the delegates succeeded only minimally in abating the continuing ethnic tensions within the country." [1] (p61)

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**January 2004 to December 2004**

**4.14** On 26 January 2004, the Institute for War and Peace Reporting (IWPR) reported that the new constitution had been passed. According to IWPR "The approval of a new Afghan constitution took weeks of wrangling between delegates at the Loya Jirga, or Grand Assembly, and represents a compromise between various interest groups. The 502 members of the Loya Jirga, who had been debating

amendments to a draft constitution since mid-December, passed the final version on January 4 [2004]." [73b] (p1)

**4.15** The CIA World Factbook 2004 records that "The constitution was signed on 16 January 2004 and highlights a strong executive branch, a moderate role for Islam, and basic protections for human rights." [23] (p1)

(See also Section 5 Constitution and Constitutional Loya Jirga paragraphs 5.1 - 5.13)

**4.16** In January 2004 Keesing's Record of World Events recorded that "According to Afghan officials, a US helicopter raid on a home in the southern Uruzgan province killed 11 civilians, including four children and three women, on Jan. 18 [2004]. The US military disputed the reports and insisted that five armed militants had been targeted and killed in the air strike.... The incident marked the third occasion in just over a month that US forces had been blamed for killing children." [5a] (p45789)

**4.17** On 28 January 2004, BBC News reported that a British soldier had been killed in Kabul in a blast, which injured four other UK soldiers, two of them seriously, and an Afghan interpreter. It was reported that "The British army confirmed it was a suicide attack shortly after the Taleban said they carried it out. A suicide bombing on Tuesday killed a Canadian member of the international peacekeeping force in Kabul. That, too, was claimed by the ousted Taleban, who have recently issued warnings of a new wave of attacks against peacekeepers and other foreigners in Afghanistan." [25a]

**4.18** On 12 February 2004, UNHCR reported that an Afghan court had sentenced to death the two men convicted of the UNHCR official's murder on 16 November 2003. The report said that the convicted men could appeal the sentence to two higher courts including the Supreme Court. President Karzai must sign the death warrant before they can be executed. The men were arrested by police shortly after the murder and identified as members of the Taliban. [11f]

**4.19** Europa records that

> "In March 2004 the presidential election was postponed until September [2004], owing partly to delays in voter registration (fewer than 2m. of a possible 10.5m. eligible voters had so far been registered). It was also agreed that the legislative elections would be held at the same time. However, in July [2004] the UN-sponsored Afghan election commission announced that the presidential election would be held in early October and that the parliamentary elections would take place in April-May 2005." [1] (p61)

(See Section 5 Elections paragraphs 5.27 – 5.47 for more detailed information)

**4.20** On 17 March 2004, BBC News reported that "US Secretary of State Colin Powell has pledged the US will stay committed to rebuilding Afghanistan. Mr Powell met President Karzai on a visit to Kabul and vowed that Taleban remnants would not be able to "turn the clock back". He also praised Pakistan's military drive on the Afghan border, which has seen the fiercest clashes there yet. Islamabad says the number killed in the offensive has risen to 39 - 15 soldiers and 24 tribesmen or al-Qaeda suspects." [25c]

**4.21** On 21 March 2004, BBC News reported that

> "Afghanistan's Civil Aviation Minister, Mirwais Sadiq, has been killed in the western city of Herat...The attack followed a failed bid to kill his father, the governor of Herat [Ismail Khan]. After Mr Sadiq's death, heavy fighting broke out between troops loyal to his father and a senior local military commander Zahir Nayebzada, police said. There are reports that up to 100 people have been killed in the clashes... In Kabul, President Hamid Karzai's cabinet convened an emergency session following Mr Sadiq's death. A government statement said Mr Karzai was "deeply shocked" by the killing and had ordered an investigation. The government said it was sending a senior delegation to Herat. State television has reported that the security commander for Herat, the city's director of narcotics control and a bodyguard were travelling in the car with the minister and were also killed in the attack." [25d]

(See also Section 5 Political Situation in Herat paragraphs 5.48 - 5.50)

**4.22** On 1 April 2004, BBC News reported that $8.2 bn (£4.4bn) had been pledged over the next three years by international donors at an aid conference for Afghanistan in Berlin. The largest donor was the US, which promised $2.2bn over the next two years. President Karzai hailed the conference as a great success. [25l]

**4.23** On 1 April 2004, global humanitarian organisation CARE International reported that the $8.2bn pledged at the Berlin conference brought a welcome increase in funding but falls short on long-term commitment. CARE stated that "According to a recent needs assessment prepared by the Afghan government, reconstruction will require $27.5 billion over the next seven years." According to CARE, the pledge of $4.5 billion in the first year slightly exceeds the amount requested. However, only $1.4 billion in firm commitments - just 36% of the requested amount - has been made for the third year. [40aj]

**4.24** On 4 April 2004, a UNAMA (United Nations Assistance Mission in Afghanistan) spokesman reported that the Berlin Conference had concluded on 1 April 2004 with the adoption of the Berlin Declaration. According to UNAMA, "The Declaration highlights the priorities for Afghanistan over the next few years, including intensifying Disarmament, Demobilization and Reintegration ahead of the elections, reducing and eventually eliminating poppy cultivation, and establishing the rule of law and a functioning judicial system, among others... In his closing statement at the Conference, the Special Representative of the Secretary-General, Jean Arnault, called the outcome a 'genuine new milestone in the Afghan Peace process'". [40x] (p1)

**4.25** In a report of 12 August 2004, the UN Secretary-General noted that

> "In Faryab Province, factional tensions culminated on 8 April [2004] when the Governor and senior officials of his administration were forced out of office by a violent crowd affiliated with the Jumbesh faction that accused them of siding with an opposing faction. During the incident, the Governor was protected by elements of the British provincial reconstruction team from Mazar-e-Sharif. The central Government deployed Afghan National Army troops to the area to restore order. Nevertheless, factional elements have thwarted the efforts by the central

Government to install a new governor." [39d] (p8)

**4.26** Keesing's Record of World Events for May 2004 records that

"Continued clashes between US soldiers and the Talibaan [sic] saw an escalating death toll during May [2004], with eight suspected Talibaan killed in one bombing raid on May 25. Four US troops were killed in an ambush on May 1, and a further four were killed by a bomb attack on their vehicle on May 29, taking the total number of US soldiers killed in Afghanistan since the start of operations to 90. There were also a number of non-military deaths during the month, including those of two UK citizens employed on a UN programme to register voters for forthcoming elections. The UN workers were shot dead along with their local translator in Nuristan province on May 5; the Talibaan claimed responsibility for the killings... Talibaan forces seized control of Zabul province's Mizan district on May 18 but were repelled on May 20 following the arrival of reinforcements from Qalat, capital of Zabul, and neighbouring Kandahar province. " [5d]

**4.27** Europa records that

"As of June 2004 very little had been done to curb the power of the regional military commanders, whose fiefdoms covered much of the country, whose human rights abuses were notorious and who had some 100,000 armed men at their disposal. These warlords may indeed have been strengthened as a result of the policies adopted by the USA following the removal of the Taliban. Several military commanders have been employed and paid to assist US-led forces (numbering some 15,000 in mid-2004) to counter the remnants of al-Qa'ida and the Taliban. The latter had, meanwhile, in alliance with Hekmatyar [leader of Hizb-e Islami], regrouped in Pakistan and were mounting incursions in eastern and southern Afghanistan. Their activities have included attacks not only on US-led forces but also on civilians and aid workers." [1] (p62)

**4.28** In June 2004, Amnesty International reported that "Afghanistan has carried out its first execution since the establishment of the interim government in late 2001. Abdullah Shah, a military commander from Paghman, was executed in the Afghan capital, Kabul, around 19 April 2004... Another death sentence was imposed by an Afghan court in May [2004]. Reuters news agency reported on 29 May [2004] that a suspected member of the former Taleban government, Abdullah Jan, had been sentenced to death in connection with a bomb attack in the southern city of Kandahar which killed 15 schoolchildren and wounded 50 others." [7h] (p3-4)

(See also Section 5 Death Penalty paragraphs 5.84 to 5.86)

**4.29** The UN Secretary-General's report of 12 August 2004 noted that

"On 17 June [2004], the Afghan National Army was again deployed following factional fighting, involving heavy weaponry, between the commander of the main military unit in Ghor and supporters of the provincial Governor. A presidential delegation, supported by the presence of the Afghan National Army, assisted in negotiating a settlement, which resulted in changes in senior administrative posts in the province. During the period under review [mid March to 1 August 2004]

there have also been sporadic clashes in Farah, Balkh and Daikundi." [39d] (p8)

**4.30** Europa notes that "In July 2004 the non-governmental organization (NGO) Medecins Sans Frontieres announced that it was withdrawing from Afghanistan, partly on account of the lack of security and partly because aid and reconstruction efforts were not being treated separately from counter-insurgency operations. This dilemma reflects that facing many NGOs operating in the country." [1] (p62)

(See also Section 6A Domestic and International NGOs paras. 6.32 – 6.39)

**4.31** On 15 July 2004, Radio Free Europe/Radio Liberty (RFE/RL) reported that "Afghan leader Hamid Karzai has signed a decree that threatens tough measures against warlords who resist a nationwide disarmament drive... The decree signed by Afghan Transitional Administration Chairman Hamid Karzai in Kabul yesterday is the toughest legislation to date from the Afghan central government in regard to renegade warlords who control their own private militia forces. It follows a pledge made by Karzai last week to crack down on warlords and militia commanders who resist the internationally backed process of Disarmament, Demobilization, and Reintegration program, also known as DDR. " [29c]

**4.32** The RFE/RL report quoted a Kabul-based expert of the International Crisis Group as saying that "This decree opens up the prospect of criminal prosecution of those commanders who continue to maintain militias as well as those commanders whose militias have never been recognised by the state...The big question is whether there is any capacity on the part of the Afghan judiciary and law enforcement institutions to actually arrest and initiate prosecutions of commanders who maintain militias in violation of the law," he said." [29c]

**4.33** On 12 August 2004, the UN Secretary-General reported details of several attacks in June and July 2004. The report noted that

> "Acts of violence have, increasingly, been directed at the staff and offices of the electoral secretariat and United Nations workers. The electoral secretariat suffered its first fatalities in the east, where four Afghan female registration staff were killed in two separate bomb attacks on the vehicles in which they were travelling to registration sites in Nangarhar province on 26 June and 8 July [2004]. In the south, a team leader of the Joint Electoral Management Body in Uruzgan province and a village chief travelling on motorbikes were ambushed and shot dead by unidentified assailants on 24 July [2004]...
>
> A protracted attack on an electoral convoy, in clearly marked United Nations vehicles with a police convoy, took place in broad daylight in the south-east on 6 June 2004: the assailants employed improvised explosive devices, rocket-propelled grenades and light weaponry. Rocket-propelled grenades were fired at a United Nations Mine Action Centre for Afghanistan demining convoy in the central and south-eastern regions on 12 June [2004] and on a compound of the Office of the United Nations High Commissioner for Human Rights (UNHCR) in the southern province of Kandahar on 18 June [2004].
>
> The view of the north as the safest area of the country was seriously undermined

by a succession of violent acts. A brutal attack left 10 Chinese construction workers dead in the city of Jilawugir (Baghlan Province) on 10 June [2004]; five days later, an attack with improvised explosive devices in the town of Kondoz killed four Afghans, including the driver of a German provincial reconstruction team vehicle that was passing through the area, an improvised explosive device exploded next to a vehicle belonging to the United Nations Office on Drugs and Crime in Takhar Province on 10 June [2004]; and, throughout the period, a significant number of improvised explosive devices were laid along roads in the north-east...

In addition to these attacks, the north and west of the country have experienced a level of factional fighting unprecedented since the fall of the Taliban and efforts to restore order have seen several emergency deployments of the Afghan National Army." [39d] (p7)

(See also paragraph 4.51 about arrests in connection with the above attack in Jilawugir)

**4.34** On 26 July 2004, BBC News reported that President Karzai had announced he was standing as a candidate in the presidential elections due to take place on 9 October 2004. [25l]

**4.35** On 27 July 2004, the Guardian reported that "President Hamid Karzai dropped a powerful warlord to add the brother of a slain Afghan hero to his electoral ticket Monday... Ahmad Zia Massood [Masoud], an ethnic Tajik, is Afghanistan's current ambassador to Russia and a brother of Ahmad Shah Massood [Masoud], who led the resistance to the Taliban regime until he was killed by al-Qaida terrorists on Sept. 9, 2001. Karzai, a member of the country's main Pashtun group, named ethnic Hazara leader Karim Khalili his choice for second vice president." [18d]

**4.36** The Guardian report noted that President Karzai had dropped his current first vice president and defence minister, Mohammed Fahim, who was arguably Afghanistan's most powerful warlord. Fahim was reported to be supporting the education minister Yunus Qanooni, an ethnic Tajik, who had also announced his candidacy. According to the Guardian report, "Fahim has failed to deliver on a promise to disarm thousands of militiamen in time for the elections. Thousands of his troops remain in the capital, and NATO troops who patrol the city took no chance on Monday on potential trouble." A spokesman for NATO said that patrols were increased because of the rising political temperature. [18d]

**4.37** On 28 July 2004, BBC News reported that, according to officials, a suspected bomb blast in a mosque in Ghazni province, south-west of Kabul, had killed at least two people. The mosque was being used as a voter registration centre. The US military said that six people had been killed, four Afghans and two UN staff but a UN spokesman in Kabul could not confirm UN casualties. Ghazni Governor Haji Assadullah blamed remnants of the Taliban who have vowed to disrupt the elections. [25k]

**4.38** On 2 August 2004, IRIN reported that

"The Afghan government has reaffirmed its commitment to address the security

concerns of aid workers on the ground following the pull out of Médecins Sans Frontières (MSF), an international NGO with over two decades experience in the country. "It is our duty to secure the security and stability situation for the people of Afghanistan, as well as the international community who are working to help the Afghan people," Lutfullah Mashal, a spokesman for the Afghan Interior Ministry told IRIN in the Afghan capital, Kabul, on Sunday... According to the Afghan official, elaboration of an extensive security plan all over the country was underway with the cooperation of the Ministry of Defense, the National Directorate of Security (NDS), coalition forces, as well as International Security Assistance Force (ISAF)." [40w]

**4.39** The IRIN report also noted that "Since the beginning of 2003, more than 30 aid workers have been killed in the country, a fact seriously impeding reconstruction efforts outside the capital." [40w]

(See also Section 6 Domestic and International NGOs paragraphs 6.32 – 6.39)

**4.40** On 30 August 2004, Reuters reported that

"The Taliban warned on Monday of further deadly attacks in the run-up to Afghanistan's first presidential election after a car bomb in the heart of the capital killed up to a dozen people. Three Americans were among those killed in the blast, aimed at the offices of international security company DynCorp, which provides bodyguards for Afghan president Hamid Karzai and also helps train the national police force. The explosion in Kabul came less than 24 hours after another blast killed 10 people, including nine children, at a religious school in Paktia province, south of Kabul. And in a separate incident on Sunday, Afghan troops captured five Taliban in the southeastern city of Kandahar before they could carry out an attack on U.S.-led forces, Khalid Pashtun, a spokesman for the provincial governor, told Reuters." [40u]

(See also paragraphs 4.60 and 4.61 about arrests in connection with the above)

**4.41** On 31 August 2004, BBC News reported that "US warplanes have bombed a remote village in eastern Afghanistan killing at least six people and wounding several others, local officials say. Police in Konar province say civilians and militants are among the dead. They say US warplanes destroyed eight houses in Weradesh village, following an attack on government positions... A Taleban claim it carried out the attack has not been confirmed. The area is a stronghold of renegade military commander Gulbuddin Hekmatyar." [25aa] On 1 September 2004, the BBC reported the US military as saying that it was conducting an enquiry into whether or not civilians were killed in the air attack on 30 August 2004. [25ab]

**4.42** On 14 September 2004, the Institute for War and Peace Reporting (IWPR) reported that

"In an apparent move to bolster his position ahead of the October leadership election, President Hamed Karzai last weekend removed Ismail Khan as military governor of the western province of Herat. The September 11 decision sparked two days' of violent clashes by Khan supporters that left as many as 7 dead and over 50 wounded, according to news reports...Karzai, who faces 17 challengers in next

month's presidential election, replaced Khan with Sayed Mohammad Khairkhuwa, a Herat native, a former mujahedin fighter and member of the same political faction as Khan - Jamiat-e-Islami. Khan accepted Karzai's move, but rejected the president's offer to take up the post of minister of mines and industry...Ibrahim Malikzada, the governor of Ghor, was also sacked over the weekend. Malikzada, however, accepted a new position offered by Karzai as an advisor to the interior ministry." [73]

**4.43** On 14 September 2004, IRIN News noted that Herat was reported to be calm following the violent clashes and the Afghan National Army (ANA), supported by US-led security forces, was controlling the situation on the ground. According to the report, hundreds of people, angered by Ismail Khan's dismissal had burned and looted the compounds of the United Nations and some other international aid agencies. The UN moved 76 staff, including 38 international employees to Kabul. The UN deputy special representative for Afghanistan said the attacks were evidently targeted at UN premises. Local staff, together with 15 international aid workers remained in Herat. [36b]

**4.44** Keesing's Record of World Events for September 2004 records that "Interim President Karzai evaded an apparent assassination attempt on Sept. 16 [2004] when a rocket fired by unidentified attackers missed his US military helicopter as it approached the south-eastern town of Gardez where Karzai was due to carry out an official visit to a school opening...The Talibaan [sic] claimed responsibility for the attack, which constituted the most serious threat to Karzai since a failed assassination attempt in Kandahar in September 2002." [5e]

**4.45** Keesing's also recorded that "An Afghan court sentenced three US citizens to between eight and 10 years in prison on Sept. 15 [2004] after they were found guilty of operating a private prison without legal authority and of torturing detainees." [5e]

**4.46** In a report to the UN General Assembly Security Council of 26 November 2004, the Secretary-General noted that

The presidential election, which was contested by 18 candidates, including one woman, was held on schedule on 9 October [2004]. Despite fears that the process might be attacked by anti-Government elements, no major security incidents occurred. A number of opposition candidates, however, raised serious allegations regarding the fairness of the process, including problems with the use of indelible ink to mark voters' thumbs and assertions of undue influence on voters by polling staff and candidates' representatives. Those opposition candidates issued an appeal midway through the polling for voters to boycott the ballot. The boycott was largely ignored by voters: 8,128,940 ballots were cast, representing 70 per cent of the registered voters. Forty per cent of voters were women. Polling also took place in Pakistan and the Islamic Republic of Iran, where over 580,000 and 240,000 Afghan refugees, respectively, voted. The elections were followed by some 5,321 domestic and 121 international observers and monitors, 22,000 party agents and 52,000 agents of candidates, as well as national and international media." [39p] (p4)

**4.47** The Secretary General's report also noted that

"In the days after the ballot most of the candidates who had called for a boycott continued to allege serious irregularities and called for the reopening of some polling centres and for their complaints to be investigated by an independent panel. While the Joint Electoral Management Body did not agree to the former, it did request UNAMA to nominate an independent panel of international electoral experts to investigate their complaints. The panel's report to the Joint Electoral Management Body, which was made public on 2 November [2004], found that the irregularities observed did not have a material impact on the overall outcome of the election... The candidates agreed to accept the election results." [39p] (p4)

**4.48** Keesing's Record of World Events for October 2004 records that

"Interim President Hamid Karzai, as expected by most observers, emerged as the undisputed winner of Afghanistan's first presidential elections, held on Oct. 9 [2004]. Marked by a high turnout (83.66 per cent), the landmark ballot gave a sufficiently large share of the vote for Karzai to avoid a run-off contest against the second-placed candidate, former Education Minister Yunus Qanuni. Karzai received around 55 per cent, compared with 16 per cent for Qanuni. Only two other candidates received a significant share of the vote: former Planning Minister Haji Mohammad Mohaqqeq and warlord Gen. Rashid Dostam, who secured just under 12 per cent and 10 per cent respectively." [5c]

**4.49** Keesing's also noted that "The security situation in the capital, Kabul, during the course of polling was largely calm until a suicide attack on Oct. 24. Three people, including a US woman, were killed in Chicken street, a busy commercial area popular with foreigners, when a suspected Islamic militant detonated explosives strapped to his body. The Talibaan [sic] subsequently claimed responsibility for the attack." [5c]

(See also paragraph 4.60 about arrests in connection with the above and Section 5 Presidential Elections paragraphs 5.30 – 5.40 for more information on the security situation on polling day.)

**4.50** On 16 October 2004, CBS News reported on incidents, which had occurred since the election.

"Two rockets hit residences in the Afghan capital late Saturday [9 October 2004], injuring one woman, police and witnesses said. Both rockets landed in a residential area of Kabul near its airport... On Monday [11 October 2004], at least three rockets landed not far from the U.S. Embassy, killing one man and damaging the roof of a mud-brick house... [President] Karzai strongly condemned an assault Friday [15 October 2004] in eastern Kunar province in which a truck was reportedly set on fire and then a remote-controlled bomb detonated, killing at least three children and a policeman... Meanwhile, the U.S. military said a homemade bomb hit an American Humvee jeep on patrol in the southern province of Uruzgan on Thursday [14 October 2004], killing two soldiers and wounding three others, one of them critically.

While polling day, Oct. 9, was mostly peaceful despite threats by Taliban-led rebels to sabotage the vote, their insurgency still simmers in the country's lawless south

and east. Nearly 1,000 people, many of them insurgents, have died in political violence this year [2004] in the run-up to the poll." [66]

**4.51** On 29 October 2004, BBC News reported that "An Afghan court has sentenced to death three men for killing 11 Chinese road workers in June [2004]... Eight defendants were given jail terms of up to 15 years, said Supreme Court judge Abdul Bari Bakhtyari." The report noted that General Mohammad Akbar, one of those sentenced to death, was formerly a commander in Kunduz for the Northern Alliance. The Taliban had denied any involvement." [25u]

**4.52** Keesing's for October 2004 also records that

"Three foreign UN workers employed to help organise the presidential election were kidnapped on Oct. 28 [2004] as they drove their clearly marked UN vehicle in a busy street in Kabul during broad daylight. Up to seven armed militants wearing military uniforms seized the workers, one of whom was a woman from Northern Ireland, another a Filipino diplomat, and the third was from Kosovo. The militants, reportedly members of the Talibaan [sic] splinter group Jaish-e-Muslimeen (Army of Islam) later released a video on Oct. 31 [2004] in which they said that the hostages would be killed if their demands for the release of prisoners and withdrawal of foreign troops were not met by Nov. [2004]" [5c]

**4.53** On 26 November 2004, the UN Secretary-General reported that the kidnapped UN workers had been released on 22 November 2004 and that, as a result of the kidnapping, additional security measures, the most stringent since 2001, had been taken to enhance the safety of staff. [39p] (p6)

**4.54** BBC News reported on 7 December 2004 that Hamid Karzai had been sworn in as Afghanistan's first elected president amid tight security at the former royal palace in Kabul. President Karzai then swore in Ahmad Zia Massood and Karim Khalili, members of the country's two largest ethnic minorities (Tajik and Hazara respectively), as his two deputies. [25ae]

**4.55** On 13 December 2004, the Afghanistan Daily Digest reported that "Pakistani security forces on 11 December [2004] arrested the alleged leader of the Army of the Muslims (Jaysh al-Muslimin), the group involved in the recent kidnapping of three UN employees in Kabul, Pakistan TV 1 reported." [54]

**4.56** BBC News reported on 13 December 2004 that the US military has launched a new offensive, known as Operation Lightning Freedom, against Taleban and al-Qaeda militants ahead of elections planned for 2005. A US spokesman was quoted as saying that all 18,000 troops in the US-led force would be involved. "Analysts say the offensive also aims to persuade Taleban militants to accept a recent US amnesty offer and disarm." [25x]

**4.57** On 24 December 2004, BBC News reported that the new Afghan cabinet, announced the previous day, had been sworn in at the presidential palace in Kabul and that the line-up replaced some key warlords with reformers and technocrats. The report noted that "Defence minister General Mohammed Fahim, a veteran warlord, has been dropped, as has Yunus Qanuni, the runner-up in the October poll. Mr. Karzai said he had asked Mr. Qanuni to form a national political party to stand in

parliamentary elections due to be held in April [2005]." [25af] On 26 December 2004, BBC News reported that Mr. Qanuni had announced he was forming a new political party under the name of New Afghanistan, which will contest April's parliamentary polls." [25ac]

(See also Section 5 Lead up to Parliamentary Elections paragraph 5.47 for information on the parliamentary elections being delayed)

**4.58** On 10 January 2005, the Special Representative of the Secretary-General reported that

> "Before and after his inauguration, the President held protracted consultations regarding the formation of his cabinet. This has been a complex exercise involving on the one hand the need to increase the number of qualified professionals to head the Ministries – a requirement implicit in the Constitution that provides for all Ministers to have higher education, and a strong popular demand – and, on the other hand, the need to ensure adequate political and ethnic representation. The outcome of these consultations was made public on 23 December [2004]. The composition of the 27-member cabinet does meet the requirements of the Afghan constitution, and all ministers have higher education and hold only Afghan citizenship. It also reflects broadly the ethnic composition of the country, with ten Pashtuns, eight Tajiks, five Hazaras, two Uzbeks, one Turkmen and one Baloch. Three women are in the cabinet - among them is the only female presidential candidate, Masuda Jalal." [40k]

**4.59** News reports from the BBC and Institute for War and Peace Reporting (IWPR) dated 24 and 27 December 2004 respectively also noted that there would be three women in the new government. [25af] [73k] The IWPR report said that the government would include Dr. Masouda Jalal as minister of women's affairs, Amena Afzali as minister of youth affairs and Sidiqa Balkhi as minister of martyrs and the disabled. [73k] A Radio Free Europe/Radio Liberty report of 30 December 2004 noted that Amena Afzali's position was described as ministerial adviser for youth affairs. [29g] On 26 January 2005 the Afghan Ministry of Foreign Affairs web site did not show Amena Afzali as a cabinet minister. [67]

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**January 2005 onwards**

**4.60** On 1 January 2005, BBC News reported that

> "Police in Afghanistan have arrested two men over their alleged role in deadly attacks in the capital, Kabul. One of them - Tajik national Mohammed Haidar - admitted organising the attack last August [2004] against US security company Dyncorp, Afghan television said. The TV report said Mr Haidar had admitted taking $7,000 from an al-Qaeda operative in Pakistani to pay for a car and explosives. Ten people were killed in the car bomb attack, including three Americans. The second suspect was detained for his part in a bombing in Kabul in October [2004] which killed one woman and a child, the television said." [25ag]

**4.61** On 8 January 2005, Reuters reported that "Afghan security forces have detained a supreme court judge suspected of being involved in an August [2004] car bomb attack that killed 10 people, including three Americans, in the capital Kabul, a court official said on Saturday... A supreme court official said the arrest of Judge Naqibullah followed the interrogation of two al Qaeda members detained this month for the bombing." [24e]

**4.62** On 10 January 2005, the Special Representative of the Secretary-General also reported that consultations held by UNAMA with political parties, representatives of civil society and communities in various regions indicated that a majority of Afghans welcomed the composition of the new cabinet, seeing it as a sign of the national character of the Government. The report noted

> "This is in contrast to the mitigated – and sometimes critical - reaction in public opinion after the 2002 Emergency Loya Jirga, who many saw as overly influenced by factional considerations and a missed opportunity to establish a truly representative central government. This vote of confidence in the new Cabinet will no doubt increase the authority and effectiveness of the Government as it tackles some very complex, urgent and difficult tasks on the national agenda, including the holding of local and parliamentary elections, expanded disarmament and demobilization, and counter-narcotics." [40k] (p1)

**4.63** In a report of 13 January 2005, Human Rights Watch noted that

> "In the south and southeast of the country, Taliban remnants and other anti-government forces outside Afghanistan's political framework have continued to attack humanitarian workers and coalition and Afghan government forces. As a result of attacks, international agencies suspended many of their operations in affected areas, and development and humanitarian work has suffered as a result. In some areas—like Zabul and Kunar province—whole districts are essentially war zones, where U.S. and Afghan government forces engage in military operations against Taliban and other insurgent groups. Hundreds of Afghan civilians were killed in 2004 during these operations—in some cases because of violations of the laws of war by insurgents or by coalition or Afghan forces." [17f] (p2)

**4.64** On 20 January 2005, BBC News reported that "Afghan warlord General Abdul Rashid Dostum has survived an assassination attempt by a suicide bomber. He was not hurt when the attacker blew himself up outside a mosque in the northern town of Sheberghan where the general had been praying. About 20 others were wounded. The Taleban said it carried out the attack to avenge the killing of its members... His fighters are accused of leaving hundreds of Taleban fighters to perish inside sealed steel containers after their defeat and capture." [25ah]

**4.65** On 9 February 2005, BBC News reported that all 104 people on board an Afghan airliner, which crashed on a mountain in Kabul on 3 February 2005, were reported dead. The airliner had been flying from Herat to Kabul when it flew into a heavy snowstorm. The crash has been confirmed as Afghanistan's worst air disaster. [25f]

**4.66** On 1 March 2005, Reuters reported that

> "Afghan President Hamid Karzai appointed a controversial regional strongman as

his personal military chief of staff on Tuesday, despite calls by rights groups for him to sideline warlords. Karzai's spokesman Jawed Ludin said General Abdul Rashid Dostum, who finished fourth in October presidential elections, had been named chief of staff to the commander in chief, a post held by Karzai...Dostum came fourth in October's presidential elections and diplomats say he had felt sidelined after being left out of Karzai's new cabinet, having served as a military adviser to his previous government." [24b]

For history prior to September 2001 refer to Europa, source [1] See also Annex A for a Timeline of Afghanistan

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# 5 State Structures

## The Constitution

**5.1** Europa Regional Surveys of the World: South Asia 2005 records that

"On 5 December 2001 28 Afghan leaders signed the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (also known as the Bonn Agreement), stipulating a timetable for the creation of a permanent constitution and the holding of free national elections. In accordance with the agreement, Afghanistan temporarily reverted to the Constitution of 1964. A Transitional Authority, with the assistance of the UN, established a Constitutional Drafting Commission in November 2002 to draw up a new constitution. A new charter providing for a strongly presidential system following eventual elections by universal suffrage was approved by a Constitutional Loya Jirga [CLJ] (Grand National Council) in early January 2004." [1] (p79)

**5.2** On 26 January 2004, the Institute for War and Peace Reporting (IWPR) reported that the 502 members of the CLJ who had been debating amendments to the draft constitution since mid-December [2003] passed the final version on January 4 2004. IWPR noted that "Observers say the new constitution could help bolster the rights of Afghan women and help resolve ethnic rivalries within the country. Although some have expressed reservations about the way in which the document was drafted and amended – often far from the floor of the grand tent - it has been widely hailed as a step forward for Afghanistan." [73b] (p1)

**5.3** The preamble of the adopted constitution states as two of its aims, "Observing the United Nations Charter and respecting the Universal Declaration of Human Rights" and "For creation of a civil society free of oppression, atrocity, discrimination, and violence and based on the rule of law, social justice, protection of human rights, and dignity, and ensuring the fundamental rights and freedoms of the people." [81b]

**5.4** Article 29 of the constitution decrees that "Torture of human beings is prohibited. No person, even with the intention of discovering the truth, can resort to torture or order the torture of another person who may be under prosecution, arrest, detention or convicted to be punished. Punishment contrary to human integrity is prohibited." [81b]

**5.5** The Freedom House Afghanistan Country Report 2004 published in April 2004 noted that, "It [the constitution] establishes a presidential system of government in which a directly elected president has wide-ranging powers but is subject to some controls by the parliament. All references to Afghanistan's compliance with the Universal Declaration on Human Rights have been retained, and the document contains a number of provisions enunciating basic political, civil, economic, and social rights. In addition, it mandates equal rights for women and ensures their political representation through reserved seats in the parliament." [41a] (p3)

**5.6** Commenting on the new constitution in January 2004, Human Rights Watch stated that

> "Despite the democratic shortcomings of the Constitutional Loya Jirga, the new Afghan constitution it approved in January 2004 included significant provisions, notably on women's rights. The constitution guarantees women a substantial number of seats in Afghanistan's bicameral National Assembly. Approximately 25 percent of seats in the Wolesi Jirga (House of the People) are reserved for women; the president is obligated to appoint additional women in the Meshrano Jirga (House of Elders). Another provision of the constitution specifically guarantees equality between men and women under law.
>
> The document contains several provisions enunciating basic political, civil, economic, and social rights, but little strong language empowering institutions to uphold them. The Afghan Independent Human Rights Commission [AIHRC] is given a mandate, but lacks many of the powers necessary for it to credibly protect basic rights. The constitution fails to adequately address the role of Islamic law and its relationship to human rights protections. Human Rights Watch is concerned that extremist factions could use appointments to the new judiciary to implement laws that violate human rights standards. The issue of accountability for past atrocities is also not addressed in the document. Despite Afghanistan's recent history, the charter does not directly address issues of past war crimes and serious human rights abuses. The AIHRC may be able to delve further into this area, but it lacks any specific constitutional mandate to do so." [17c] (p3)

**5.7** The World Bank Economic Report on Afghanistan of 9 September 2004 noted that

> "The Constitution establishes a unitary state with a strong central government, providing for a democratically elected President and for separation of powers among the judiciary, executive, and legislative branches. The Government is allowed to delegate certain authorities to local administrative units (provinces) in the areas of economic, social, and cultural affairs, and to increase the participation o f the people in development. To this end, it establishes a role for elected provincial, district, and village level councils to work with the sub-national administration. Municipalities are to administer city affairs under the oversight of elected mayors and municipal councils." [69a] (para. 4.15)

**5.8** The UN Secretary-General noted on 26 November 2004 that

> "It [the constitution] provides for a pure presidential system, but one that places a great emphasis on parliamentary control of the executive. The Constitution vests

most powers in the central Government and does not devolve much authority to the provinces. It also calls for an independent judiciary, headed by a Supreme Court, and a legal framework that is consistent with the "beliefs and prescriptions" of Islam. In an important measure to advance national unity, the Constitution explicitly includes all minority groups in the definition of the nation and recognizes Dari and Pashto as official languages, and other languages as official in the area where the majority speaks them. The Constitution provides equal rights to men and women and guarantees that women will make up at least 25 per cent of the representatives in the lower house of parliament." [39p] (p3)

(See also paragraphs. 5.9 – 5.13 on CLJ below)

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**The Constitutional Loya Jirga**

**5.9** On 26 January 2004, the Institute of War and Peace Reporting (IWPR) recorded that, on 14 December 2003, Sibghatullah Mujaddidi, a moderate ally of President Karzai and one of the president's 52 handpicked delegates, had been voted chairman of the Constitutional Loya Jirga. "Four deputy chairpersons, including female delegate Safia Saddiqi, were also selected." [73b] (p2)

**5.10** The Freedom House Afghanistan Country Report 2004 noted that

"After many months of drafting, internal government deliberations, and consultations with the public, Afghanistan held a CLJ [Constitutional Loya Jirga] from December 14, 2003 to January 4, 2004 in order to ratify a new constitution. In keeping with the precedent set before and during the Emergency Loya Jirga, the 502 delegates to the CLJ faced some instances of harassment and intimidation, and many important discussions took place between power brokers behind closed doors. In addition, sustained disagreements broke out among delegates over the power of the presidency, the relationship between Kabul and the provinces, and the adoption of official languages. Nevertheless, the 160-article constitution approved on January 4 [2004] is an important step forward for Afghanistan's democratic prospects." [41a] (p3)

**5.11** Commenting on the processes leading up to the CLJ, Human Rights Watch noted on 8 January 2004 that "During elections for delegates to the convention, Human Rights Watch documented numerous cases of death threats and corruption, and a general atmosphere of intimidation at election sites. UN officials told Human Rights Watch that many of the elected delegates to the convention were proxies or allies of local factional leaders." [17d] (p1)

**5.12** The IWPR report dated 26 January 2004 noted that

"A number of observers were critical of the way the Loya Jirga, and the drafting and public consultation processes leading up to it, were organised. Some resented the enormous influence wielded by the former militia commanders and many even said the former mujahedin representatives – or "jihadis" – were so powerful that they were afraid to disagree with them. One female delegate, Malalai Joya from Farah province, caused outrage on December 17 [2003] when she spoke out against the mujahedin leaders, saying many of them were war criminals who should face trial.

Delegates called her a communist and an atheist – both serious insults in Afghanistan – and Mujaddidi tried to have her removed, although he later said he had simply been concerned for her safety... Others were unhappy that former Taleban officials were allowed to take part in the assembly, although Afghanistan's Independent Human Rights Commission said it had no problem with this because they had been elected by the people. Some female delegates also said they felt intimidated by the atmosphere in the assembly.

Other observers expressed reservations about the processes leading up to the Loya Jirga sitting. The International Crisis Group think-tank said the drafting process was undemocratic and favoured factions already in power. Others said the election of delegates was badly organised and there were also signs that the attempts at public consultation had been largely unsuccessful." [73b] (p2-3)

**5.13** On 26 November 2004, the UN Secretary-General reported that

"A central feature of the Constitutional Loya Jirga was that many positions on issues seemed to be decided on a regional or ethnic basis. Positions on issues such as the nationality of ministers, the timing of the elections and the national language, came down to either a political or a symbolic context, and sometimes both, between representatives from the north and those from the south. The role of Islam was the subject of another important debate, this time between fundamentalists and more secular-minded Afghans. The final text agreed to bear the imprint of these debates." [39p] (p3)

(See also Section 5, Constitution paragraphs 5.1 to 5.8 above)

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**Citizenship and Nationality**

**5.14** The United States Office of Personnel Management document Citizenship Laws of the World dated March 2001 records the following:

"Citizenship laws [in Afghanistan] are based upon the Official Gazette of the Ministry of Justice for the Republic of Afghanistan dated March 19, 1992.
BY BIRTH: Birth within the territory of Afghanistan does not automatically confer citizenship. Exception is a child of unknown/stateless parents.
BY DESCENT: Child whose mother or father is a citizen, regardless of the country of birth.
MARRIAGE: Foreign national who marries a citizen of Afghanistan is granted citizenship upon application.
BY NATURALIZATION: Afghan citizenship may be acquired upon fulfillment [sic] of the following conditions: Person was born in Afghanistan and has resided continually in country for at least five years.
DUAL CITIZENSHIP: NOT RECOGNIZED.
Exceptions: A former citizen of Afghanistan, who fled the country due to political instability or war and has acquired new citizenship, may still hold "unofficial" Afghan citizenship. This is recognition that those who fled the country might some day want to return as Afghan citizens without losing new citizenship. The Afghani spouse of a foreign national is not required to renounce Afghan citizenship unless demanded by the spouse's country.

LOSS OF CITIZENSHIP: VOLUNTARY: Voluntary renunciation of Afghan citizenship is permitted by law... The following persons are not allowed to renounce citizenship:
• Person who has continuing financial obligations to the government or other institutions.
• Person who has been convicted of a crime and sentenced to jail.
• Persons involved in national security, whose loss to the country might endanger Afghan security.
INVOLUNTARY: The following is grounds for involuntary loss of Afghan citizenship: Person voluntarily acquires foreign citizenship and does not fall under the exempted status described under "Dual Citizenship." Persons concerned with dual citizenship should not assume their Afghan citizenship was lost by default. Embassy should be contacted and citizenship formally renounced." [61] (p13)

**5.15** Article Four of the Constitution of January 2004 states that "The word Afghan applies to every citizen of Afghanistan. No member of the nation can be deprived of his/her citizenship of Afghanistan. Affairs related to the citizenship and asylum are regulated by law." [81b]

**5.16** A Danish fact finding mission to Kabul in March/April 2004 reported that

"The Ministry of the Interior explained that Afghan nationality cards (tazkara) [ID cards] represent a difficult area. Such cards have not been issued for the last 25 years. It is difficult to verify a person's true identity if they request a nationality card, including whether a person comes from Afghanistan or from one of the neighbouring counties [sic] due to problems with false passports. According to the Ministry of Interior, national identity cards can currently only be issued by the authorities in Kabul. Previously, such identity cards were issued in the format of a small book. Today, such cards are issued on a peace [sic] of paper size A4 (29,6 x 21 cm.)." [8] (section 8.1.1)

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## Political System

### Overview

**5.17** The Central Intelligence Agency (CIA) World Factbook 2004 records that "Following the 11 September 2001 terrorist attacks, a US, Allied, and Northern Alliance military action toppled the Taliban. In late 2001, major leaders from the Afghan opposition groups and diaspora met in Bonn, Germany, and agreed on a plan [the Bonn Agreement] for the formulation of a new government structure that resulted in the inauguration of Hamid Karzai as Chairman of the Afghan Interim Authority (AIA) on 22 December 2001." [23] (p1)

**5.18** In a report of 26 November 2004, the UN Secretary-General noted that "The Bonn Agreement of 5 December 2001 mapped out a process whereby provisional governing institutions would gradually increase in legitimacy, culminating in a fully representative Government after the holding of free and fair elections. The legitimacy of the Government would be rooted in a new Constitution." [39p] (p3)

**5.19** The CIA World Factbook 2004 records that

> "The AIA held a nationwide Loya Jirga (Grand Assembly) in June 2002, and Karzai was elected President by secret ballot of the Transitional Islamic State of Afghanistan (TISA)... The Transitional Authority convened a Constitutional Loya Jirga from 14 December 2003 until 4 January 2004 and ended with the approval of a new constitution. The constitution was signed on 16 January 2004 and highlights a strong executive branch, a moderate role for Islam, and basic protections for human rights." [23] (p1)

**5.20** The UN Secretary-General's report of 26 November 2004 noted that "On 8 July [2004], the Chairman of the United Nations-Afghan Joint Electoral Management Body — the independent commission mandated to conduct and supervise Afghanistan's electoral process — formally announced that the presidential election would be held on 9 October [2004] and parliamentary elections would be held in the Afghan month of Saur (20 April-20 May) 2005." [39p] (p4)

**5.21** The final report of the Impartial Panel of Election Experts published 1 November 2004 recorded that "The 2004 Afghan Presidential Election took place 9 October 2004, in a relatively calm and secure environment, with high turnout and much enthusiasm, and substantial participation of women." [68] (p5)

**5.22** In a report of 23 November 2004, the International Crisis Group (ICG) recorded that

> "The 9 October [2004] vote was an historic event, the country's first ever-direct election for its head of state. The high turnout, orderly conduct of voters and absence of widely expected violence demonstrated the strong desire of Afghans to participate in their country's political process. President Hamid Karzai won convincingly with 55.4 per cent of the vote, well ahead of Younus Qanuni (16.3 per cent). With some exceptions, however, voting was largely along ethnic and regional lines." [26d] (pi)

(See also Section 5 Presidential Election paragraph 5.41 for full election results)

**5.23** The report of the UN Secretary-General dated 26 November 2004 noted that

> "Planning for the parliamentary elections is under way, and careful account is being taken of the experience gained during the presidential election. The parliamentary elections are much more complex logistically and present formidable security concerns. A number of key issues must be resolved in order to hold the elections by spring 2005: boundaries of districts must be delineated; population figures must be agreed upon for the assignment of parliamentary seats; the list of voters must be analysed, refined and updated; a complaints mechanism and electoral offence prosecution system must be developed at the local level; and the qualifications of thousands of potential candidates must be vetted prior to their registration. Finally, the expansion of the formal security apparatus will be essential to the success of parliamentary and local elections." [39p] (p5)

**5.24** The ICG report of 23 November 2004 noted that

> "A draft Political Parties Law, tabled for comment by the justice ministry in May 2003, proposed formidable barriers to the registration of non-militarised parties by including a membership threshold of 10,000. It also worked against political participation by Afghans returning from abroad by barring dual nationals from leadership posts in political parties. The final draft, signed into law four months later, lowered the membership threshold to 700 and dispensed with the bar on political leadership on the grounds of dual nationality or marriage to a non-Afghan. It also replaced a provision obliging parties to "follow and respect Islam and historical and national customs of Afghanistan" with a more measured statement that parties shall not "pursue objectives that are opposed to the principles of the holy religion of Islam".
>
> Unfortunately, the law gives the justice ministry authority to register parties and power to request their dissolution by the Supreme Court. These powers are more commonly conferred on independent electoral commissions. While limiting the grounds on which a party can be dissolved, the law nevertheless fails to ensure due process for a party against whom the justice ministry initiates proceedings; the Supreme Court is the court of first and last instance, its decisions "definite and final". [26d] (p17)

**5.25** In their report of 9 September 2004, the World Bank recorded that "Afghanistan is a unitary state with a highly centralised government structure. Politically, all formal authority is vested in the center [sic]. Leaders at sub-national level - provincial Governors and municipal mayors, for instance - are appointed by the center. Most government services are delivered at provincial and district levels, but powers and responsibilities of sub-national administration are determined by the center. [69a] (para. 4.05)

**5.26** The World Bank report also noted, however, that

> "Despite this very high degree of de jure centralization, the defacto reality is that central control is very weak, given the strength of regional and local warlords who command substantial revenues and military power, and have captured the government administration in the localities they control. Certainly in the revenue-rich provinces, Governors make resource allocation decisions other than on basic salaries. Staff appointments from Kabul are often rejected in favor [sic] of those loyal to regional factions; and even Kabul-based appointments often reflect loyalties and ethnic ties rather than merit. In these areas, where the warlords (and in some cases Governors) have "captured" both strategic decision-making and overall fiscal resources, the public sector is essentially autonomous from the central government." [69a] (para. 4.08)

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## Elections

### General

**5.27** In his report of 26 November 2004, the UN Secretary-General noted that

"The Bonn Agreement called for elections to be held in June 2004 — or two years after the convening of the Emergency Loya Jirga — and also requested the United Nations to carry out a voter registration exercise. The latter occurred in two phases, the first between December 2003 and April 2004 and the second between May and August 2004. In the first phase, 1.9 million voters were registered in the eight main urban centres. The second phase, in which registration teams were extended to provincial capitals and rural areas, resulted in the registration of a further 8.6 million Afghans. At the end of registration, 41 per cent of the 10.5 million registered voters were women. [39p] (p4)

**5.28** In a report of September 2004, the Afghanistan Research and Evaluation Unit (AREU) noted that

"The Joint Electoral Management Body (JEMB) voter registration process by many standards was a remarkable success... There are, however, concerns that the voter registration effort was perhaps too successful, as the final number exceeds the original UN estimate that there were only 9.8 million Afghans eligible to vote on election day – a figure that was subsequently revised upward to 10.5 million voters when it became apparent that registration figures would exceed 100 percent. Indeed, the large number registered in a short period of time in some of the most remote and/or dangerous regions of the country has raised concerns about the credibility of the process and the figures." [22c] (p4)

**5.29** The AREU report also noted that

"Concerns about over-registration are compounded by the problem of under-registration in specific areas of the country, especially of women. The three most under-registered provinces were Zabul, Kabul and Parwan, which each had less than 60 percent. While the overall percentage of women who registered to vote was impressive, in the south only 21 percent of the registered voters were women. In Zabul and Uruzgan Provinces, less than 10 percent of registered voters were female. There was one district, Ajiristan in Ghazni Province, where not a single woman was registered to vote.

There are a number of other concerns about flaws in the registration process. Some of these concerns arose from the way registration itself was handled: individuals registering to vote merely had to state that they were Afghans of at least 18 years of age and had not previously registered to receive voting cards. During the registration process there was very little to preclude an individual from picking up multiple voter cards, perhaps from different registration sites at various times of the process. Instances of multiple registration have been confirmed by UNAMA and the AIHRC, as well as the registration of minors, though it is not possible to estimate the scale and extent to which this has occurred." [22c] (p4-5)

**Presidential Election**

**5.30** Prior to the presidential election scheduled for 9 October 2004, Human Rights Watch (HRW) published two reports, which suggested that a number of factors could affect the implementation of a free and fair presidential election. In a report of September 2004, entitled 'The Rule of the Gun', HRW reported that military

commanders and their armed factions were involved in widespread intimidation aimed at influencing the poll results. According to the HRW report

> "The political rights of Afghans are not being adequately protected or promoted in the run-up to the October 9 election. The overall process has been severely affected by the overriding atmosphere of threats, harassment, and fear. Because of this environment, an indeterminable number of politically active Afghans have decided against taking part in the process, and many voters are not free to enjoy their right to participate actively in politics. Many voters simply may not be able to vote as they wish, not trusting the secrecy of the ballot and fearing the consequences if they do not follow instructions." [17] (p41)

**5.31** In a further report of 5 October 2004, entitled "Between Hope and Fear: Intimidation and Attacks against Women in Public Life in Afghanistan", HRW noted that many positive steps had been taken by UNAMA, the Joint Electoral Management Body (JEMB), international donors and NGOs to encourage female voter registration. According to HRW, "These efforts helped generate commendable results: according to official tallies, 41 percent of all registered voters in the country are women." However, the HRW report also noted that "In some places, multiple registrations have likely significantly inflated voter registration figures; in others, women have faced violence and intimidation during the registration process and few have registered." HRW noted that poor security conditions, partly due to attacks by insurgent forces including the Taliban, had contributed to very low female registration rates in the south of the country of only 9 percent in Uruzgan, 10 percent in Zabul and 16 percent in Helmand provinces. The HRW report also noted other constraints that may have prevented some women from voting freely and independently including fear of warlords and lack of permission from their husband or head of family to vote. [17] (p25-26)

**5.32** The report of the Impartial Panel of Election Experts published 1 November 2004 recorded that

> "The 2004 Afghan Presidential Election took place 9 October 2004, in a relatively calm and secure environment, with high turnout and much enthusiasm, and substantial participation of women. Many voters made personal sacrifices and braved difficult conditions to cast their ballot on 9 October. The Afghan population is justified in the pride it has overwhelmingly expressed in this election. There were fewer problems on Election Day than many experts had anticipated. However, following alleged problems at some polling centres, many presidential candidates raised complaints relating to alleged Election Day irregularities. As a result the JEMB decided to form an independent Expert Panel, nominated by the United Nations, to investigate these complaints. The Panel's mandate was to investigate the complaints and to report to the JEMB... The formal complaints contained 661 different allegations. These fell almost exclusively into one or more of the following subject areas -
>
> - Ink
> - General Procedural Issues
> - Materials
> - Voter Access Issues

- Allegation of Bias or Intimidation" [68] (p5)

**5.33** The report of the Impartial Panel of Election Experts further noted that

> "The Panel finds the inking problem on polling day was as a result of a series of errors within the JEMB and the JEMB Secretariat. Most were at the time, minor, but the cumulative effect was significant resulting in the ink becoming the most widespread issue on Election Day... The Panel also finds that the misuse or misapplication of ink on Election Day was not politically motivated. But the Panel finds that multiple voting was *not* a significant problem on Election Day." [68] (p5)

**5.34** Regarding procedural issues, the Panel found that

> "Many minor irregularities took place, as might be expected in a population where most were experiencing a first election. Some real or perceived problems were as a result of errors or omissions in voter registration. Proxy voting, although disallowed, was precipitated in some locations by actions on behalf of communities that considered it a cultural norm. It is also clear that underage voting occurred in some locations. The JEMBS Training Department was not regularly consulted during decision-making processes relating to the training of polling staff, and certain decisions came too late to allow for training throughout the cascade. These problems were not on a scale that would undermine the credibility of the election process." [68] (p6)

**5.35** The Panel's report also noted that "Ballot paper shortages occurred in a few locations, largely as a result of technical difficulties related to the lack of a voter register. The Panel finds that there was provision to supply additional ballot papers but in some cases the system was unable to respond. There is no evidence of political motive." Furthermore, "The allocation of polling stations, although not perfect, was the result of the best policies available in the circumstances. As there was no voter register and registered voters could use any available polling centre there was no way to guarantee that the polling centres would be placed exactly where voters would require them. There was an imbalance of polling stations in some areas, and isolated communities were disadvantaged. The number of voters affected would not have influenced the overall result." [68] (p6)

**5.36** The Panel also found that

> "Sixty per cent of candidates' complaints alleged bias and intimidation against voters and agents. By contrast, observers did not report large numbers of such cases. In general polling station staff took their duties seriously and performed well in difficult circumstances. However there were cases of workers assisting voters; in most cases, it was not mal-intentioned. Some party agents were excluded from polling centres or stations. This was often for legitimate reasons, including limits on numbers of agents in a station. Many party and candidate agents were accredited too late, and were not well informed of Election Day procedures, complaints procedures and adjudication mechanisms. There were attempts at electoral fraud such as ballot box stuffing but this was neither widespread nor limited to the supporters of any one political candidate." [68] (p6)

**5.37** The Panel concluded, "In summary, this was a commendable election,

particularly given the very challenging circumstances. There were shortcomings, many of which were raised by the candidates themselves. These problems deserved to be considered, to ensure the will of the voters was properly reflected, and to help shape improvements for future elections. The Panel concludes, however that these concerns could not have materially affected the overall result of the election." [68] (p7)

**5.38** IRIN News reported on 11 October 2004 that

> "Security had been the leading concern in the run-up to the election. Although around 100,000 Afghan and international security personnel were overseeing the historic poll, the worst had been expected. "There was very good coordination between the Afghan national police together with the Afghan national army, the coalition [US-led forces] and the ISAF [international peacekeeping forces based in Kabul]," Lutfullah Mashal, an Interior Ministry spokesperson, told IRIN.
>
> Mashal said they had impounded three trucks loaded with explosives in Kandahar and arrested an unspecified number of people trying to launch attacks against polling stations in various parts of the country. "We also arrested six people in Kabul who were intimidating people to vote for a particular candidate," he added. A convoy carrying ballot papers was attacked in Uruzgan province and three policemen were killed, but elsewhere the feared violence by Taliban insurgents failed to materialise." [36c] (p1-2)

**5.39** The same IRIN report also noted that

> "The elections received national and international support. The Free and Fair Elections Foundation of Afghanistan (FEFA), a local elections observer agency, in a statement, congratulated Afghans for "peaceful elections". It said "the large participation of Afghans is an encouraging sign of people's participation in the democratic process." FEFA had deployed 2,300 observers across the country to monitor the process. More than 300 international observers and tens of thousands of supporters of the presidential candidates were also monitoring the poll, where security was adequate.
>
> Meanwhile, the Organisation for Security and Cooperation in Europe (OSCE), which had been observing election preparations and the poll itself, expressed satisfaction while acknowledging that the process had not been without its limitations." [36c] (p2)

**5.40** In January 2005, Human Rights Watch reported that

> "Surprisingly few problems occurred on election day and over eight million votes were cast. But the international community failed to supply adequate numbers of international monitors to observe the election, and the majority of election sites were not adequately monitored. In many cases Afghans were able to vote relatively freely, but in many other places—especially rural areas—voters did not receive adequate civic education about the secrecy of the ballot and were likely threatened by local leaders how to vote. Independent political organizers unaffiliated with factions or their militia forces faced death threats and harassment and in many areas struggled just to organize. In the months before the election,

Human Rights Watch documented continuing political repression by local factional leaders." [171] (p2)

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**Presidential Election Results**

**5.41** On 3 November 2004, the Joint Electoral Management Body (JEMB) in Afghanistan announced Mr. Hamid Karzai the winner of the 9 October 2004 presidential election, based on the following results:

| | | | |
|---|---|---|---|
| Hamid Karzai | Independent | 4,443,029 | 55.4% |
| Yonous Qanooni | Hezb-e-Nuhzhat-e-Mili Afghanistan | 1,306,503 | 16.3% |
| Haji Mohammad Mohaqiq | Independent | 935,325 | 11.7% |
| Abdul Rashid Dostum | Independent | 804,861 | 10.0% |
| Abdul Latif Pedram | Hezb-e-Congra-e-Mili Afghanistan | 110,160 | 1.4% |
| Massooda Jalal | Independent | 91,415 | 1.1% |
| Syed Ishaq Gailani | Nuhzat-e-Hambastagee Mili Afghanistan | 80,081 | 1.0% |
| Ahmad Shah Ahmadzai | Independent | 60,199 | 0.8% |
| Abdul Satar Serat | Independent | 30,201 | 0.4% |
| Hamayon Shah Asifi | Independent | 26,224 | 0.3% |
| Ghulam Farooq Nijrabi | Hezb-e-Istiqlal-e-Afghanistan | 24,232 | 0.3% |
| Syed Abdul Hadi Dabir | Independent | 24,057 | 0.3% |
| Abdul Hafiz Mansoor | Independent | 19,728 | 0.2% |
| Abdul Hadi Khalilzai | Independent | 18,082 | 0.2% |
| Mir Mohammad Mahfouz Nedaee | Independent | 16,054 | 0.2% |
| Mohammad Ebrahim Rashid | Independent | 14,242 | 0.2% |
| Wakil Mangal | Independent | 11,770 | 0.1% |
| Abdul Hasseb Aryan | Independent | 8,373 | 0.1% |
| Valid Votes | | 8,024,536 | 100.0% |
| Invalid Votes ** | | 104,404 | |

| | |
|---|---|
| Total Votes * | 8,128,940 |

* Total votes estimate equal to sum of votes from polling stations checked in plus projected votes for outstanding polling stations.
** Invalid votes account for 1.3% of total votes. [74]

**5.42** The UN Secretary-General's report of 26 November 2004 observed that

> "A preliminary analysis of the final results suggests that, as with the Constitutional Loya Jirga, the assertion of ethnic identity played an important role. Electoral support for the four main contenders, President Karzai, Mr. Qanooni, Mr. Dostum and Mr. Mohaqeq, strongly correlated with the rural areas where Pashtuns, Tajiks, Uzbeks and Hazaras are, respectively, the majority groups. Ethnic considerations, however, appeared to have had less impact in major cities. This may be attributable to the fact that, since ethnic identity was not exploited aggressively during the campaign, candidates were able to operate widely in capitals outside their core constituencies." [39p] (p5)

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**Lead up to Parliamentary Elections**

**5.43** The AREU report of September 2004 noted that

> "The electoral law decreed in 2004 announced that the voting system for parliamentary elections would be a Single Non Transferable Vote (SNTV) system... Under the SNTV system for Afghanistan, voters cast ballots for individuals rather than political parties. Within each region there are a set number of open seats, with a certain number of these reserved for female candidates. This means that if collectively a party wins a majority of the vote, it does not necessarily win a majority of the seats – the numbers of seats won depend on whether individual candidates within the party have performed well... The advantage of the SNTV system is that it is simple to vote under and count, and ensures representation of independents in a nascent party system. It does, however, have serious drawbacks for creating stable and legitimate institutions of government, especially in an emerging and fragile democracy like Afghanistan." [22c] (p12)

**5.44** In September 2004 a Human Rights Watch (HRW) briefing paper noted that

> "To date, almost 70 political parties have applied to register with the government. At least 40 have successfully registered so far. The parties vary in scope of organization, membership characteristics, and links to different factions or governmental officials: Some are comprised of former government officials from pre-1992 governments, including the Soviet-supported governments of Najibullah and Babrak Karmal, the government of Daoud Khan (1973-1978) and even the government of the former King of Afghanistan, Zahir Shah. Some are reincarnations of political parties from the 1960s-1980s which never held any significant political power, including various socialist and communist groups, secularist groups, and various Islamist groups. Some parties are entirely new and are headed by youth leaders.

But much of Afghanistan's political activity is being dominated by the warlord factions. There are numerous parties—the most powerful ones in fact—which are merely proxies for the various military factions, or sub-factions within them. Afghanistan's registration law prohibits parties from maintaining their own private militias, but since most militia forces have an official status as divisions or battalions under the control of the Ministry of Defense, faction "parties" can disingenuously claim that they have no private forces. The 10th Army Division, for instance—official units under the control of the Kabul government—are actually factional forces controlled by the Ittihad-e Islami faction ("Ittihad"), which in turn is controlled by the powerful faction leader Abdul Rabb al-Rasul Sayyaf.

Moreover, some factions changed their party names for registration purposes, possibly to avoid running afoul of the law. Most members of Jamiat-e Islami (Jamiat), for instance, a mujahidin military force which fought against the Soviet occupation, are now organized as the political party Nehzat-e Melli. Ittihad, a Pashtun armed faction, is now known as Daw'at-e Islami. (For more information on the different factions, see Appendix A [of HRW report]) Parties which change their name can then disingenuously claim that they have no official link with any military faction, and claim to be independent. To date, the political party registration office in the Afghan government has not disqualified any party on the grounds that it maintains a private militia or is linked with one." [17i] (p5-6)

(See also Annex B for more information on political parties and organisations)

**5.45** The US State Department Report 2004 (USSD), published on 25 February 2005 recorded that

"Political parties generally were able to conduct activities throughout the country without opposition or hindrance, except in regions where antigovernment violence affected overall security. Joint reports by UNAMA and AIHRC revealed that officials sometimes interfered with political parties, mainly due to a lack of awareness of citizens' political rights. Political parties also exercised significant self-censorship. Political activities were visibly discouraged or curtailed in some parts of the country. For example, the Republican Party's activities were restricted in provinces that were controlled by Ismail Khan and General Rashid Dostum. However, UNAMA and AIHRC's conclusions were that political freedom improved substantially and steadily during the year." [2d] (section 3)

**5.46** On 27 January 2005, a UN News Service Press Briefing reported the spokesperson, for the Special Representative of the Secretary General for Afghanistan as saying that

"The United Nations Assistance Mission to Afghanistan (UNAMA) welcomes the inauguration of the Independent Electoral Commission and congratulates its members... The establishment of the Commission marks the formal beginning of the process leading to the upcoming parliamentary and local elections. The Commission will make a key contribution to establishing the basic parameters of the election, including the allocation of seats, the registration of candidates and the most appropriate timing and modalities for the elections themselves." [39m] (p1)

**5.47** On 24 February 2005, BBC News reported the United Nations, as saying that Afghanistan's first parliamentary election since the fall of the Taliban would not take place on time. The report stated that

> "The poll was due to take place by 21 May [2005], but logistical and security concerns have prevented President Hamid Karzai making an official announcement. Under Afghanistan's new constitution any poll must be announced 90 days before it is scheduled to take place. Correspondents say the election could be delayed by up to six months...Important decisions still remain over voting systems, voter registration and electoral boundaries... A decision is also needed on whether to reopen registration to returning refugees." [25p]

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**Political Situation in Herat**

**5.48** In a report dated September 2004, Human Rights Watch (HRW) noted that "Until recently, western provinces in and around Herat were controlled by the militia of Ismail Khan, an Islamist mujahidin leader. Ismail Khan is loosely allied with Jamiat and Shura-e Nazar but has remained essentially autonomous. Until he was removed by President Karzai on September 12, 2004, he controlled almost all aspects of government and security forces in Herat and surrounding districts. He is still believed to have significant power over militia forces in the Herat area." [17i] (p48)

**5.49** The HRW report of September 2004 noted that

> "Human Rights Watch received consistent and repeated testimony through August 2004 that local military, police, and intelligence forces under Ismail Khan were continuing to threaten independent political activity and stifle free speech.
>
> On September 11, 2004, Karzai appointed a new governor for Herat, Sayed Mohammad Khairkwa, and relieved Ismail Khan of his post (the United States had apparently refused to support a 2003 plan by Karzai to remove Ismail Khan). The same day the new governor took office, September 12 [2004], supporters of Ismail Khan attacked, looted, or burned five UN offices, including the headquarters of UNAMA, and AIHRC. The situation has stabilized, but Ismail Khan still controls some militia forces around Herat, and it is unclear who holds real power in Herat. Khairkwa has already promised changes to improve political rights, but it is too soon to judge whether he has either the will or ability to allow this to happen.... The repression in Herat under Ismail Khan over the last two-and-a-half years, and continuing worries about his presence in Herat, mean that many would-be political actors have good reasons to fear open and active involvement in politics." [17i] (p26)

The HRW report also noted that "It is still unclear what effect Ismail Khan's dismissal will have." [17i] (p28)

**5.50** On 27 December 2004, the Institute of War and Peace Reporting reported that Ismail Khan had been given the position of water and energy minister in the new cabinet sworn in on 24 December 2004. The report also noted that "Khan was accused of torture while governor of Herat, but was also credited with bringing

stability and relative prosperity to the region." [73k]

(See also Sections 6A, Human Rights paragraphs 6.106, 6.109 and 6.138 and Women paragraphs 6.236 - 6.239 for more information on the situation in Herat)

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**Judiciary**

**5.51** Europa Regional Surveys of the World: South Asia 2005 records that

> "After 23 years of civil war, which ended in December 2001 with the defeat of the Taliban, there no longer existed a functioning national judicial system. In accordance with the Bonn Agreement, Afghanistan temporarily reverted to the Constitution of 1964, which combined Shari'a with Western concepts of justice. A new Constitution was introduced in early 2004, which made no specific reference to the role of Shari'a but stated that Afghan laws should not contravene the main tenets of Islam." Europa also notes that the Chief Justice is Fazul Hadi Shinwari. [1] (p81)

**5.52** The Constitution adopted in January 2004 states that

> "The judicial branch is an independent organ of the state of the Islamic Republic of Afghanistan. The judicial branch consists of the Supreme Court (Stera Mahkama), High Courts, (Appeal Courts), and Primary Courts, structure and authorities of which are determined by law." [Article 116]..."Judges are appointed with the recommendation of the Supreme Court and approval of the President." [Article 132] Article 3 of the Constitution states that "In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam." [81b]

**5.53** The International Development Law Organization (IDLO) website in 2004 noted that,

> "Libraries and legal collections have been largely depleted or destroyed in Afghanistan during the twenty-four years of war, erasing signs of a rich and elaborate legal tradition. No comprehensive collection or official record of laws has survived, while institutions and lawyers have little or no access to most texts. The compilation and indexing of the existing body of legislation is therefore essential to re-establishing the rule of law. IDLO started in late 2001 a research to collect Afghan laws and legal documents, as part of its preparation for an assistance program in Afghanistan... IDLO has made available its collection and index to the Afghan Authorities, and is providing assistance to the Ministry of Justice in finalizing its task of compiling and indexing all existing laws." [81a]

**5.54** Amnesty International reported in March 2004 that "Lack of proper security for the courts, judicial personnel, victims and witnesses further undermines the capacity of the judicial system to act independently. Low level and irregular salaries contribute to corruption being widespread among judges and prosecutors in every region of Afghanistan. As a result, certain individuals remain above the law because of their place in the community or their ability to threaten, intimidate and use other forms of pressure to influence judicial proceedings." [7a] (p2)

**5.55** The Freedom House Afghanistan Report 2004 noted that,

> "Currently, Afghanistan has two parallel court systems —the general courts, which comprise the district, provincial, and Supreme courts, and special courts, which comprise family and children's courts and are used to adjudicate cases relating to family law. In addition, the Supreme Court has established national security courts to try terrorists and other cases. As most legal records had been destroyed, courts do not have access to the main laws and regulations of the civil and criminal codes and as a result tend to apply either Islamic or customary law. In the absence of a functioning formal legal system in many areas, Afghans also rely heavily on traditional structures such as the shura or jirga (provincial, district, tribal, or village level gatherings of elders) to dispense justice and resolve disputes. However, shuras at the higher levels are often under the control of local or regional commanders." [41a] (p8)

**5.56** A Danish fact finding mission to Afghanistan in March/April 2004 reported that "The UNHCR found that there is no rule of law in any place in Afghanistan, but local mechanisms for the solving of conflicts exist. People with influential relatives are likely to find their way out of a conflict." [8] (section 5.2.1)

**5.57** The Danish fact finding mission also reported that

> "The UNAMA [United Nations Assistance Mission in Afghanistan] was of the opinion that the institutions, which should protect people against assaults, are not powerful enough to do so if the perpetrators are warlords or powerful persons from the government or the police force. The UNAMA had knowledge of citizens who have out standings [sic] with powerful individuals and therefore were not safe in Kabul, and have had to flee the country. There are cases where parents and siblings to the persecuted have been involved too...The Italian Embassy explained that there are major geographical differences in the ability of the legal system to provide rule of law and justice. The system is not satisfactory anywhere in the country, and even in Kabul that is regarded as the best functioning area considerable improvements are necessary. Everywhere in the country judges are subject to interference in their work. No judge is free to make rulings solely according to his own judgement. This lack of independence also applies to the police. The source pointed out that the legal system including the police and other administrative offices are influenced by the general security situation in the country." [8] (section 5.2.1)

**5.58** Freedom House Report of 9 September 2004 noted that "There is no functioning nationwide legal system, and justice in many places is administered on the basis of a mixture of legal codes by judges with minimal training. In addition, the influence of armed power brokers and political factions over the judiciary remains strong. The Karzai administration's plans to rebuild the judiciary have proceeded slowly, as the Judicial Reform Commission tasked with overseeing the process of legal reform has thus far operated with limited effectiveness, and funding from donors has been generally inadequate." [41b] (p3)

**5.59** On 11 November 2004, the Guardian newspaper reported that

"The reconstruction of Afghanistan has yet to extend to the rule of law. The legal system, which analysts say is the cornerstone of any lasting peace, remains in tatters. There are just a handful of courthouses in the main cities, and virtually no defence lawyers. Most judges are religious leaders with no legal qualification. Even the law itself is murky - many of the original statutory texts from the 1960s and 70s have been destroyed. In the countryside, most crimes are still decided by village elders. Perpetrators can avoid punishment for crimes as serious as murder by paying "blood money" or giving away a daughter in marriage. "Effectively, there is no legal system," says Alex Thier, a fellow at the Stanford Institute for International Studies and expert on Afghan legal systems... Afghanistan's legal system is a hybrid of civil and sharia rulings that, in theory, favours secular law. Since 2001 the top judicial ranks have been dominated by Islamic fundamentalists, who are pushing for universal application of sharia.

Concern centres on the powerful Chief Justice, Fazl Hadi Shinwari. The cleric has no legal training, although he once ran a Pakistani madrassa, and has links with a hardline, Saudi-backed militia. Since his appointment in 2001 Mr Shinwari has packed the benches with mullahs... Two months ago Mr Shinwari tried to bar a presidential election candidate, Latif Pedram, for questioning the treatment of women under Islamic practices such as polygamy. "I will never accept and am not obliged to learn any law or regulation opposing Islamic law," he has said." [16a]

**5.60** On 26 November 2004, the UN Secretary-General reported that

"The general assessment of the justice sector is that there is weak management and communication among justice institutions, and this needs to be addressed by coordination at all levels. The absence of implementing legislation for organizing the justice system compounds these problems. In addition, after 25 years of war, the justice sector lacks the required number of skilled staff, and there is a real need to build the capacities of existing justice-sector staff.

Under the new Constitution the Supreme Court is the highest judicial organ in Afghanistan, and its structure and administration are well defined. The physical facilities of the permanent justice institutions, including the Supreme Court, the Attorney General's office and the Ministry of Justice, are currently undergoing rehabilitation with support from UNDP.

Legal education reform, also supported by UNDP, is a crucial step for ensuring a new generation of judicial staff. Two legal education systems exist in parallel: the Faculty of Law and Political Studies, following the old French model, and the Faculty of the Shariah. Both have very old curricula that have not been revised over the past 25 years." [39p] (p8-9)

**5.61** On 5 December 2004, a UNAMA spokesman reported the completion of a 16-month training programme for the Afghan judiciary, which was designed by the International Development Law Organisation (IDLO) in collaboration with the International Institution of Higher Studies in Criminal Sciences (ISISC). The training's objectives were to train a significant number of members of the judiciary to improve the administration of justice and to form some of them to serve later as trainers for others. "The program involved over 450 judges and prosecutors, around 150 of them

from Kabul, the remainder from the provinces. Approximately one third of the participants are women. Each participant received 300 hours of practical training in some 20 topics including civil, commercial, administrative, criminal law, as well as codes of conduct for the judiciary." [40f] (p1-2)

**5.62** On 4 February 2005, an article by the Institute for War and Peace Reporting (IWPR) noted that President Karzai had re-appointed all but one of the nine high court judges he had initially appointed to the Supreme Court in December 2001. The article reported that observers said the President had missed an opportunity to reform the country's ineffective judicial system. The IWPR reported that

> "Supreme court spokesman Wahid Muzhda, in an interview with IWPR, acknowledged that the court has had problems with corruption. He blamed, in part, the unstable political and security situation and said that many high-level staffing decisions were made through political influence or outright intimidation, degrading the calibre of judicial appointees. "The influence of weapons and the weakness of the government led to bribery in the supreme court and the judicial system," he said.
>
> Many had hoped that this situation would change when Karzai announced the new nine-judge court last month. But instead, Karzai made only one change in the previous court's composition, removing Fazal Ahmad Manawi, who had been deputy head of the supreme court, and appointing Ayatollah Mohammad Hashim Salehi, a Shia cleric. Salehi is the first Shia to be appointed to the court in overwhelmingly Sunni Afghanistan. Chief Justice Fazl Hadi Shinwari, seen as a conservative, retained his post... Presidential spokesman Hamid Elmi denied politics played a role in Manawi's dismissal. "These changes in the supreme court were not because of any political concerns," he said. "The government just tried to make a better judicial system." Muzhda, the court's spokesman, applauded the appointment of the new judge. He called Salehi "a highly educated and a very experienced judge", and said Manawi had been removed because of concerns over his political connections. [73] (p1-2)

**5.63** The IWPR article also reported political analyst Mohammad Qasim Akhgar as saying the court is currently made up of "fundamentalists". According to Akhgar "The concern is that supreme court members have different views toward democracy, because all of them are mullahs [Muslim preachers] and maulavis [Islamic scholars] and don't have contemporary knowledge of international and [Afghan] civil law," said Akhgar. "Another concern is the judges' opinion about real democracy because they are all mullahs who don't have knowledge of modern human rights." [73] (p2-3)

**5.64** The same IWPR report also noted that

> "Under the constitution, members of supreme court and judges are prohibited from being involved in politics until after their terms have concluded. Judges on the supreme court are appointed by the president and serve staggered terms, with three being appointed to four-year terms, three to seven-year terms and three to ten-year terms. All appointments need to be confirmed by an as yet unelected parliament. Because the country's legal framework is a combination of both Islamic and civil law, the constitution requires that the justices possess

higher education degrees in areas [sic], a standard most on the bench currently fail to meet...

So far, any and all attempt to reform the country's court system in general and the supreme court in particular have been unsuccessful. Habibullah Ghalib is a member of the government's judicial reform commission, a special body created by Karzai in November 2002. He told IWPR that his panel had not been consulted in advance about the latest supreme court appointments. "The commission put forward a suggestion [in January 2003] to the supreme court about getting rid of people who don't have experience and a high level of education," he said, "but the supreme court ignored us and replied by saying that it is an independent organisation." [73] (p2-3)

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**Land Court**

**5.65** In a report on land issues published in September 2003, UNHCR advised that

"There is a strong and evident lack of faith in the effectiveness of the existing judicial system. As such, returnees, similar to other Afghans, hardly resort to the local courts when exploring solutions to land disputes... In the few cases where returnees have accessed the legal channel, they have had to wait for many years before their cases were processed...Given the lack of faith in the legal channel, the parties continue to largely rely on the informal and tribal dispute resolution mechanisms. Most villages establish councils of representatives or elders, otherwise known as "shuras" in order to tackle various kinds of disputes that arise at the village level. The effectiveness of these informal mechanisms has been mixed, and is also affected by the power structure in the village or district. It has however managed to solve many disputes and conflicts among individuals in a peaceful manner that is acceptable to both parties. " [11g] (p11-12)

**5.66** A briefing published by Minority Group International (MRG) in November 2003 noted that

"A Land Court has been established to address the property concerns of returnees, but it is overburdened, politicized and, like Afghanistan's formal courts, subject to both intimidation and widespread corruption. More recently, a special commission has been established to look at the issue of land rights following the high-profile demolition of some houses in the Shiropur district of Kabul to make room for private houses for a number of government ministers. In the meantime many Afghans prefer to settle disputes informally, using customary practices." [76] (p5)

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**Legal Rights/Detention**

**5.67** Article 31 of the Constitution adopted in January 2004 states that "Every person upon arrest can seek an advocate to defend his/her rights or to defend his/her case for which he/she is accused under the law. The accused upon arrest has the right to be informed of the attributed accusation and to be summoned to the court within the limits

determined by law. In criminal cases, the state shall appoint an advocate for a destitute... The duties and authorities of advocates shall be regulated by law." [81b] The constitution also states that "All final decisions of the courts are enforceable, except for capital punishment, which is conditional upon approval of the President." [81b]

**5.68** Human Rights Watch (HRW) recorded in 2004 that Afghanistan had ratified the International Criminal Court Treaty (ICC) on 10 February 2003. HRW noted that "The International Criminal Court (ICC) is able to investigate and prosecute those individuals accused of crimes against humanity, genocide, and crimes of war. The ICC complements existing national judicial systems and will step in only if national courts are unwilling or unable to investigate or prosecute such crimes. The ICC will also help defend the rights of those, such as women and children, who have often had little recourse to justice." [17g]

**5.69** In November 2003, the Lawyers Union of Afghanistan - the only lawyers union in Afghanistan - reported that "The number of registered attorneys is changeable and there is no adequate information about the number of attorneys from provinces. There are 20 registered attorneys in Kabul." [80] (p2)

**5.70** The Danish fact finding mission of March/April 2004 reported that

> "The Lawyers Union of Afghanistan explained that 30 (thirty) years ago the Afghan law was based on French and Egyptian models. If the secular law could not be applied in a given area, they supplemented it with Sharia law. This practice was followed until the fall of Najibullah were [when] all civil laws were repealed, and until the end of the Taliban regime only Sharia laws were employed. After the fall of the Taliban regime, the Afghan nation has been striving to reconstruct the legal system and to bring in new laws or to reintroduce laws from Najibullah's time. In the meantime, only Sharia laws are used in the provinces. The source also mentioned that punishment like amputation has not been used since the fall of the Taliban regime. The source pointed out that everybody deploys Sharia law even in Kabul. This extends to prosecutors, judges and defence lawyers." [8] (section 5.2.2)

**5.71** The same report also noted,

> "The UNAMA explained that in practice secular law, Sharia law, tribal law and local customs are applied. The Constitution solely implies that the country is Islamic. Sharia law is often practiced in courts and other laws are used as a supplement...The Italian ambassador explained that secular law is above Sharia law. Thus, it is forbidden to use Sharia law when it conflicts with secular law. In this context it is problematic that most judges only posses [sic] religious training and have no training in secular law... The President of the Supreme Court said that the old laws are still being practiced everywhere in the country. The source mentioned that Sharia laws and the Koran are applied in the courts in relation to penal cases and they are supplemented with secular law if necessary. The source mentioned that the Afghan government in collaboration with the Italians has made a new code of penal law but underlined that according to the new constitution, Afghan law may still not be in conflict with Islam." [8] (section 5.2.2)

**5.72** The Danish fact finding report also stated that "The Italian ambassador

explained that as a part of the law reform they are trying to include a law guiding the relationship between Shuras/Jirgas and the formal legal system. People have recognised that it is impossible to do away with the traditional institutions and are therefore trying to incorporate the Shuras into the formal legal system to the extent that their work are [sic] not in conflict with human rights." [8] (section 5.2.3)

**5.73** The Danish fact finding report further noted,

> "The Lawyers Union of Afghanistan stated that the court system is almost in a state of chaos. When meeting in court, it is possible to be confronted on the first day with a judge who is trained only in religious law. On the next day it might be a judge who has a law degree but uses Sharia law to protect himself against criticism. As a consequence, women continue to be imprisoned for infidelity. The source expected that in time the law reforms would have an impact that will change the present situation. The source explained that corruption is so widespread that access to legal institutions and to rule of law does not exist. Only a few percent of the cases come out with a just or correct ruling. Anybody can start a legal case, but it is the most powerful or influential person who will come out as the winner of the case." [8] (section 5.2.1)

**5.74** The Danish fact finding mission reported that according to UNAMA, "Court sentences are not enforced if the local warlord disagrees with the ruling. It was pointed out by the UNAMA that judges are intimidated in several districts. In many areas, judges and prosecutors are in need of protection." [8] (section 5.2.1)

**5.75** The Lawyers Union of Afghanistan explained to the Danish fact finding mission that, in principle, any ruling made by a district court can be appealed and taken to a provincial court and to the Supreme Court, but in reality there are only three ways of solving problems. According to the source, in order of priority,

> "The first is to go to the warlords, which means that you turn to the most powerful person in your local area with your problem. The most powerful person is the one who possess [sic] most weapons and controls the area/local community. If a warlord or a commander has decided that a certain case should be settled in a particular way, the district or provincial court will not make a ruling that will overrule this. The second is to go to the local tribal council. Tribal councils consist of people who are considered by the local population to be clever, reasonable individuals, and who can solve conflicts... The third and last possibility is to turn to the formal legal system." [8] (section 5.2.1)

**5.76** The Danish fact finding mission of March/April 2004 noted that opinions differed on the situation regarding double jeopardy. The report noted that "The UNHCR had no general information about the occurrence of double jeopardy. They found that the risk of double jeopardy depends on whether a sentence, passed and served abroad, comes to the attention of the authorities in Afghanistan. It is difficult in practical terms to follow up on what happens in Afghanistan and therefore it is even more difficult to keep track on [sic] what sentences have been passed abroad." [8] (section 7.2)

**5.77** The President of the Supreme Court was reported as saying that generally a person will serve his sentence where he committed the crime. However, he also

pointed out that it depended on whether the crime was committed against society or against an individual. If a crime against society had been committed, the individual would not be prosecuted on returning to Afghanistan. However, if someone had committed a crime against a person, for example a murder, there was a risk that the family of the victim could demand the perpetrator to be punished according to Afghan Law. In such cases there could be a risk of double jeopardy. On the other hand, "The Minister for Justice argued that if a sentence has been served abroad it is final. According to the Minister of Justice it does not make any difference whether one is sentenced and punished for murder and there are relatives who wish to present themselves as injured parties. There is no risk of double jeopardy if the offender has served his sentence abroad. The Justice Minister stated in this context that he disagreed with the President of the Supreme Court on this matter." [8] (section 7.2)

**5.78** On 14 March 2004, a UNAMA spokesman reported that "Efforts to reform the juvenile justice system began this month with a national strategy to protect children at risk and victims as well [as] to prevent delinquency and return to a life of crime. In Afghanistan anyone seven years and up can be charged for a criminal offence." [40c] (p2)

**5.79** The Freedom House Afghanistan Country Report 2004 stated

> "As law-enforcement and judicial institutions function at varying levels in different parts of the country, procedures for taking people into custody and bringing them to justice do not follow an established code and often rely on the whims of local officials. Authorities subject Afghans to arbitrary arrest and detention, often with the aim of extracting bribes in exchange for a prisoner's release... According to Article 28 of the criminal procedure code of 1965, which remains in force, police can detain suspects without charge for up to 24 hours during the course of an investigation, which can be extended for up to a week if the police apply to the attorney general's office. However, in many police detention centers, suspects are routinely held for weeks or months on end. This is in large part due to the lack of a functioning judicial system, as well as inadequate police infrastructure in terms of personnel, transport equipment, and holding facilities, especially in the remoter provinces." [41a] (p4)

**5.80** On 12 August 2004 the UN Secretary-General reported that "Because of competing fiscal priorities facing the Government and the low level of donor support for the rehabilitation of the corrections system, very limited progress has been possible in that area. There is still little capacity at the district level for the police to appropriately detain accused persons at the time of arrest. These limitations notwithstanding, restructuring of corrections facilities is under way in Kabul and the refurbishment of the female detention centre in Kabul has been completed." [39d] (p11)

**5.81** The report of the UN appointed Independent Expert of the Commission on Human Rights dated 21 September 2004 noted that

> "Individuals held in Government-controlled prisons are frequently held for months without being charged. Persons who are charged are held for extended periods of time without being tried. In some cases, pre-trial detentions exceed the sentence for the alleged crimes. These individuals, who may well be innocent of any crime, are

held in detention with hardened criminals. In addition, children and juveniles are commonly held in the same cells as violent adult criminals. Corruption throughout the system is rampant." [39q] (para. 60)

**5.82** The US State Department Report 2004 (USSD), published on 28 February 2005, records that

"The Constitution prohibits arbitrary arrest or detention; however, arbitrary arrest and detention were serious problems. Legal and law enforcement institutions operated unevenly throughout the country, and justice was administered on an intermittent basis according to a mixture of codified law, Shari'a law, and local custom.

Human rights groups reported that local police authorities extorted bribes from civilians in return for their release from prison or to avoid arrest... Judicial and police procedures and practices for taking persons into custody and bringing them to justice followed no established code and varied depending on the area and local authorities. Some areas had a more formal judicial structure than others. Limits on lengths of pretrial detention were not respected. The AIHRC received several hundred reports of pretrial detention during the year. According to the laws, police can detain suspects for up to 24 hours, primary and secondary courts can detain for up to 2 months, and the final court can detain for up to 5 months." [2d] (p3)

**5.83** The USSD 2004 also notes that

"Private prisons were a problem. The country's intelligence agency ran at least two prisons, and there were unconfirmed reports of private detention facilities around Kabul and in northern regions of the country. Representatives of international agencies and the AIHRC were unable to gain access to these prisons during the year. The AIHRC reported numerous cases of arbitrary arrest and detention. For example, in Ghazni Province, Governor Asadulah arbitrarily arrested seven suspects in December and did not allow anyone to visit these detainees. No charges were filed, and these detainees remained incarcerated at year's end. During the year, the Governor of Helmand arbitrarily arrested a suspect and detained him for 4 months. At year's end, no charges were filed against the suspect, and the suspect remained in prison at year's end.

The Constitution provides for access to legal counsel (see Section 1.e.[in USSD report]). The country's law limited pretrial detention to 9 months; however, there were documented cases where suspects were held for longer periods. There were credible reports that some detainees were tortured to elicit confessions while awaiting trial." [2d] (p3-4)

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**Death Penalty**

**5.84** The Constitution of January 2004 allows for capital punishment, conditional on the approval of the President. [81b]

**5.85** In June 2004, Amnesty International reported that

"Afghanistan has carried out its first execution since the establishment of the interim government in late 2001. Abdullah Shah, a military commander from Paghman, was executed in the Afghan capital, Kabul, around 19 April 2004. He had been convicted in October 2002 on 20 counts of murder in special court proceedings which fell far short of international fair trial standards. Abdullah Shah had no defence lawyer at his trial, the hearing was held in a closed court and the chief judge in the initial trial was dismissed for accepting bribes.

Another death sentence was imposed by an Afghan court in May [2004]. Reuters news agency reported on 29 May that a suspected member of the former Taleban government, Abdullah Jan, had been sentenced to death in connection with a bomb attack in the southern city of Kandahar which killed 15 schoolchildren and wounded 50 others. Abdullah Jan maintained that he was not involved in the attack. No further information was available on his trial.

AI has urged Afghan President Hamid Karzai to declare a formal moratorium on executions in line with assurances given to AI earlier in the year by his office that he would not approve any judicial executions until the criminal justice system was reformed. After AI issued a public statement in April [2004] concerning the execution of Abdullah Shah, the Presidential chief spokesperson publicly stated that all judicial executions will be suspended for the time being." [7h] (p3-4)

**5.86** On 28 April 2004, BBC News reported that, according to Afghan officials, the execution for murder of a former military commander does not mean a policy of capital punishment has been reintroduced. The report noted "Jawed Ludin, chief spokesman for President Hamid Karzai, said the case was an exception, not the rule... He told Reuters news agency it was "premature" to say the execution of Shah meant capital punishment had resumed in Afghanistan. There are about 20 people in Afghan jails who have been sentenced to death, court authorities told Reuters." [25i] The 2004 Foreign and Commonwealth Office (FCO) Annual Report on Human Rights observed that "It is not yet clear whether the Afghan transitional administration will carry out any further executions, although the courts have continued to hand down the death sentence in certain cases." [15a] (chapter 1.3)

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## Internal Security

### Developments following 11 September 2001

**5.87** In a report dated 27 September 2004, Save the Children recorded that "Twenty-five days after the terrorist attacks of 11 September 2001 against the USA, Coalition troops were deployed to Afghanistan under OEF [Operation Enduring Freedom] – the US-led war on terrorism. These Coalition forces, numbering approximately 11,000 as of June 2004, continue their combat operations, especially in southern and south-eastern Afghanistan, under US command. The UK's contribution is limited to approximately ten military personnel posted to the OEF headquarters in Kabul." [50] (section 3.4.1.)

**5.88** The final provisions of the Bonn Agreement of 5 December 2001 included: "Upon the official transfer of power, all mujahidin, Afghan armed forces and armed groups in

the country shall come under the command and control of the Interim Authority, and be reorganised according to the requirements of the new Afghan security and armed forces." The participants in the UN Talks on Afghanistan in Bonn requested the assistance of the international community in helping the new Afghan authorities to establish and train new Afghan security and armed forces. Acknowledging that this would take some time, a UN mandated force was also requested to assist initially in the maintenance of security for Kabul and its surrounding areas and which could be progressively expanded as appropriate to other areas. [39b]

**5.89** The Save the Children report of September 2004 recorded that "The ISAF [International Security Assistance Force] was subsequently authorised by UN Security Council resolution 1386 (20 December 2001) to 'assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas'." [50] (para. 3.4.2) The report also noted that "Since the fall of the Taliban regime three distinct formulations of military engagement have been pursued by the international community in Afghanistan: Operation Enduring Freedom (OEF); the International Security Assistance Force (ISAF); and the PRTs [Provincial Reconstruction Teams]." [50] (section 3.4)

**5.90** The 2004 Berlin Conference on Afghanistan resulted in the Berlin Declaration of 1 April 2004. The participants at the international conference stated that they were determined to assist further in the stabilisation of the security situation throughout the country, in particular with the deployment of PRTs, to contribute to reconstruction and development efforts. The participants in the conference agreed that, although responsibility for providing security and enforcing law and order throughout the country resided with the Afghans themselves, the engagement of the ISAF and Operation Enduring Freedom (OEF), at the request of and welcomed by the Afghan Government, would be continued until such time as the new Afghan security and armed forces are sufficiently constituted and operational. [40t] (p2)

(See also ISAF and PRTs paragraphs 5.125 – 5.150 for more detailed information)

**Security Sector Reform (SSR)**

**5.91** On 3 December 2003, the UN Secretary-General reported that "In the last eight months the Government has begun the process of reforming national security institutions. This process requires coordinating five interrelated efforts: (a) disarmament, demobilization and reintegration [DDR] of armed factions; (b) building a new national army [ANA]; (c) training a new national police force and border guard; (d) rehabilitating the justice sector; and (e) counter-narcotics." [39j] (p6-7)

**5.92** On 16 May 2004, a UNAMA spokesman reported on the Afghanistan Stabilization Programme (ASP), a two year government initiative designed to make urgent changes in the way provinces and districts are governed. According to the spokesman, "It [the ASP] intends to re-establish basic security and good governance at district and provincial level through sequenced and coordinated projects that focus on security, governance, and reconstruction. The ASP is managed by a Taskforce comprised of the Ministries of the Interior, Rural Rehabilitation and Development, Finance, Communication, and Urban Development and Housing, with support from the United Nations, international security forces, NGOs, local communities and the

private sector." [40j] (p2-3)

**5.93** The World Bank report of September 2004 noted that

> "To date, progress in security sector reform (SSR) has been limited, and greater efforts are required to extend the rule of law beyond Kabul into major regional cities and the provinces." The report noted, however, that there had been some modest achievements with the initiation of DDR; the establishment of the Counter Narcotics Directorate and Counter-Narcotics Police and a National Drugs Control Strategy adopted; 7-8,000 police fully trained and police academies established in Kabul, Gardez, Kandahar, Kunduz, and Mazar-e-Sharif; reforms made to the staffing and structure of the Ministry of Defense; 9,500 soldiers recruited to the ANA; and some early judicial reforms initiated. Nevertheless, "Despite these actions, the security situation across much of the country has deteriorated, interfering with the Government's state-building agenda. And the demilitarization of Kabul, mandated by the Bonn Agreement, has not yet been fully implemented." [69a] (para. 4.16)

(See Sections on DDR; Police and Army for more detailed information)

**5.94** BBC News reported on 24 December 2004 that the Defence Minister, General Mohammed Fahim [Khan], a veteran warlord, had been dropped from the new cabinet. [25af] General Abdurrahim Wardak replaced him as defence minister in the cabinet announced on 24 December 2004. [67]

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**General security situation**

**5.95** A Freedom House report updated on 9 September 2004 provided the following overview of the security situation in 2003:

> "Numerous civilians have been killed as a result of bombings, rocket attacks, and other acts of terror by unknown assailants; during localized fighting between ethnic factions, particularly in the north; or during skirmishes between Taliban supporters on one side and government forces and the U.S. military on the other. Both the foreign and Afghan staff of a number of international organizations and nongovernmental aid agencies have been targeted for attack, particularly in the provinces with an active Taliban presence, and several dozen were killed during the year. In October [2003], after months of reluctance on the part of the international community to significantly expand the 5,300-strong International Security Assistance Force (ISAF), the United Nations voted that the ISAF should be allowed to operate beyond Kabul. Although Germany deployed a contingent of troops in the northern city of Kunduz shortly thereafter, other donors remained loath to commit extra troops, and the security situation in much of the country continued to be extremely poor." [41b] (p4)

**5.96** The 2004 Freedom House Afghanistan country report noted that

> "Several decades of political strife, during which time armed factions fought for control of territory and resources, have left Afghanistan a heavily militarized society in which the rule of the gun largely supersedes the rule of law. Currently, however,

no military force has authority throughout the entire country. Coalition forces based mainly in southern and eastern Afghanistan are focused on rooting out remnants of the Taliban rather than providing security." [41a] (p9-10)

**5.97** The UN Secretary-General's report dated 19 March 2004 noted that factional feuds, rivalries and, increasingly, drug-related incidents continued to affect the lives of the population. Moreover, "The weak or corrupt provincial and district administrations, the continued rule of local commanders, and the absence of effective national law enforcement are more common sources of insecurity for the population than terrorist violence. These factors are likely to have contributed to a recent deterioration of security in the north-east, traditionally one of the safest regions of the country, where rival commanders have been fighting over land, possibly driven by attempts to expand drug production." [39o] (p4)

**5.98** A number of sources interviewed by the Danish fact finding mission in March/April 2004, including UNAMA, the EU Special Representative to Afghanistan and the Danish and Norwegian Charge d'Affaires, said that the central government had increased its influence in the provinces during the previous 18 months. However, local warlords continued to be very powerful in the provinces, especially outside the provincial capitals. According to the International Organisation for Migration (IOM), the central government has only been able to increase its power slowly outside Kabul and most regions outside Kabul continued to be led by local warlords. [8] (section 4.1)

**5.99** In May 2004, the European Council on Refugees and Exiles (ECRE) advised

"Beyond Kabul, the absence of an effective system of law and order means that the various power holders can act with impunity. The population at large is thus subject to the arbitrary use of power and the government is not in a position to accord protection from abuses of such power. Allegations continue that communities are often deprived of their basic rights and are victims of serious human rights abuses, sometimes by the police themselves.

Continuing efforts are being made by the international community to help build a new Afghan National Army and police, yet the Afghan Transitional Administration has very little capacity to seriously address the prevailing insecurity or to impose its authority." [37] (p2)

**5.100** In June 2004 the Afghan Research and Evaluation Unit (AREU) published a briefing paper which stated

"Insecurity in Afghanistan has many sources and facets. One source of insecurity is common crime, or banditry, which can be the product of individuals or armed groups opportunistically taking advantage of the absence of effective Afghan security institutions. Other major sources of insecurity include: anti-Government and/or anti-Coalition groups, who are responsible for more than their fair share of crime against their fellow Afghan citizens; the illegal drug economy that provides financial support for both terrorist groups and factional commanders; and neighbouring and regional powers, many of whom support and wield influence through client insurgents or factional commanders." [22a] (p6)

**5.101** The AREU report also found that the minimal investments of the international community, despite repeated calls by President Karzai, the UN, NGOs and the Afghan people to do more, had resulted in a security situation that was deteriorating daily and was markedly worse than at the start of the Bonn process in January 2002. The report also stated that "At the level of the individual Afghan citizen, where a local commander or police officer arbitrarily jails a villager or forces a family's daughter into an unwanted marriage, where a corrupt local official extorts an unlawful tax, or where two families engage in a violent dispute over land or water rights, to date *no one* – Afghan or international – is likely to play a visible or effective role to redress the situation." [22a] (p1)

**5.102** The World Bank reported in September 2004 that "Insecurity, in all its forms, is an extremely serious problem in Afghanistan. The almost total absence of well-trained and accountable police and judiciary services has led to a culture of security violations and impunity. The existence of tribal militias, security forces loyal to regional power brokers, drug mafias, and terrorist bands fosters insecurity and leads to tensions between these forces and the modest security forces loyal to the Government." [69a] (para. 4.47)

**5.103** The UN appointed Independent Expert of the Commission on Human Rights reported to the UN General Assembly on 21 September 2004 that

> "The Government has distinct security forces: ANA, under the direction of the Ministry of Defence, the Afghan police services (composed of the National Police, the Border Police, as well as local and regional police), under the direction of the Ministry of the Interior, and an intelligence apparatus, the National Security Directorate (NSD), under the direction of the Presidency. The personnel of these institutions are for the most part poorly trained, underpaid, and lack motivation to serve the Government's policies of security, reconstruction and the affirmation of the rule of law. The allegiances of these bodies' personnel remain linked to ethnic and local leaders. There is poor coordination between these bodies, reducing their effectiveness. There is also no system of internal control over illegal, corrupt, or unauthorized practices or to stem human rights violations. Even combined, these forces are unable to control the warlords, local commanders, drug cultivation and trafficking, common criminality and human rights abuses." [39q] (para. 39)

**5.104** The same report also noted that "The presence and authority of these warlords is evidenced at every level of the Government of Afghanistan, from the Cabinet to regional and local positions throughout the country." [39q] (para. 31)

(But see also Section 5, Presidential Election Results for the results of the October 2004 presidential election and Annex D for the new cabinet inaugurated December 2004)

**5.105** The Save the Children report of September 2004 stated that "The security situation in Afghanistan has deteriorated significantly since early 2003, with serious repercussions for non-governmental humanitarian agencies (NGHAs) as well as Afghans. There are four main sources of insecurity: (i) military and terrorist activities of various paramilitary groups opposed to the current government and political process; (ii) inter-militia fighting; (iii) increased general lawlessness and banditry;

and (iv) violence related to the narcotics trade." [50] (p2)

**5.106** The report by the UN appointed Independent Expert on Human Rights in Afghanistan dated 21 September 2004 noted that

> "As a result of decades of armed conflict, ethnic allegiances and the prolonged absence of a legitimate centralized State, local and regional power within Afghanistan is subject to the authority exercised by a variety of armed actors commonly referred to as warlords. These warlords' local commanders wield authority through a combination of arms, mutually supportive relationships with other armed actors, social networks and ethnic allegiances. Some key figures in Afghan politics might be described as classic warlords through their exercise of a monopoly of economic and military authority over a sizeable area. Others, who might be termed petty warlords or local commanders, exercise authority over a relatively small area and have only minor backing by genuine force. Often, the power of less dominant commanders is the result of linkages and networks with a number of armed actors. Overall, there exist numerous non-State armed groups throughout the country. Alone, few of these groups and their leaders pose a fatal threat to a unified, central Government, but combined, they do. They also present a significant impediment to a unified national Government capable of preventing these groups from committing gross violations of fundamental human rights." [39q] (para. 29)

**5.107** In a report to the Security Council on 26 November 2004, the UN Secretary-General noted that

> "In the months prior to election day [9 October 2004] and the deployment of additional security forces which took place in the final weeks before the elections, there was a build-up of serious security incidents. Some of these were directed against the electoral effort, but others were directed more generally against peace and reconstruction activities. On 10 June [2004], 10 Chinese road workers were killed, the highest death toll suffered by non-combatant expatriates in a single incident in Afghanistan. The killing of five employees of Médecins sans frontières on 2 June [2004] was the worst attack against humanitarian workers since the fall of the Taliban, causing the organization to withdraw completely. On 12 September [2004], following the decision by President Karzai to replace the Governor of Herat, Ismail Khan, several hundred protesters attacked and burned the UNAMA office in Herat and looted the offices of other United Nations agencies, non-governmental organizations and the Afghan Independent Human Rights Commission. The fact that these attacks occurred in areas previously thought not to be at high risk was of serious concern. Similarly, security in the south and south-east deteriorated to the point where large areas were effectively out of bounds to the assistance community, and government officials were frequent targets of attacks. There were real concerns over the impact that this obvious deterioration of the security situation might have on the credibility of the elections. Significant extraordinary measures were therefore taken to safeguard the election." [39p] (p5-6)

**5.108** The International Crisis Group (ICG) report of 23 November 2004 also commented on the security situation leading up to the presidential elections:

"The lead-up to the election was marked by insecurity as insurgent forces, principally the Taliban but also including Hizb-i Islami forces loyal to Gulbuddin Hikmatyar, increased their activities, hoping to disrupt the process, including voter registration. Regional and local militia commanders refused to disarm, seeking to preserve their authority through the election period. Mounting centre-province tensions also resulted in armed clashes between commanders backed by the Kabul government and those resisting the extension of its authority." [26d] (section 11.C)

**5.109** The Secretary General's report of 26 November 2004 also noted that

The generally calm security environment on election day was due in part to the additional International Security Assistance Force (ISAF) and coalition troops deployed before the election. The cooperation, planning and support provided by these forces was exceptional, and this indicates that they should remain in Afghanistan for the parliamentary and local elections. Security was also greatly enhanced by progress made in the training and deployment of the Afghan army and police forces, which performed extremely well on election day, whether in protecting polling stations, deterring threats or escorting election materials.

In the aftermath of the election, and with a reduction in the coalition and ISAF forces, three broad security threats continue to effect the Bonn process: (a) extremist or terrorist attacks, (b) factional violence among militia forces and (c) violence and other threats to human security by criminal elements, in particular those involved in the trafficking of drugs. This reality was tragically borne out by a suicide bombing in the centre of Kabul on 23 October [2004], in which two people lost their lives. A few days later, on 28 October [2004], three international electoral staff were abducted in the Kart-e-Parwan district of Kabul in broad daylight. As a result, additional security measures have been taken to enhance the safety of staff — the most stringent measures since 2001. The abducted staff were subsequently released on 22 November [2004]." [39p] (p6)

**5.110** The Human Rights Watch (HRW) World Report on Afghanistan published in January 2005 noted that

"Political repression, human rights abuses, and criminal activity by warlords—the leaders of militias and remnants of past Afghan military forces, who were brought to power with the assistance of the United States after the Taliban's defeat—are consistently listed as the chief concerns of most Afghans. However, the marginalization of two major warlords—Marshall Fahim, the first vice president and defense minister, and Ismail Khan, self-styled Emir of Herat—raised hopes that President Karzai and the international community had begun to reverse their policy of relying on warlords to provide security." [17f] (p1)

**5.111** The HRW report also noted that "The United States, the most important and involved international actor in the country, has started addressing Afghanistan's security problems more seriously, but has not taken the steps necessary to lead other nations in providing security, troops, funding, and political leadership to secure Afghanistan's future. NATO member states and other potential troop contributors are also to blame for not providing more troops to ISAF and adequate overall funding for

international efforts in Afghanistan." [17f] (p4)

**5.112** The US State Department Report 2004 (USSD), published on 28 February 2005, recorded that "Although a few major provincial centers remained under the effective control of regional commanders for most of the year [2004], the Government made progress in asserting its authority, and the commanders acknowledged the central government's legitimacy. Karzai dismissed and appointed new governors to many of the 34 provinces." [2d] (p1)

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**Security situation in different regions**

**Kabul**

**5.113** In his July 2003 report the UN Secretary-General said "The presence of ISAF in Kabul has greatly contributed to security in the capital, reducing crime and instilling a measure of confidence in its citizens." [39j] (p20) UNHCR advised in July 2003 that "Although the security situation in Kabul is better than elsewhere because of the presence of ISAF, certain persons could still be targeted in Kabul, if the persecutors intend to target them." [11j] (p41)

(See also Section 5 ISAF paragraphs 5.125 - 5.150 for further information on ISAF's role)

**5.114** The UN Secretary-General's report dated 19 March 2004 noted that,

> "Kabul itself is not invulnerable. Sophisticated attacks were directed against the International Security Assistance Force (ISAF) on 27 and 28 January [2004], when successive suicide car bomb attacks struck a Canadian and a United Kingdom patrol, killing two soldiers, injuring seven, and killing three Afghan civilians. This suggests that, while the preferred modus operandi of extremist groups is to carry out attacks against soft targets, the risk of suicide attacks against well-protected, international military targets remains of concern." [39o] (p4)

**5.115** UNAMA advised the Danish fact finding mission of March/April 2004 that the presence of ISAF forces is the main reason for the relatively good security situation in Kabul. According to the Danish Committee for Aid to Afghan Refugees (DACAAR), it is a long time since there were any attacks directed against the civilian population in Kabul. DACAAR noted that "The attacks that have taken place have been directed against the ISAF and other foreign players, for example the bombing of the ISAF in January 2004". The Swedish Committee for Afghanistan (SCA) said that Kabul is a relatively peaceful city and the degree of crime is on a level one would expect in a city the size of Kabul. The source mentioned, however, that there have been bomb attacks in Kabul. [8] (section 3.2.1)

**5.116** In May 2004, the European Council on Refugees and Exiles advised that

> "In Kabul, the security and human rights situation has been, to a limited degree, alleviated by the presence of the International Security Assistance Force (ISAF) and by the significant international presence in the capital. However, the Afghan government continues to lack effective control over Kabul, and efforts to create a

new national army and police force and to reform the judicial system throughout the country remain at an embryonic stage. It is clear from human rights and other reports that the militia, which carry out the primary policing function in the capital, offer the population no protection from human rights abuses." [37] (p2)

(See also Section 5 ISAF and PRTs paragraphs 5.125 – 5.150)

**Central**

**5.117** The Danish fact finding mission of March/April 2004 also noted "The UNHCR explained that two factions of the Hazara party, Hezb-e Wahdat, control the southern part of the central areas. There are clashes between the two factions, led by Karim Khalili and Mohammad Aqbari respectively." [8] (section 3.2.2) UNHCR were reported as saying that the New Zealand PRT has had an influence on the security situation. [8] (section 3.2.2)

(See also Section 6B Hazaras paragraphs. 6.148 and 6.152 for more information on the situation in the central province of Bamian.)

**South and southeast**

**5.118** Most sources interviewed by the Danish fact finding mission in March/April 2004 were reported as saying that security in southern, south-eastern and eastern Afghanistan is deplorable. As a result, many organisations do not operate in these areas. IOM said that security in these areas is poor for foreigners and Afghans working with foreigners but the situation is reasonably good for ordinary Afghans. [8] (section 3.2.3)

**5.119** The Danish report further noted that UNCHR found the security situation in Nangarhar in the east of Afghanistan was relatively stable and the organisation had access to half of the districts in the province. The report noted that

"According to the UNHCR, very few people return to the provinces of Kunar and Nuristan in eastern Afghanistan. Gulbuddin Hekmatyar's party Hezb-e Islami operates in these areas. The UNHCR explained that the organization currently does not have any fully functioning offices in Khost and Kunar due to the poor security situation there...The SCA does not work in Kunar, Khost, Laghman or Paktika because the presence of the coalition forces causes instability... The SCA found that local warlords, who use all their means to maintain control and to exploit the local resources especially for the growing of opium, intimidate the local population. The source found that in some areas the security situation is very unstable and equivalent to the situation before Taliban achieved power. The SCA was informed that in the eastern provinces conflicts are particularly related to the access of land." [8] (section 3.2.3)

**5.120** UNHCR described the security situation in southern Afghanistan as very unstable. The report stated that "The UNHCR do not advise people to return to the southern and southeastern parts of the country. Nevertheless some people do so, and according to the source these people certainly have a network to return to." [8] (section 3.2.3)

**5.121** Various sources were consulted by the Danish fact finding mission in March/April 2004 about the Taliban presence in the southern, south-eastern and eastern areas. According to UNHCR, Taliban infiltrators in these areas represented

a lower risk for the local population than for international organizations, aid workers and people who worked for these groups. Due to their limited presence in the area, UNHCR was not in a position to monitor the situation for the local population or to offer them any protection. The report noted "The UNHCR found that the local population perceives the Taliban infiltrators coming to their villages as a threat, due to the fact that [the] Taliban intimidates the population in some areas." [8] (section 3.2.3)

**5.122** The Danish report also noted that "The ICG [International Crisis Group] took the view that the local populations in southern, south-eastern and eastern Afghanistan works [sic] under pressure from both Taliban and the coalition forces. Taliban put pressure on the civilian population not to work with the coalition forces and the coalition forces pressurise the civilian population not to work with Taliban." [8] (section 3.2.3)

(See also Section 6C, Taliban paragraphs 6.341 to 6.359)

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**North**

**5.123** The Danish fact finding mission of March/April 2004 also reported that various sources consulted including UNHCR, UNAMA and IOM, were of the view that security in northern Afghanistan was fairly good, but there were tensions between General Dostum and Mohammad Atta.

> "The UNHCR explained that there are no major security problems in northern Afghanistan. The area is divided between General Dostum, Mohammad Atta and the Hezb-e-Wahdat party. Every year conflicts between the three factions cost causalities [sic] within military ranks, but do not affect civilians. The UNHCR explained that the Uzbek-party, Junbesh-e-Milli that is led by General Dostum, now controls the entire Faryab province. This has according to the UNCHR [sic] contributed to the stabilization of the province. The human rights situation has improved, and General Dostum has allowed Pashtuns to return to the area. Also the Jowzjan province is controlled by Junbesh-e-Milli. The UNHCR informed that any person who has been involved in conflicts with General Dostum might get into trouble when returning to villages in these provinces." [8] (section 3.2.4)

**5.124** On 2 December 2004, the Institute of War and Peace Reporting (IWPR) reported that there had been an apparent surge in the number of violent crimes being committed in the Mazar-e-Sharif area since the October 2004 presidential election. Two political analysts were reported as saying that Mohammad Younis Qanuni, Haji Mohammed Mohaqiq and General Abdul Rashid Dostum, who came second, third and fourth respectively in October's presidential elections were involved in the crimes. The report noted that "Representatives of Mohaqiq and Dostum have categorically denied their involvement in any increase in crime, and have pledged cooperation with the government. A spokesman for Jamiat-e-Islami [Qanuni's party], who did not want to be named, told IWPR that "gunmen in groups involved in the crimes in the northern region are not linked to our party"." [73m]

(See also paragraph 5.131 below on the expansion of Provisional Reconstruction Teams (PRTs) to the north)

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**International Security Assistance Force (ISAF) and Provincial Reconstruction Teams (PRTs)**

**5.125** A report published by Save the Children in September 2004 recorded that

> "At the end of 2001, parties to the Bonn Agreement anticipated the need for a United Nations-mandated international force to assist in providing security throughout Afghanistan. The ISAF was subsequently authorised by UN Security Council resolution 1386 (20 December 2001) to 'assist the Afghan Interim Authority in the maintenance of security in Kabul and its surrounding areas'. ISAF has a peace-enforcement mandate under Chapter VII of the UN Charter. Initially controlled by various coalition members, NATO took over command of ISAF in August 2003.
>
> NATO's command of ISAF represents the alliance's first mission beyond the Euro-Atlantic area – a result of it having invoked its collective defence provision for the first time in its history, to deal with the security threats in the world post 11 September 2001. As of mid-June 2004, ISAF troops numbered approximately 6,500, from 26 NATO allies, nine partner states, and two other states. ISAF's mandate was expanded by the UN Security Council in October 2003, to support the ITGA [Islamic Transitional Government of Afghanistan] in the maintenance of security in areas outside Kabul. On the basis of this same Resolution, NATO, in December 2003, expanded the role of ISAF to cover the whole country. Several NGOs had previously advocated strongly for the expansion of ISAF's mandate to include security provisioning outside Kabul." [50] (para. 3.4.2)

**5.126** A publication on the NATO website, last updated on 15 February 2005, stated that

> "On 31 December 2003, the military component of the Kunduz PRT was placed under ISAF command as the pilot project and first step in the expansion of the mission. Six months later, on 28 June 2004, at the Summit meeting of NATO Heads of State and Government in Istanbul, NATO announced that it would establish four other provincial reconstruction teams in the North of the country: in Mazar-e-Sharif, Meymana, Feyzabad and Baghlan. This process was completed on 1 October 2004, marking the completion of the first phase of ISAF's expansion. ISAF's area of operations now covers some 3,600 square kilometres in and around Kabul and approximately 185,000 square kilometres in the North and the mission is able to influence security in nine northern provinces of the country.
>
> NATO is currently in the process of filling the requirements for expansion of ISAF to the West, with a view to establish new PRTs, as well as to incorporate existing PRTs, currently under the command of Operation Enduring Freedom." [63b]

**5.127** On 3 December 2003, the Secretary-General reported to the UN General Assembly that "The mandate of ISAF remains unchanged under NATO command, and non-NATO countries continue to contribute troops. The presence of ISAF has greatly contributed to the security environment in Kabul and continues to be well received by the public." [39]] (p 10)

**5.128** In a report published in January 2004, Human Rights Watch (HRW) observed

> "There is no question that ISAF has been modestly successful in increasing security in Kabul, hence helping support the remarkable economic development that the city has witnessed over the last two years, and demonstrating how quickly Afghans can and will work toward creating a civil society if given the space to do so. But even in Kabul and its immediate environs ISAF did not (or could not) carry out one of its central missions, which was to rid Kabul of factional militias. Armed men, particularly those associated with the forces of Defense Minister Marshall Fahim and fundamentalist warlord Abdul Rasul Sayyaf, still roam the streets by day and engage in robbery and banditry by night." [17e] (p5)

(NB. Fahim is no longer Defence Minister and is not in the new Afghan government of 24 December 2004. [67] See also entry in Annex C: Prominent People for further information on Fahim's current status)

**5.129** In June 2004 a report on security policy by the Afghanistan Research and Evaluation Unit (AREU) noted that "Despite Afghanistan being widely proclaimed as NATO's highest priority, the unwillingness of NATO member states to adequately resource ISAF with troops and equipment has seriously undermined the ability of ISAF commanders to do their job effectively." [22a] (p2)

**5.130** Information on the NATO web site, current at 15 February 2005, advised that "PRTs are small teams of civilian and military personnel working in Afghanistan's provinces to provide security for aid workers and help reconstruction work. They are key in supporting the three pillars of the Bonn Agreement: security, reconstruction and political stability. Apart from the Kunduz PRT, there are eight other PRTs under the command of Operation Enduring Freedom, the continuing US-led military operation against terrorist targets in Afghanistan." [63b]

**5.131** A publication on the NATO website, updated on 15 February 2005, stated that the process of establishing four more provincial reconstruction teams (PRTs) in the north of the country (in Mazar-e-Sharif, Meymana, Feyzabad and Baghlan) was completed on 1 October 2004, marking the completion of the first phase of ISAF's expansion. NATO stated that "ISAF's area of operations now covers some 3,600 square kilometres in and around Kabul and approximately 185,000 square kilometres in the North and the mission is able to influence security in nine northern provinces of the country." [63b]

**5.132** A Foreign and Commonwealth Office (FCO) paper dated 20 January 2005 noted

> "Although operating within different military command structures, and emphasising different aspects of activity and composition as determined by the local conditions and terrain, the core tasks of each of the PRTs are consistent across the network, and with NATO OPLAN 10302: a PRT is a combination of international military and civilian personnel based in provincial areas of Afghanistan with the aim of extending the authority of the Afghan central government and helping to facilitate development and reconstruction, primarily by contributing to an improved security environment. PRTs also aim to support

reform of the Afghan security sector ("Security Sector Reform" or SSR) – the demobilisation and disarmament of militias; building an accountable national army and national police force under democratic control; stamping out the drugs trade; and building a legal system. But there is no fixed template for a PRT. Each is tailored to the prevailing security situation, socio-economic conditions, terrain, and reach of the central government." [15b]

**5.133** Commenting on Provincial Reconstruction Teams in January 2004, the HRW report noted that

"By most accounts, the PRTs have somewhat improved security conditions, although this should not be exaggerated: the city of Mazar-i Sharif, for instance, is still a flashpoint of local conflict despite the presence of a well-regarded British PRT. But the real problem with the PRT program is that it is a bandage being touted as a cure. After months of claiming that no expansion of ISAF was possible because it would require thousands of (unavailable) armed troops, it seems dishonest of the U.S. and the European powers to now claim that a few hundred lightly armed reconstruction teams will suffice to secure Afghanistan. The security mandate of the U.S. PRTs is more focused on force protection than the protection of Afghans."[17e] (p5)

**5.134** HRW commented in the same report that "Humanitarian aid organizations, which still provide for many of the basic needs of the Afghan people, vociferously oppose the PRTs' confusion of military and aid missions. Such blurring of distinctions poses a real threat to civilian aid workers, who become viewed as agents of the military forces instead of as independent actors, and thus become targets for attack." [17e] (p5)

**5.135** On 19 March 2004 in a report to the UN Security Council, the Secretary-General reported that

"The deployment of provincial reconstruction teams has contributed to stability in a variety of ways: improvement of the security environment through patrols and contacts with local authorities, assistance to the deployment of national police forces and the Afghan National Army, support to UNAMA in local conflict resolution, security advice and support to voter registration and disarmament, demobilization and reintegration, and support to local security forces through the provincial security task forces. As provincial reconstruction teams are gaining increased access to funds for project implementation, it is important to reaffirm the existing understanding that the teams focus on the creation of a secure environment, and that projects under the team umbrella are implemented in high-risk areas rather than in the safe areas where the assistance community can operate freely. UNAMA will continue to work with the coalition and ISAF to facilitate the all-important dialogue with the aid community." [39o] (p11-12)

**5.136** The AREU report of June 2004 stated that,

"The PRT concept has become the central focus for much of the security sector debate within and between the military, NGOs, policy-makers and academics. The PRTs were never the primary way in which the Coalition engaged with local

authorities, with most only covering the provincial center and those surrounding areas that could be visited in a day. Moreover, in both concept and name, the PRTs have repeatedly suffered from a lack of clarity. Apart from antagonising NGOs, the use of the word "reconstruction" created false expectations, as does their suggested renaming as Provincial Security Teams. Unless reconfigured and reinforced, PRTs do not have the integral combat capability to either provide security or operate without a minimum level of consent from factional commanders. The active solicitation of this consent risks enhancing the political legitimacy of commanders (the precise resource which they must be denied)." [22a] (p12)

**5.137** The AREU report continued

"In the end, it is difficult to generalize with regards to the PRTs. Behavior [sic] is not only dependent on the nationality of the military contingent, but also on the local security situation, the commander's experience, and the support and strength of the provincial governor and AMF [Afghan Militia Forces] corps commander. Still, most "successful" PRT commanders are developing remarkably similar institutions, distancing themselves from aid projects as time goes on (wells and schools), aligning whatever projects they do provide with provincial and national priority lists, forming provincial bodies for security coordination and gradually beginning to tread into stabilisation support issues such as police mentoring." [22a] (p12)

**5.138** On 29 July 2004, a report by the House of Commons Foreign Affairs Committee noted that "Most of them [the PRTs] are led by US personnel; one jointly by the US and South Korea; one by New Zealand; and three by NATO (ISAF) forces, two of these being under United Kingdom command and one under German command." [53] (p67)

**5.139** The Foreign Affairs Committee report also reported evidence they had heard about the work of the PRTs. The report noted

"Peter Marsden of the Refugee Council told us that US forces working in the US-run PRTs do not focus on their primary task of providing a secure environment within which the Afghan authorities and international aid organisations can function safely. Instead, they too often engage directly in reconstruction projects. By doing so, he argued,

... they have seriously undermined the humanitarian neutrality and impartiality the NGOs working in Afghanistan have taken 15 years to build up, and it is now highly dangerous for the aid community to work anywhere where PRTs exist.

Similarly, on 27 May [2004], Radio Free Europe/Radio Liberty quoted the European Aid and Development Commissioner's spokesman, Jean-Charles Ellermann-Kingombe, as saying that "the distinction between humanitarian and military personnel is becoming blurred... This undermines the perception of humanitarian aid workers being impartial, being neutral, and therefore makes it also difficult to carry out reconstruction activities."" [53] (p67)

**5.140** The Foreign Affairs Committee report further noted "We conclude that the Provincial Reconstruction Teams are one of the success stories of international engagement in Afghanistan and that their expansion should be regarded as a priority. However, there are real differences between the approaches adopted by the various PRTs as well as between Afghan perceptions of NATO's ISAF forces and those which are part of Operation Enduring Freedom. We recommend that all PRTs be placed under ISAF control as soon as possible." [53] (p68)

**5.141** The report of the UN appointed Independent Expert of the Commission on Human Rights dated 21 September 2004 noted that

> "ISAF is a relatively small multinational force (6,500 troops) based in Kabul, created to support domestic security. It has a limited mandate that echoes the "light footprint" concept of the general Afghan reconstruction process. The ISAF has become a NATO project involving 35 countries. Despite the volatile political context of post-Taliban Afghanistan and the country's long history of violent factional conflict, the international community has contributed an exceedingly small number of foreign troops in comparison with other post-conflict contexts." [39q] (para. 33)

**5.142** Keesing's Record of World Events for September 2004 records that "The UN Security Council adopted Resolution 1563 at its meeting on Sept. 17 [2004], which extended the mandate of the International Security Assistance Force (ISAF) in the country for a further 12-month period beyond Oct. 13, 2004." [5e]

**5.143** The Save the Children report on PRTs of 27 September 2004 noted that

> "The PRTs comprise international civilian and military personnel (totalling 50-150 in each team), located in select provinces throughout Afghanistan (see Figure 6 [of Save the Children report]). The proportion of non-military staff in PRTs is generally low – around five to ten per cent.... There is a lack of clarity regarding the role of PRTs. This stems from: an absence of a clearly defined set of operating principles for the PRTs; non-adherence on the part of PRTs to the existing, ambiguous operating guidelines; actual roles that differ from stated roles; and the differing ways in which the PRTs have been implemented. Originally, the role of the Joint Regional Teams included co-ordination of the reconstruction process; conducting village assessments; and liasing with regional commanders. This proved extremely controversial with NGHAs [Non Governmental Humanitarian Agencies]. Eventually, a set of PRT Working Guidelines was issued by the Office of the US Ambassador to Afghanistan in February 2003. The Guidelines identified three areas of activity for the PRTs: reconstruction, central government support, and stability. While there is general agreement on these three broad foci, there has been a divergence of views on their relative importance.
>
> Of course, the way in which a particular PRT prioritises the constituent elements of its role will depend on the operating conditions it experiences. However, there does not appear to be agreement within and between the military forces implementing the PRTs on how these roles are to be operationalised, the degree to which PRTs should engage in other activities such as intelligence gathering, or the degree to which PRTs should actively engage in relief activities. US military public

communications regarding the PRTs appear to focus more on 'hearts and minds' activities than on security." [50] (section 4.2)

**5.144** The FCO report of 20 January 2005 stated that the UK-led PRT in Mazar-e Sharif has worked hard to establish good relations with NGOs active in its area. "This has done much to dispel initial concerns from within the assistance community that the UK PRT would attempt to militarize development aid and blur the line between military and humanitarian activity. The PRT has made clear that it seeks neither to control nor co-ordinate development work. It does not task its military element with humanitarian assistance work." [15b]

**5.145** The FCO report also noted that "It [the PRT] has successfully supported local disarmament initiatives, brokered by UNAMA, by lobbying local factional leaders to engage constructively in the process, and by monitoring their compliance.... In October 2003, following an outbreak of widespread fighting across the north of Afghanistan between supporters of the two leading factions (led by Generals Dostum and Atta), the PRT played an active role in assisting the central government, the factional leaders themselves, and the UK Ambassador in brokering a cease-fire.... It also helped to contain further clashes between the two militias in April 2004." [15b]

**5.146** On 10 November 2004, NATO reported that NATO countries had agreed a schedule for commanding the ISAF up to 2007. NATO stated that "This decision will give continuity and stability to the ISAF mission at a stage where NATO is preparing to further expand the mission to the West of the country." [63d]

**5.147** On 26 November 2004, the UN Secretary-General reported that "There are currently 19 provincial reconstruction teams (15 coalition-forces teams in the south, south-east and west and four ISAF teams in the north). " [39p] (para. 37)

**5.148** NATO, in an article updated on 9 December 2004, stated that

"ISAF has been helping, through its presence, in creating a secure environment, developing Afghan security structures, identifying reconstruction needs, as well as training and building up future Afghan security forces. ISAF troops conduct 20 to 50 patrols in Kabul and its surrounding areas each day. Over a third of the patrols are carried out jointly with Kabul City Police. NATO-led Provincial Reconstruction Teams (PRTs) also carry out presence and patrol activities within their respective areas of operations, in nine northern provinces of the country, an area of approximately 185,000 square kilometres." [63c]

**5.149** The Human Rights Watch (HRW) World Report of January 2005 noted that

"The United States, along with coalition partners including Germany, New Zealand, and the United Kingdom, has been expanding small Provincial Reconstruction Teams (PRTs) of fifty to one hundred troops to several areas, but they have had only limited successes in improving human rights protections and security. The small size of the teams, their vague mandates, and their sometimes close working relationship with local Afghan militias—the very forces who are creating abusive and insecure environments in the first place—have stymied further progress." [17f] (p3)

**5.150** BBC News reported on 10 February 2005 that

> "Nato is to expand its peacekeeping mission in Afghanistan with more forces being sent to western regions... The new troops, for Herat and three other western cities, will help Nato meet its plans to operate in the whole of the country by 2006. Nato has a force of about 8,500 troops deployed in Afghanistan... Nato's current International Security Assistance Force (Isaf) comes from more than 30 countries but has been deployed in Kabul and northern regions... Nato's ministers have agreed in principle to merge their own peacekeeping force with the US operation, called Enduring Freedom." [25g]

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**Disarmament, Demobilization and Reintegration Programme (DDR)**

**5.151** In July 2003, the UN Secretary-General reported to the General Assembly Security Council that "Building security institutions in Afghanistan is contingent upon an effective disarmament, demobilization and reintegration programme to clear the way for a new, national army and police. The programme, known as the Afghan New Beginnings Programme, requires that combatants from different political factions give up their weapons to the central Government under the authority of the Ministry of Defence." [39i] (p10)

**5.152** The Workplan of the Afghan Government, an Annex of the Berlin Declaration of April 2004, committed to completing the implementation of the Disarmament and Demobilization process of the AMF (Afghan Militia Force) by June 2005 and of the Reintegration activities by October 2006, as agreed between the Government and the international community. [40t] (p8)

**5.153** A report published in July 2004 by the House of Commons Foreign Affairs Committee concluded that the most urgent and pressing need for Afghanistan was to achieve disarmament, demobilisation and reintegration. [53] (p76) According to the Committee, the DDR mechanism is the key to reducing the influence of the commanders or 'warlords' by removing their standing armies from the power equation. The report noted that "The DDR process in Afghanistan is slow and making little headway." [53] (p75) In July 2004, the Center for Defense Information reported that, "President Hamid Karzai has warned that private militias pose a greater threat to Afghan stability than the Taliban. Karzai has acknowledged that a nationwide disarmament program had so far failed to reduce the power of these militias." [55] (p1)

**5.154** In a report dated 23 November 2004, the International Crisis Group (ICG) noted that

> "Since its April 2003 launch, the UNDP-managed Afghanistan New Beginnings Program (ANBP) has progressed haltingly toward the primary objective of DDR: the progressive decommissioning of all regular militia units recognised by the ministry of defence. These units, known informally as the Afghan Military Forces (AMF), were established by the ministry at various points following the signing of the Bonn Agreement, most often at the request of individual militia commanders. As a compromise between the ANBP and the ministry, both parties accepted AMF's size -- and thus the number of officers and soldiers to be demobilised -- as

100,000. This was, however, a purely arbitrary figure. Most militia commanders maintain only relatively few combatants on active duty but retain the capacity to mobilise many more through "team leaders" in each village; the elasticity of membership in militia units thus makes any projection of potential strength inherently speculative." [26d] (section F.1)

**5.155** The ICG report also noted that

"Although President Karzai has issued a decree stipulating that persons maintaining unofficial militia will be "punished", neither the ANA nor trained police are presently sufficient strong to enforce this. Attaining that capability as well as implementing judicial reforms that would enable the credible prosecution of offenders may take several more years. Both the ANBP and donors, meanwhile, have resisted expanding the DDR process to cover unofficial militias, deterred by the size of the task and the open-ended commitment it would require. In addition, the ministry of defence has, since June 2004, been attempting to slow down DDR by shifting units from divisions slated for decommissioning to divisions that are as yet slated only for downsizing or are simply not covered under the current phase. Militia leaders have also taken steps to conceal their heavy weaponry; an estimated 30 per cent of functioning or serviceable heavy weaponry in Panjshir, for example, remains unassessed." [26d] (section F.1)

**5.156** In a report dated 26 November 2004, the UN Secretary-General observed that

"The disarmament, demobilization and reintegration process, supported by the United Nations Development Programme (UNDP) and under the leadership of Japan, began in October 2003. It has two major components: the demobilization of soldiers from existing military units and the cantonment of heavy weapons. Participants in the Berlin conference of April 2004 resolved to demobilize at least 40 per cent of the 100,000 targeted soldiers and to canton all heavy weapons prior to the elections.

While these targets were not met prior to the [presidential] election, the electoral process itself appeared to have a positive effect on disarmament. For example, a provision in the electoral law stated that candidates could not register to vote if they maintained connections with armed militias. Hence, the Central government appointed commanders from within the structure of militias that were linked to aspiring candidates. The Ministry of Justice, in accordance with the political party law, also refused to register groups with known links to armed factions. This provided a further incentive to decommission militia units." [39p] (paras. 16-17)

**5.157** The Secretary-General continued

"To accelerate demobilization and disarmament, in July 2004 the President issued a decree identifying additional units to be demobilized prior to the elections and instructing the Ministries of Defence and Finance to begin to apply financial sanctions in cases of non-compliance. By the end of September [2004] an additional 5,480 soldiers had entered the disarmament, demobilization and reintegration programme, beyond the 15,355 that had been disarmed before the decree was issued. Over 20,000 soldiers have begun the process of reintegration.

The issue of irregular militias also needs to be addressed. These are armed groups that are not on the payroll of the Ministry of Defence, and hence not included in the ongoing disarmament, demobilization and reintegration programme. But these groups are increasingly responsible for insecurity in many parts of Afghanistan. The Government, together with the international community in Kabul, is examining the means to dismantle these groups through weapons collection and community development programmes." [39p] (paras. 18-19)

**5.158** On 4 January 2005, IRIN reported that

"Tens of thousands of irregular militia groups will be disarmed through a new joint United Nations and government initiative, officials from the Afghan Ministry of Defence (MOD) told IRIN on Tuesday..."While the DDR is making significant achievements, this is the time to address all those who are armed illegally," Zahir Azimi, an MOD spokesman, told IRIN. Azimi said they were discussing with the UN and donor countries the raising of funds to identify and disarm what the MOD estimates at more than 100,000 illegally armed people."

The spokesman was also reported as saying that the dismantling of illegal militias would take a bit longer than the DDR programme as the process was more complicated and challenging. [40s]

**5.159** The same IRIN report also noted that

"There is a determination by the president [Hamid Karzai] that we must tackle the worst cases, worst areas and worst groups prior to the parliamentary elections. Otherwise it won't be a free and fair election because these guys can threaten potential members of parliament," Peter Babbington, acting programme director of ANBP told IRIN....The programme is in its early stage. Babbington said the groups or individuals holding arms illegally would not be given the cash or other incentives that ex-combatants received under the DDR process. "They will not be offered cash or other incentives but a particular community or area can be granted some development projects if they help the process." [40s]

**5.160** On 10 January 2005, the Special Representative of the UN Secretary-General for Afghanistan told the Security Council that

"Improved access to large stocks of heavy weapons and ammunition in areas where cantonment operations had been previously hampered – particularly Herat, Mazar and the North-West – has accelerated progress of this important aspect of DDR... It is important to note that DDR has been particularly successful in Northern Afghanistan. The requirement under the political party law that units with links to political organizations must comply with DDR before the latter are cleared to be registered as political parties, has resulted in considerable disarmament in this area. In particular, practically all military divisions under the control of General Dostum have now entered DDR and opened the way for his political formation – Jumbesh – to participate fully in the electoral process. Broad disarmament will hopefully contribute to stabilize a region that has been especially prone to inter-factional conflict in the last three years.

On the other hand, a few obstacles remain: some of the militia units based in Kabul city and scheduled to be disarmed in the current phase of the programme – namely Divisions 1 and 8 – have not yet complied or have only partly complied with the basic requirements of DDR. In the case of Division 10, after some delays, lists of men to be demobilized have been provided and there will be an important opportunity for disarmament later this week. Considerable delays have also occurred in the cantonment of the last significant group of heavy weapons not yet under the control of the central government – those in the Panshjir Valley, where there are reports of large stocks of ammunition as well. Yesterday, ANBP was finally allowed to begin cantonment operations in this area. This is a welcome development and we hope that in a few weeks they will be cleared of heavy weapons." [40k] (p6-7)

**5.161** A UN Press Briefing of 27 January 2005 reported that "Recently the Ministry of Defence reviewed its lists of Afghan Military Forces (AMF) units still scheduled for the Disarmament, Demobilization and Reintegration process. As a result - and based on 15 months of field experience - the Ministry of Defence and the Afghan New Beginnings Programme (ANPB) now believe that there are only 15,000 soldiers left to be disarmed. ANBP still expects little trouble in achieving its goal by the end of the disarmament phase in June of this year. The reintegration phase will then continue for a further 12 months. " [39m] (p2)

**5.162** On 10 February 2005, a UNAMA senior public information officer reported that "ANBP is on track to collect all remaining Heavy Weapons by June 2005. In the Panjshir Valley however, ANBP is still trying to find an equipment contractor. We are told that tenders are out. But the collection will not start until this technical issue is settled." [39c] (p2)

**5.163** The UNAMA spokesman acknowledged that the collection of heavy weapons in the Panjshir Valley had not been easy. "But eventually, in December [2004], we got the agreement of political and military leaders and of commanders. It has been a long process of negotiations but we have the agreement. So we started the collection early January [2005] and out of 110 Heavy Weapons that were to be given back, 62 have been collected already." [39c] (p5)

**5.164** On 17 February 2005, a UNAMA senior public information officer reported that "The Afghanistan 's New Beginnings Programme (ANBP) is now over the 40,000 mark regarding disarmed soldiers. As of today, 40,104 former AMF officers and soldiers have handed in their weapons. This is another milestone in the disarmament process, which has kept gaining momentum since it was initiated last year. As for the Heavy Weapons programme in general, the total number held in secure compounds is 8,484." [39a] (p1)

**5.165** An update briefing on the DDR process by the International Crisis Group (ICG) dated 23 February 2005 stated that

"The DDR effort has undoubtedly had a positive impact on the democratic political process. More than 40,000 AMF [Afghan Militia Force] soldiers have been disarmed and the program is on target for completion by June 2005, ahead of parliamentary elections anticipated later in the year. Progress in DDR has

enhanced space for political party development and the wider democratic process. The ANA and ISAF do not have to factor thousands of now demobilised AMF troops into their security precautions for the elections. However, although some combatants have been disarmed, others could take their place, financed by what is still a war economy, indeed one that is primarily driven by a booming drug trade. And unless a more concerted attempt is to made to disarm unofficial militias, the rule of the gun might continue to prevail." [26b] (section III.E)

**5.166** The ICG report also noted that

"Unofficial militias, that is, armed groups that are not recognised as AMF units by the ministry of defence, continue to lie outside the ANBP's mandate, a glaring omission in the plans to disarm Afghanistan's warring factions that is only now -- very late -- being addressed. Most are linked to political parties, backed or led by former commanders; some are even supported by government officials. They exercise considerable authority in rural areas and undermine the centre's attempts to extend its authority. The progressive decommissioning of AMF units could even strengthen these militias further, creating new challenges for the Karzai government and its international allies.

In July 2004, President Karzai issued a decree ordering "the severest of punishments" for individuals who refuse to disarm or who maintain private militias" but it has not been enforced, and no arrest warrants have been issued. According to the ANBP's assessments, there are 853 "illegal armed groups" but the number could be more than 1,000, with anywhere between 65,000 to 80,000 armed personnel." [26b] (section IV)

In the conclusion of the ICG report it was noted that "President Karzai's appointment of a new cabinet in late December 2004 came at a critical moment for Afghanistan's DDR process. Angered by the perceived domination of Pashtuns and the loss of their monopoly on the security apparatus, the Tajik-dominated Shura-yi Nazar units in Kabul and Panjshir are dragging their feet on disarmament." [26b] (section V)

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**National Security Directorate (Amniat)**

**5.167** An Amnesty International report dated March 2003 recorded that,

"The National Security Directorate (NSD), Afghanistan's intelligence service, was established during the period of Soviet rule, and in theory reports directly to the Head of State. There are widespread reports that the NSD engages in ordinary police work at the provincial level through its local offices and uses its influence with powerful local armed groups that operate their own, unofficial "police forces". The legal basis for these activities is unclear. According to a member of NSD interviewed by Amnesty International, the power to arrest and detain is delegated by the central government to the NSD. Article 23 of the Criminal Procedure Law states, 'When the ministries and public or private institutions resort to actions which [are] part of police duties, the written approval of [the] authorised department of police must be obtained.' However, it is not known whether police

authorities have given this permission to the NSD. Members of the NSD have committed human rights violations, including arbitrary detention and torture." [7g] (p9-10)

**5.168** In July 2003, an Amnesty International report stated that the NSD was carrying out arrests and detention across the country. According to the report "This intelligence system is a legacy of the Communist period. In Kabul there are widely reported to be at least two NSD prisons, one holding prisoners suspected of being members of al-Qa'ida and Taleban, and another holding political opponents of certain powerful members of the ATA. Amnesty International was able to visit the former. All those in detention are foreign nationals." [7e] (p28)

**5.169** The Danish fact finding mission of March/April 2004 reported that the Co-operation Centre for Afghanistan (CCA) had not heard of the present security forces using torture and committing mass murders like Khidamat-i-Ittala'at-i-Dawlati (KhAD), but found that the use of torture by the security forces could not be excluded. [8] (section 5.2.5) The fact finding mission also reported the CCA as saying that about half of the officers working in the present Afghanistan Intelligence Services are former officers of the KHAD. The report stated that "It has been necessary to introduce them into intelligence work, as there is a lack of qualified personnel in this field. The organization gave as an example that the director in the 7th department of the present intelligence service earlier served the same position in the KHAD." [8] (section 6.5.1)

**5.170** In April 2004, a Progress Report on the implementation of the Bonn Agreement, attached to the Berlin Declaration, stated that "The National Directorate of Security is undergoing a programme of substantial reform and restructuring both in Kabul and the provinces on the basis of a new charter that restricts its previously held wide powers." [40t] (p11)

(See also General Security Section paragraph 5.103; Prisons and Prison conditions paragraph 5.202 and Torture, inhuman and degrading treatment paragraph 6.16 for further information on the NSD)

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**Army**

**5.171** The UN Secretary-General reported on 26 November 2004 that the Afghan National Army (ANA) was being formed under the lead of the US, assisted by France. The report noted that

"At full strength, it will consist of approximately 70,000 soldiers organized into five corps: the central corps in Kabul and four regional corps in Kandahar, Paktia, Herat and Balkh. The three brigades in the central corps are currently at full strength, with 15 battalions altogether. Plans are under way to develop the more technical elements of the corps, especially artillery, air defence and engineering. It is expected to take five to seven years to fully establish the regional corps. The process has begun, with four regional corps commanders and some of their key staff having been appointed on 1 September 2004." [39p] (para. 20)

**5.172** The Secretary-General also noted that

"The main accomplishment of the Afghan National Army over the past year was

the provision of security for the presidential election. It was an integral part of the nationwide security plan and played a major role in the search for improvised explosive devices before polling stations opened, in securing roads and as a visible quick-reaction force. In addition, it was primarily responsible for the security of the regional counting stations. Throughout the election the soldiers were highly visible and technically proficient and were able to secure the cooperation of Afghans in locating and neutralizing improvised explosive devices, rocket-launching areas and potential ambush sites.

The Afghan National Army also provided security, in isolated cases, for the mobile disarmament units conducting the disarmament, demobilization and reintegration programme. In addition, it was instrumental in separating the forces of Ismail Khan and his opponents, Amanullah Khan (Shindand) and Zahir Khan (Qala-e-Naw), in western Afghanistan during the conflict in August 2004, when it deployed two battalions to the area at short notice, where they provided a buffer between the belligerent forces to allow negotiations to continue." [39p] (paras. 21-22)

**5.173** The Special Representative of the Secretary-General reported on 10 January 2005 that the ANA currently constituted 28 battalions – a force of approximately 17,000 – and was expected to increase to 32 battalions by April 2005 and to 39 battalions by July 2005. [40k] (p3)

**5.174** On 17 February 2005, IRIN reported that

"Tens of thousands of ex-poppy growers are choosing to join the ANA after the ban on poppy cultivation and a serious eradication campaign began in the country's eastern and southern provinces... Din Mohammad [governor of Nangarhar] said hundreds of thousands of people had become jobless after stopping poppy cultivation or when their poppy fields were destroyed over the last two months. The governor said he was now under pressure from community elders to help thousands of young men join the US-supported and trained new Afghan army...

Meanwhile, authorities in the Afghan Ministry of Defence (MOD) confirmed to IRIN that an increasing number of people were coming to the ANA and the Afghan National Police (ANP) recruitment centres after this year's anti-narcotics campaigns and the disarmament of tens of thousands of militia forces. "We have 20,000 people on standby in 34 ANA recruitment centres despite recruiting 3,000 every month," General Mohammad Ibrahim Ahmadzai, the chief of staff in the ANA recruitment command, told IRIN. In addition to poppy growers, most of the demobilised ex-combatants had also chosen to join the ANA, he noted. But Ahmadzai said the massive turnout was a serious challenge to the ANA recruitment centres. "We can only recruit 100 applicants from one province every month. Yes it is a voluntary process but we have to consider the ethnic balance," he maintained.

Attempts to increase the number of soldiers in the fledgling force have been hampered by a lack of suitable recruits and poor pay and conditions. But Ahmadzai said there was now more enthusiasm to join up, as ANA recruits currently enjoyed better pay and privileges than Afghan civil servants. "Every ANA

soldier is paid 3,500 Afs [US $70 per month] and the salary is doubled on missions outside duty stations," he said, adding they also received very good food and logistical support." [40an]

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**Police**

**5.175** A report dated April 2004 published by the German Federal Ministry of the Interior noted that

"An extract from the final report of the first fact-finding mission by a German delegation in January 2002 highlights the situation of the Afghan police at the start of assistance measures to rebuild the police force: "The police force is in a deplorable state just a few months after the dissolution of the Taliban regime. There is a total lack of equipment and supplies. No systematic training has been provided for around 20 years. At least one entire generation of trained police officers is missing. Next to constables, former Northern Alliance fighters are being put to work as police officers." [65] (p8)

**5.176** The report also noted that the police Project Office in Kabul was set up in April 2002 [65] (p9). Furthermore,

"After the Project Office was set up, its most urgent task was to swiftly resume basic and advanced training of the Afghan police force. The police force comprised around 150,000 police officers with widely varied experience and training and displayed a strong military influence. Nonetheless, the Afghan police includes a large number of officers who up to the 1970s received thorough training oriented on Western standards.

Before the Police Academy was completed and became fully operational, basic courses were provided offering basic police training for more than 500 police officers. The objective is to create a police force able to protect every Afghan citizen and respond to their needs. These courses therefore emphasise human rights and the role of the police in a democratic state governed by the rule of law. In addition, the German police officers supervise the trainees in applying what they have learnt to their everyday police work. At the same time, the Project Office selects Afghan police officers who already have basic, well-founded knowledge of police matters to be multipliers within the Afghan police force and teaches them to be trainers. Today, recruits at the Police Academy receive their training entirely from Afghan instructors...The Police Academy targets in particular young police officers who are interested in professional police work in compliance with the rule of law. Police officers who have committed crimes or war crimes are not admitted to the Academy." [65] (p12)

The report also noted that the German police mission in Afghanistan has a merely advisory and supportive mandate. [65] (p10)

**5.177** A June 2004 Briefing Paper by the Afghanistan Research and Evaluation Unit (AREU) recorded that

"The goal of the police reform pillar is to field a trained and equipped nation-wide police force totalling approximately 50 000, with an additional 12 000 border police, operating under the command and control of a reformed Ministry of the Interior (MoI)... During 2002 the reform effort began with the reconstruction and reestablishment, under German sponsorship, of the Kabul Police Academy, designed to offer multi-year programs to turn out officer-level police leadership, later adding a multi-month program to train police sergeants. In 2003 US officials began designing multi-week patrol-officer training programs to augment the German program for officers and sergeants. The US program began turning out graduates in Kabul in mid-2003, and from regional training centres in 2004." [22a] (p17)

**5.178** The AREU report also noted that

"While such training programs are good, there are still substantial gaps in the pillar. Once trained, the police generally return to their original police forces with no further monitoring, mentoring or training in the field...Many local police agencies in Afghanistan are little different from the ethnic-based, factional militias... There are real and chronic problems in Afghanistan with police salaries not set at adequate levels and often not paid. Police not being adequately equipped, and Afghan police are under-gunned, under-resourced, and under-paid." [22a] (p17)

**5.179** The Interior Vice Minister told the Danish fact finding mission that improvements in the police force are occurring all the time. According to the source "Within the police, every district now has a human rights office. Training centres have been established for police personnel in four districts, and will be extended to six districts. The aim is to improve the level of training for both the existing and the future police officers...New recruits as well as the current police officers will be trained." [8] (section 4.3.1)

**5.180** In comments prepared for the Advisory Panel on Country Information (APCI) meeting on 8 March 2005, UNHCR stated "Whether or not recourse can be had to law enforcement authorities, in particular the police in major cities, depends on the links of the police officers to whom Afghans refer and ask for protection. Those that are loyal to the Bonn process and to the reforms conducted by the government of the IRA [Islamic Republic of Afghanistan] provide protection as much as they can. In several cities it is therefore not a question of willingness but ability to provide protection." [11h] (5.75)

**5.181** On 26 November 2004, the UN Secretary-General reported that

"Training, staffing and sustaining an effective police force is a vital element of assuring security and the rule of law in Afghanistan. This task, undertaken under the lead of Germany, has proved to be challenging. The existing police force continues to suffer from a lack of well-trained officers, appropriate equipment and effective command structures. A number of important initiatives were taken to address these concerns. Five regional training centres were established across the country, in addition to the German-supported Police Academy and the United States-led Central Training Centre in Kabul. As of mid-October [2004], 2,624 personnel had been trained at the Kabul Police Academy. These included 1,831

non-commissioned officers, of which 55 were female, and 752 border police. In addition, 27,200 police received basic police training through United States Government-supported programmes. The projected strength of the police force is 50,000, plus 12,000 border guards." [39p] (para. 23)

**5.182** The UN Secretary-General also noted in the same report that

"At the Doha conference on police reconstruction, held on 18 and 19 May 2004, co-hosted by the Governments of Afghanistan, Germany and Qatar and the United Nations, participants pledged $350 million for police programmes over the next few years. The UNDP-administered Law and Order Trust Fund for Afghanistan (LOTFA), which pays for police salaries and equipment, currently suffers from a financing shortfall of $72.6 million.

The Afghan police force proved itself during the electoral process despite its limited means. Police, who were provided with specific electoral training, accompanied registration teams to ensure their security and provide order during registration. Police also guarded polling sites on election day and, along with the Afghan National Army, formed the first line of defence against those who might have attacked the election process." [39p] (paras. 24-25)

**5.183** The UN Secretary-General's Special Representative noted on 10 January 2005 that "The size of the reformed and trained Afghan National Police is expected to increase from about 32,000 now to over 37,000 by April [2005] and over 45,000 by July [2005]. [40k] (p3)

**5.184** On 10 January 2005, Xinhua News Agency reported that the Afghan government with the support of the United States and its allies had established the first model police station in Kabul. "The computerized station, according to Afghan Interior Minister, has been equipped with all necessary means. "Establishing district 10 police station as a Model Police Station is a major step by the first Afghan elected government towards improving policing in Afghanistan," Interior Minister Ali Ahmad Jalali noted at the opening ceremony of the station. A total of 300 policemen in the first model police station are equipped with 40 vehicles, 20 motorbikes and 40 bicycles." [40ad]

(See also Section 6A Human Rights paragraphs 6.10, 6.13, 6.15, 6.17, 6.18 and Section 6B Women paras. 6.206, 6.211 and 6.216 for information regarding police and human rights)

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**Prisons and Prison Conditions**

**5.185** An Amnesty International (AI) report of 8 July 2003 stated that,

"Prisons in Afghanistan have a long and disturbing history of serious abuses. Amnesty International (AI) has repeatedly raised its concerns over conditions of detention in Afghanistan including reports of torture and cruel, inhuman and degrading treatment and punishment. During the last two and a half decades, prisoners have been held in overcrowded detention centres, deprived of adequate

food, sleeping space and toilet facilities. Imprisonment has been used as a political tool for the repression of political opponents." [7e] (p3)

**5.186** The AI report also noted that "Between 1992 and 1995 when various regional commanders controlled different parts of Afghanistan, Amnesty International received reports of appalling conditions in almost all of the prisons run by these groups. With the arrival of the Taleban in much of the country, reports of torture and ill-treatment continued and prison conditions did not improve." [7e] (p4)

**5.187** The AI report also stated that

"According to the Law of Prisons and Jails in Afghanistan, currently applicable national law, each provincial centre should have a prison and a detention centre. Each district centre should have a detention centre. Detention centres are under the jurisdiction of the police, working in the Ministry of Interior. Prisons are under the jurisdiction of the Ministry of Justice. In many provinces, prisons are in no condition to hold any person. The police are responsible for arrested detainees for the first 72 hours of arrest, after which they should be brought before a judge and then become the responsibility of the prison system. Under international law, detained suspects should be brought promptly before a judge to assess the legality of detention. Currently people are being held for months without any access to a court before trial, which may result in the police having responsibility for detainees for long periods of time without judicial supervision. This is particularly the case in rural areas." [7e] (p4)

**5.188** The same AI report stated that "The current administration does not have resources and expertise to reconstruct a prison system that conforms to international minimum standards. Prisoners are being held for months in overcrowded cells, some of them shackled, with inadequate bedding and food. Staff have received no training and have not been paid for months. Prisoners and detainees are not being held in safety, some are suffering ill-treatment or even torture." [7e] (p1)

**5.189** The AI report noted that in May 2003 the United Nations Office for Drugs and Crime (UNODC) signed a project proposal "Reform of the penitentiary system" with the Ministry of Justice focusing on the reconstruction of the penal system. AI notes "However, funds for this project, due to run for two years from July 2003, stand at only US$2.1 million. UNODC acknowledges that the project only covers Kabul, leaving the rest of the country untouched." [7e] (p10)

**5.190** The AI report noted that "In March 2003 the administration of prisons was transferred from the Ministry of Interior to the Ministry of Justice." [7e] (p1) UNAMA stated on 28 July 2003 that the key objective of this transfer was to improve the general standard of prisons starting with Kabul. [40as]

**5.191** The Danish fact finding mission of March/April 2004 interviewed several sources about the prison system, reporting that "The EU Special Representative mentioned that prisons exist both under the control of the NSD and of the Ministry of Justice. Additionally, there are private prisons that are controlled by warlords or by the local police on which the government has no influence." [8] (section 5.2.4)

**5.192** The Danish fact finding mission also reported that,

"The prisons represent an area that was described by the Italian ambassador as very problematic. The prison system does not receive enough support from the international community. Donors are not interested in the prison system and outside Kabul the prison system has to be built from scratch. It is the intention to demilitarise the prison system, which according to the source will demand considerable training of prison personnel. The Minister of Justice explained that certain improvements have been carried out in Afghan prisons. Among other things, an effort is underway in order to provide satisfactory food for the prisoners. Complaints boxes have been introduced where the prisoners can submit complaints about anything of their concern and they can make suggestions for improvements. International organizations have access to the prisons. The Afghan media can write freely about prison conditions if there is anything to criticize... The Pul-e Charki prison in Kabul is being renovated and has been renamed Kabul Central Prison." [8] (section 5.2.4)

**5.193** In March 2004, Human Rights Watch (HRW) published a report alleging that the United States is maintaining a system of arrests and detention in Afghanistan as part of its ongoing military and intelligence operations that violates international human rights law and international humanitarian law (the laws of war). [17b] (p1)

**5.194** The HRW report noted that,

"Afghans detained at Bagram airbase in 2002 have described being held in detention for weeks, continuously shackled, intentionally kept awake for extended periods of time, and forced to kneel or stand in painful positions for extended periods. Some say they were kicked and beaten when arrested, or later as part of efforts to keep them awake. Some say they were doused with freezing water in the winter. Similar allegations have been made about treatment in 2002 and 2003 at U.S. military bases in Kandahar and in U.S. detention facilities in the eastern cities of Jalalabad and Asadabad."[17b] (p4)

**5.195** The Human Rights Watch report also stated that "In December 2002 two Afghan detainees died at Bagram. Both of their deaths were ruled homicides by U.S. military doctors who performed autopsies. Department of Defense officials claim to have launched an investigation into the deaths in March 2003. In June 2003, another Afghan died at a detention site near Asadabad, in Kunar province. The Department of Defense has yet to explain adequately the circumstances of any of these deaths." [17b] (p4)

**5.196** On 13 May 2004, AI advised that "Amnesty International has received consistent reports of torture and abuse of detainees held in US military bases across Afghanistan during the past two and a half years. Whilst Amnesty International welcomes official statements from the US authorities that the allegations are being taken seriously, to date, fundamental principles of law and human rights continue to be violated." The same AI report also expressed concerns that a recent request by the Afghan Independent Human Rights Commission (AIHRC) to be allowed access to US managed detention facilities had been refused. The report noted that "The US military has repeatedly denied access to independent human rights bodies, including Amnesty International." [7]

**5.197** On 8 March 2004, Agence France-Presse (AFP) reported the US response to the HRW report. AFP reported that

> "US military spokesman Colonel Bryan Hilferty denied the accusations. "This report shows lack of understanding on the region, this is a combat zone. We follow strict rules of engagement and the laws of war" Hilferty told a news conference here. "Some of the things reported in the HRW report have happened, like the case of two detainees who died in custody in Bagram, and we are investigating that very actively," he said. "But their main point is incorrect. This is a combat zone, we are applying appropriate rules of engagement," Hilferty added." [40ar]

(See also paragraph 5.205 below)

**5.198** Amnesty International reported in March 2004 that,

> "Conditions in prisons and detention facilities in Kabul have seen an improvement but there remains an urgent need for the rehabilitation and reconstruction of detention facilities elsewhere. Furthermore, prison conditions (sanitation, food, overcrowding) and legal rights of prisoners fall far short of international standards as laid out in the UN Body of Principles for All Persons under Any Forms of Detention or Imprisonment and the UN Standard Minimum Rules for the Treatment of Prisoners... To date, the central government has responsibility to administer provincial prisons but in reality they remain under the control of various armed groups and human rights violations continue to be reported. The prison service continues to be plagued by insufficient personnel, inadequate training facilities for officers, inconsistent payment of salaries and a marked lack of donor interest. Despite a plan drawn up by Italy, the lead donor government for justice reform, to tackle this, lack of resources hamper reform and development." [7a] (p2-3)

**5.199** The report of the UN appointed Independent Expert of the Commission on Human Rights dated 21 September 2004 noted that

> "The inability of national prisons to provide those detained with conditions that meet minimal international standards is shocking. The independent expert visited the Pol-e Charkhi prison outside of Kabul, and found overcrowding and unhealthy conditions. The independent expert has heard reports that jails in the countryside are often in an appalling state, with crumbling walls, no water and limited access to nutritious food. Prisoners are seldom allowed out of their cells, in the best of cases for between less than one hour to three hours a day. Medical facilities are almost non-existent. Bribery is rampant and physical abuse is routine. It should be noted that the Government of Italy offered to build a prison facility, but the Ministry of Justice has so far (six months) not identified an available parcel of land. The independent expert brought this matter to the attention of President Karzai, who indicated that he would take corrective measures." [39q] (para. 59)

**5.200** The Independent Expert's report further noted that the physical, sanitary and health conditions at Pol-e Charkhi prison called for immediate action for improvement by the Government and the international community. The report stated "It is used as the country's main prison. As winter approaches, conditions for the prisoners at that location will become dire." [39q] (para. 68)

**5.201** The report of the UN appointed Independent Expert also noted that the women's detention centre in Kabul holds 40 women and these women are often held for unsubstantiated crimes. According to the report,

> "They [the women] live in the prison with their children in a situation, though far better than that of Pol-e Charkhi, which is nonetheless below contemporary standards. The women must share their cramped living space and food with their children, as no food is provided for them.
>
> Another abhorrent situation throughout the country has to do with the confinement of women in the custody of tribal elders. Because of the absence of detention facilities for women in the districts (there are only three detention facilities for women in the country), women found to be guilty of acts that may not constitute legal offences are confined to the personal custody of tribal leaders and others. These women are sometimes forced into slave-like conditions outside the reach of the law and are reportedly subject to sexual and physical abuse. The charges brought against them are reported to arise in large part out of allegations of "immoral conduct", which does not, however, constitute a legal violation. In addition, some cases allegedly involve crimes committed by spouses and fathers for which the women are forced to accept responsibility." [39q] (paras. 61 and 62)

**5.202** The same report also noted that

> "The independent expert has received reports of serious violations, such as torture committed in secret detention centres run by NSD, and has notified the Attorney-General...The independent expert has received reports of numerous informal prisons located around the country, which are generally run by warlords and local commanders. They exist outside the control of the State and beyond the reach of the law." [39q] (paras 63 and 64)

**5.203** The independent expert's report also noted that on 12 September 2004 President Karzai had ordered the release of all detainees transferred from Shiberghan prison in May 2004 and held in Pol-e Charkhi prison. The report noted that

> "The detainees were Taliban combatants who were captured in 2001 by Northern Alliance forces under the command of General Dostum. They had been held for over 30 months in violation of the Geneva Conventions. Originally, the detainees numbered between 3,200-4,000, and were kept in the Shiberghan prison facility under the control of General Dostum. Many prisoners obtained their release by paying ransom. Others died under conditions that have been described as murder and torture, such as those who reportedly died of suffocation in metal cargo containers." [39q] (para. 65)

**5.204** On 26 November 2004, the UN Secretary-General reported that "A draft penitentiary law finalized by the United Nations Office on Drugs and Crime is currently under review by the Ministry of Justice. The Office has also begun the rehabilitation of the detention and prison facilities in Kabul and selected provinces so that they meet international standards." [39p] (para. 29)

**5.205** In December 2004, BBC News reported that

"The US army has admitted that eight detainees have died in its custody in Afghanistan - two more than it had previously acknowledged. The army's admission came after the campaign group Human Rights Watch said it knew of three new incidents. The group sent an open letter to US Defence Secretary Donald Rumsfeld, saying the US has failed to investigate or punish abuses by its soldiers. A US official said at least three deaths were still being investigated...HRW says it is aware of "only a handful of criminal investigations" into the cases and into many claims of torture by detainees." [25j]

**5.206** On 7 February 2005, the UN News Service reported the views of Cherif Bassiouni, the UN Independent Expert on Human Rights in Afghanistan. The report noted that

"On prisons, he [Mr. Bassiouni] noted that the jail in Logar consists of a metal container, "buried in the ground and the basement of a rented house, whose ceilings are about to fall."

Both there and in Kabul "conditions are below human standards by any means and they are in total violation of the UN Minimum Standards for the Treatment of Prisoners," he added, with small metal containers in which 10 human beings are kept, some of them shackled hand and foot with a metal bar for 24 hours a day for 6 weeks.

He noted that unpaid guards frequently shackled people so that those who can afford it pay to be unshackled and he underscored the lack of any medical facilities. He also stressed "the very inhuman situation" in which women prisoners have to keep their children with them with the result that there are more children there than women. "So, in effect, the crimes of the mothers are carried out onto the children who are paying the price," he added." [40ae]

**5.207** The US State Department Report 2004 (USSD), published on 28 February 2005, recorded that

"Prison conditions remained poor, and there were reportedly many other secret or informal detention centers in the country (see Section 1.d. [in USSD report]). Prisoners lived in overcrowded, unsanitary conditions in collective cells and were not sheltered adequately from severe winter conditions. Prisoners reportedly were beaten, tortured, or denied adequate food. The Justice Ministry's assumption of prison management from the Interior Ministry in March 2003 improved conditions marginally. The humanitarian NGO Emergency reported in January [2004] that infectious diseases were common among prisoners...

Approximately 4,500 convicts were held in 32 government-run prisons across the country. There were 15 correctional centers for juveniles, and approximately 8 women's detention centers. Men and women were housed in separate facilities. Living conditions of all prisons did not meet international standards, and conditions in women's facilities were worse than in men's facilities. Children under 12 years were incarcerated with their mothers. Juveniles (under 18 years) were detained in

juvenile correctional facilities; however, juveniles charged with murder were detained in adult facilities but were assigned to a separate area within the facilities. There were no pretrial detention facilities." [2d] (section 1c)

**5.208** The USSD 2004 also noted that "The Government permitted the International Committee of the Red Cross (ICRC) to visit all prisons that the Government controlled, and the ICRC conducted such visits during the year; however, the ICRC alleged that it lacked full and transparent access to some prisoners. The AIHRC monitored prison conditions regularly during the year, and independently of the Ministry of Justice." [2d] (section 1c)

(See also Section 5 Legal Rights/Detention paragraph 5.83 for further information on private prisons.)

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**Military Service**

**5.209** The Freedom House Afghanistan Country report 2004 noted that "The Bonn Agreement also provided a broad framework for the creation of an Afghan National Army (ANA), although it did not specify the details of how it should be constituted." The report also noted that the government's intentions are for the ANA to reach a maximum size of 70,000 men by 2010, but training for ANA battalions has proceeded at a slow rate. "In addition, critics note that a disproportionately high number of Tajiks have been recruited, thus raising questions about the representative nature of the army, and attrition levels are high." [41a] (p10)

**5.210** In January 2004, the UN Office for the Coordination of Humanitarian Affairs (UN OCHA) Integrated Regional Information Network (IRIN) reported that at the beginning of the process to build a national army, local commanders were instructed to send their troops to join and this element of compulsion appears to have contributed to some recruits leaving the ANA. According to a spokesman for the Afghan Ministry of Defence, more than 80% of those who escaped had been forcibly sent to join the ANA by local commanders. However, according to the spokesman, this process had stopped and now it is a totally voluntary recruitment system. [40v]

**5.211** The IRIN report also noted that

"A recent announcement on state-run Afghan television told deserters to come back and join the army, otherwise they would have to pay for the cost of their training. But officials at ANA high command in Kabul told IRIN only less than a thousand soldiers from the central corps had fled, but that half had returned. "All together, 800 people had left the army, some before training, some during the training and a very limited number of them fled after they had joined the central corps here," Major General Mohammad Mu'een Faqir, commander of ANA central corps told IRIN. Faqir said often absent soldiers had problems in their localities and some could not rejoin the fledgling army due to poor security in their provinces. "We sent letters to their community elders and solved their problems and 388 of those who escaped, came back from different provinces and rejoined the army," the general maintained, adding in recent months they had no absenteeism." [40v]

**5.212** On 9 February 2005, the UN Secretary-General reported that there had been

no reported cases of recruitment of children into the Afghan National Army." [39e] (para.8)

(See also Section 6B Child Soldiers paragraphs 6.268 – 6.271)

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## Medical Services

### General

**5.213** In January 2004 the International Federation of the Red Cross (IFRC) and Red Crescent Societies reported that

> "More than two decades of civil war in Afghanistan has left the health sector critically damaged and has had a major impact on the health of vulnerable people, particularly women and children. Several statistics illustrate the gravity of the situation: one woman dies every half hour due to pregnancy related complications and one in four children die before their fifth birthday. In Afghanistan, malnutrition and communicable diseases remain among the most significant causes of morbidity and mortality. The large majority of health services are and have been for the last decades financed by international assistance, without coordinated planning. The health system emerging after decades of conflict is too small, fragmented, used only by a minority of the population, grossly gender and urban biased, concentrated along vertical lines across the country and is severly (sic) underfinanced. The gravity of the situation is reflected in some of the worst health indicators found anywhere in the world." [42c] (p6)

**5.214** The IFRC report continued

> "It is estimated that there are only 500-600 primary health care facilities in Afghanistan scattered heterogenously throughout the country, leaving the large majority of the population with no access to health services. Hospitals are reported to number between 60 and 100 of varying standards, severely under-used and unevenly distributed with the largest concentration in and around the Kabul area. Data on the structure of the health workforce is inconsistent but a striking feature is the over representation of doctors numbering slightly less then the nurses and midwives put together... Distribution is also severly (sic) uneven with 68 per cent of doctors and 63 per cent of other health professionals found in the Kabul province. Women represent only 26 per cent of doctors and 30 per cent of nurses. Government community health workers are thought to number around 3000 with varying levels of training from a few weeks up to six months. On the supply side, drug shortages are acute, inadequate imports and poor distribution systems hamper access, quality controls are virtually non-existent and irrational drug use is widespread." [42c] (p7)

**5.215** The IFRC report also noted that

> "In the face of these formidable challenges the Transitional Islamic Government began a process to determine the major priorities for rebuilding the national health system aiming, over time, to make essential health services available to all Afghans. A basic package of health care services (BPHS) was developed for the

purpose of:

- providing standardised services in primary health care; and
- providing equitable access, emphasising under-served areas.

The BPHS aims to provide a comprehensive set of health services based on a global system of district health with four standard types of health facilities, ranging from district hospitals with inpatient and outpatient services, to health centres with health posts having increasing focus on health promotion and preventive care." [42c] (p7)

**5.216** Another January 2004 report by the British Agencies Afghanistan Group (BAAG) stated that "Afghanistan's Basic Health Care Package [BPHS] concentrates its resources on providing basic health care to serve the whole population rather than on specialist care for the few. NGOs play an important part in filling gaps in specialist areas such as working with the blind, psycho-social care, orthopaedics, family planning and, increasingly, HIV." [71a] (p7) According to the UN Secretary General in March 2004, "Coverage by the Government's primary health service package now reaches 40 per cent of the population." [39o] (p14)

**5.217** The UN News Centre reported in January 2004 that there was one physician for every 50,000 people in Afghanistan. [39n]

**5.218** In January 2004, Action Contre La Faim Afghanistan (ACF) published a paper giving the results of their study into vulnerability in Kabul. According to the paper, "The health care system in Afghanistan's capital continues to be strikingly inadequate." [33] (p16)

**5.219** The ACF paper also reported that

> "There are no exact figures available for public or semi-public (i.e. supported by NGOs) health facilities in Kabul for reported figures, which can vary from 39 to 55, are clearly understated. Many international agencies and an increasing number of national agencies are technically and financially supporting sections of the clinics and hospitals. Despite this support, obvious discrepancies in the staffing and equipment of health facilities results in failure to effectively serve the burgeoning urban population. In fact, the lack of regular funding or investment over the last ten years has made quality care a virtual impossibility. The public system, largely subsidised by foreign funds, continues to be characterised by a lack of qualified staff and appropriate care. It is important to note that the high salaries of the UN and INGOs have drawn the more experienced medical personnel thus creating a drain on the availability of staff for the public system." [33] (p16)

**5.220** The ACF paper further noted that doctors in both hospitals and clinics in Kabul are reportedly used to referring patients to their own private clinics and demand that a particular private drug vendor in the "bazaar" fill prescriptions. The report continued "Indeed the majority of doctors registered under the Ministry of Public Health run private clinics after their shifts in public hospitals and clinics. The impact this dysfunctional system has on the population should not be underestimated as the poorest are not financially able to access the treatment they need...The lack of regulatory bodies regarding certification of medical personnel is apparently a real cause for concern." [33] (p16)

**5.221** The ACF paper also noted that "While health services in the capital are markedly superior to that of rural areas, there are parts of the city, which are remote or difficult to access. Communities in the peri-urban areas face difficulty in accessing care." [33] (p 17)

**5.222** On 28 July 2004, Medecins Sans Frontieres announced the closure of all medical programmes in Afghanistan following the killing of five MSF aid workers on 2 June 2004. The MSF Press Release stated that "Until the assassinations, MSF provided health care in 13 provinces with 80 international volunteers and 1,400 Afghan staff. Our projects included the provision of basic and hospital level health care as well as tuberculosis treatment and programs to reduce maternal mortality. In the coming weeks, MSF will complete the hand over of its programmes to the Ministry of Health and other organizations." [72]

**5.223** On 13 August 2004 the Institute for War and Peace Reporting (IWPR) reported that

> "Untrained or under-trained individuals claiming to be doctors are at work all across Afghanistan prescribing drugs and even carrying out surgeries at unregulated private clinics on unsuspecting patients. In some cases, the treatments performed by these so-called doctors have led to permanent injury or even death, according to interviews with patients or the relatives conducted by IWPR. Government officials admit that the problem exists throughout much of the country. "There are lots of unlawful clinics and pharmacies all over the provinces," said Abdul Manan Saidi, the deputy president of law and assessment in the ministry of health. "Even those people who were hospital cleaners in Pakistan and Iran have opened their own clinics." But with trained medical professionals in short supply, especially in rural areas, many feel they have no choice but to turn to these unqualified and unregistered individuals... [73e] (p1)
>
> Most legitimate doctors in Afghanistan have undergone seven years of university training before receiving their medical degree. But many of the so-called doctors have taken as little as three months of medical courses, often when they were refugees in Pakistan. Others received some basic first-aid training when the mujahedin were in power in the late 1980s and have simply declared themselves doctors since then." [73e] (p2)

**5.224** The World Bank report of 9 September 2004 noted that

> "Preventive health is lacking as demonstrated by low vaccination rates especially in rural areas, and poor access to potable water. Routine immunization coverage (Diphtheria, Tetanus, Pertussis - DTP3) is estimated at 30% (23% in rural areas). Inaccessibility to health centers, hospitals, or doctors that could provide preventive and curative services, as well as lack of medicines including essential drugs, are major contributing factors to the poor state of public health. Forty percent of health facilities do not have female staff, which implies that women are very unlikely to use those facilities." [69a] (para. 2.06)

**5.225** On 26 November 2004, the UN Secretary-General advised that

"The dual challenge in the health sector is to expand national services and improve the quality of health care — preventive and curative — while remaining within the Government's recurring cost projections. In line with the strategy prepared by the Ministry of Health, UNICEF and other United Nations agencies, the international community is supporting the Government in rebuilding the primary health-care system. The overall strategy in 2004 has focused on prevention, improving subnational capacity, establishing health-network structures, strengthening outreach services and building partnerships with NGOs and the private sector. There has been a particular focus on obstetric care and reproductive and child health. Existing projects to support hospitals and other social institutions, control disease, respond to outbreaks and pre-position medical supplies are ongoing. Specific programmes to eradicate polio and maternal and neonatal tetanus, as well as other vaccination and immunization campaigns, are also continuing." [39p] (para. 52)

**5.226** In a report dated 22 December 2004, the UN Secretary-General advised that "Article 52 of the Constitution requires the State to provide free preventive health care and treatment of diseases as well as medical facilities to all citizens in accordance with the provisions of law... There remains an urgent need to further improve the physical infrastructure of health facilities across the country and, more importantly, to enhance competency-based education and training for health professionals, including midwives, obstetricians and female doctors and nurses." [39l] (paras 57 & 61)

**5.227** A USAID Report dated January 2005 noted that "The basic health and nutrition of Afghans, particularly women, children, and displaced persons, improved this year [2004]. REACH (Rural Expansion of Afghanistan's Rural-based Healthcare) brought basic services and health education to under-served communities, focusing on maternal and child health, hygiene, water and sanitation, immunization and the control of infectious diseases." [60]

**5.228** A UNHCR paper dated December 2004 advised that "For some medical cases, return to Afghanistan is impossible, unless family- or community support and care is available during the treatment period. For others, there may be no treatment possibilities and no medication in Afghanistan for the time being. Examples are those with HIV or AIDS and injuries or conditions requiring sophisticated surgical procedures (i.e. transplants), which are not available in Afghanistan." The paper also advised that "The following diseases can currently not be treated in Afghanistan":

Heart disease; Liver cirrhosis and renal failure; thalassemia, hemophilia and leukemia (blood diseases); AIDS; Post measles encephalopathy, cerebral palsy and hydrocephalus; All cancerous diseases; Post organ transplantation; Viral diseases (medicines not available)

In addition, the following surgical operations cannot be performed and post-operative care is unavailable in Afghanistan:

Micro-neurosurgery; Heart surgery; Vascular surgery (only one expert in Kabul who can do peripheral vascular surgery); Radiotherapy for treatment of cancer; All kinds of organ transplantation; Dialysis; Eye and ear surgery. [11d]

**5.229** On 28 January 2005, the ICRC reported that "Following extensive renovations, Wazir Akbar Khan Hospital in the Afghan capital, Kabul, was handed over to the Ministry of Public Health on 25 January 2005... The 100-bed facility was, and still is, the main referral hospital for orthopaedic and emergency surgery in Afghanistan... Between 1996 and 2004, Wazir Akbar Khan Hospital admitted 71,500 patients and performed 50,000 operations. Some 28,600 patients received blood transfusions." [40af]

**Women and children**

**5.230** On 22 June 2004 a US State Department Report on US Support for Afghan Women, Children and Refugees noted that "Years of conflict and deprivation have left Afghanistan with the second highest maternal mortality rate in the world (1,600 maternal deaths per 100,000 live births), and significantly high child mortality (one in four children dies before age 5). Access to basic health care could have prevented many of these deaths, but currently over 90% of Afghan women deliver their babies without trained medical assistance." [2a] (p9) The UN Secretary-General's report dated 26 November 2004 confirmed that "The maternal mortality rate in Afghanistan is 1,600 per 100,000 live births. Maternal health-care services are not equally distributed, and the majority of women, especially from rural areas, do not have access to essential obstetric care. Moreover, pregnant women, as well as children under five, are at high risk of contracting malaria." [39p] (para.43)

**5.231** A Danish fact finding mission of March/April 2004 reported that the EU Special Representative, the Swedish Committee for Afghanistan and the World Health Organization all agreed that women had limited access to healthcare, not only because of the general problems in the healthcare system but also because of the lack of female health personnel. The report stated that "The World Health Organization (WHO) confirmed that the lack of female health personnel is a big problem, since it is part of Afghan culture that only women are allowed to examine women. The cultural customs thus prevent proper use of the already sparse resources. They reported that many women die without the healthcare system being made aware of it. This is due to the fact that they are suffering from a female illness and because the healthcare personnel are mainly male." [8] (section 6.2.6)

**5.232** On 21 May 2004, the ICRC reported that

> "The first ever centre for Afghan children with cerebral palsy was officially opened in Kabul on 17 May [2004]. Financed by the Italian Red Cross and operated under the auspices of the International Committee of the Red Cross (ICRC), the centre is housed in the Indira Ghandi Children's Hospital in the Wazir Akbar Khan district of the Afghan capital. The cerebral palsy programme will initially run for two years. In addition to providing physiotherapy to its young patients, it offers counselling for families and training courses." [42a]

**5.233** The International Medical Corps (IMC) noted in June 2004 that the Rabia Balkhi Women's Hospital is the only women's hospital in Kabul. IMC noted that

> "Its 13,000 births per year make up only a tiny fraction of the more than one

million births nationwide annually, but, nonetheless, the hospital is an irreplaceable starting point for building the capacity of the Afghan health system to care for women...IMC has been training female health workers at Rabia Balkhi since spring 2003. Already, infant and maternal mortality rates have dropped dramatically. In April 2004, less than one year into the project, there were no maternal deaths at the hospital." [40d]

**5.234** In July 2004, the World Health Organisation (WHO) reported that "To reduce the maternal and infant mortality due to tetanus, 7.2 million women of child bearing age were vaccinated during 2003 and 850,000 during 2004." [43] (p1)

**5.235** The WHO also reported that, under the nationwide measles campaigns, more than 16 million children had been vaccinated in order to address the largest contributor of mortality amongst the six vaccine preventable diseases in children under 5 years of age. [43] (p1)

**5.236** In August 2004, Afghan Connection, an organisation which refurbishes and equips clinics and hospitals and provides medical training, advised that the Indira Gandhi Paediatric Hospital in Kabul is the only paediatric teaching hospital in Afghanistan. Afghan Connection advised that the hospital had only 250 beds and was originally funded by the Indian government. According to the source, "The Ministry of Public Health now fund most of the hospital, but some of the individual wards are supported by non-government organisations (NGOs) from overseas." [9] (p1)

**5.237** In September 2004, UNICEF reported that in order to reduce one of the world's highest rates of maternal mortality, the organisation was committed to the provision of quality emergency obstetric care (EmOC) facilities throughout Afghanistan. The report stated that "To date, the facilities have become functional in 27 provinces (mostly through support from partner NGOs), including 5 Centres of Excellence (CoE) in major cities." [44b] (p4)

**5.238** The September 2004 UNICEF report noted that "National efforts to eradicate polio from Afghanistan continue, as three new cases were found during 2004. UNICEF, with the Ministry of Health (MOH) and WHO, is increasing its actions for immunization of children against polio involving 40,000 vaccinators (45% women). So far two rounds of National Immunization Days (NIDs) were held in March and April, targeting all children below five years of age. Over 6.6 million children (over the NID target of 6 million) were reached during the two rounds." [44b] (p3)

**5.239** In a report dated October 2004, Human Rights Watch (HRW) noted that "Women and girls no longer confront Taliban-era restrictions to gain access to health care services." Nevertheless, the report noted that Afghan women's reproductive health and mental health indicators were alarming." [17j] (p6-7)

**5.240** The World Bank report of 9 September 2004 noted that a massive vaccination programme had led to a marked reduction in confirmed polio cases and a measles mortality reduction campaign was conducted and reached more than 90% of children six months to 12 years of age. The report also noted that

"Based on a 2003 sample survey, infant mortality at 115 per thousand live births and under-five mortality at 172 per thousand live births are among the highest in

the world. The situation is particularly grim in rural areas where one out of five children dies before reaching five years of age. The estimated rate of maternal mortality (1,600 per 100,000 live births) is among the highest in the world. Nine out of ten births are not taking place in health facilities, and the corresponding figure is even higher in rural areas. Family planning is largely non-existent.

Morbidity rates are extremely high: 30% of children under five years of age were reported to have diarrhea during the two-week period that preceded the survey and 19% to have suffered from severe respiratory diseases over the same period. Malnutrition is also a critical issue. Seventy percent of children do not receive timely complementary feeding that can damage their physical and learning capacity irreversibly, and 85% of households consume non-iodized salt. Three percent of children are disabled and 6% are orphans." [69a] (paras. 2.03-2.05)

**5.241** In his report dated 22 December 2004, the UN Secretary-General advised that

"Women's access to quality health care continues to be impeded by restrictions on movement, security concerns and an acute lack of trained female health staff. The maternal mortality rates remain very high and great variations between rural and urban areas are due to the uneven availability of and access to obstetric care. Badakhshan province still reports the highest maternal mortality rates in the world, recording 6,500 deaths per 100,000 live births. Tuberculosis is also a major killer, with 70 per cent of those affected being women. Women's vulnerability to acute depression and suicide is also high.

To address these challenges, the Ministry of Health has prioritized the provision of good quality and affordable health care to mothers and children. A basic package of health services has been developed, with special attention to the health of lactating mothers and newborn babies. The Ministry of Health, with support from UNICEF and NGO partners, is establishing and/or upgrading one health facility per province to perform emergency obstetric care services. Currently, 25 out of 34 provinces have such services. The United Nations Population Fund (UNFPA) has provided reproductive health kits to hospitals and NGOs working in remote areas in 22 provinces. While a number of agencies, including the World Health Organization (WHO), have supported the training of midwives and nurses in Afghanistan and neighbouring countries, the need for qualified female medical staff will remain critical for years to come. In addition, the Ministry, with the help of UNICEF and WHO, continues to implement a three-year (2003-2005) plan to eliminate maternal and neonatal tetanus. To ensure successful immunization and maternal health programmes, the Ministry and international organizations increasingly sought the support of religious leaders. To date, the vaccination programme has reached over 3 million women, largely due to the fact that the majority of those giving vaccinations are female." [39l] (paras 57 & 58)

**5.242** The US State Department Report 2004 (USSD), published on 28 February 2005, recorded that "Women continued to be denied access to adequate medical facilities. According to the AIHRC, nearly 40 percent of the 756 basic primary-health facilities in 2002 had no female workers, a major deterrent for women because societal barriers discouraged them from seeking care from male health workers." [2d] (p11)

**5.243** The USSD 2004 also noted that "Children did not have adequate access to health care, and only one children's hospital existed in the country; however, it was not accessible to citizens in distant provincial districts outside Kabul." [2d] (p11)

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**Persons with disabilities**

**5.244** On 22 November 2004, IRIN News reported that

> "The country has more than a million people living with disabilities, according to the Afghan Ministry of Martyrs and Disabled (MOMD) and a quarter of them - at least 250,000 - are victims of landmines and unexploded ordnance (UXOs). The number is rising, with at least 40 people still falling victim to mines each month, as people return to villages that used to be on front lines. But this figure has now fallen considerably compared to the last few years when 300-400 people became victims of UXOs and mines every month." [40am]

**5.245** The IRIN report also noted that although there are several national and international organisations and a government ministry with mandates to assist the disabled, the head of Afghanistan's Disabled Women's Association, Nafisa Sultani, believes there is little happening to help them reintegrate. "Despite hundreds of millions of dollars of international aid for Afghanistan, the disabled community has not been addressed." As Afghanistan already has a high rate of unemployment, finding jobs for mine victims is very difficult. Even though the government has passed a decree that disabled people must comprise five percent of every ministry's staff, "that has not been implemented", Sultani said." [40am]

**5.246** The same IRIN report noted that "The government is paying 300 afghanis (about US $7) disability pension monthly. Some distribution of land for shelter or monthly food items through aid agencies for disabled families also takes place." However, one UXO victim was reported as saying that disabled ex-combatants are often prioritised over civilians. The source said that there had recently been land distribution for the disabled, but they were told that it was for ex-officers and soldiers, not civilian victims. [40am]

**5.247** The IRIN report further noted that

> "The International Committee of Red Cross (ICRC) is running the largest orthopaedic centres in major Afghan cities providing limb prostheses and physiotherapy. According to Alberto Cairo, head of ICRC orthopaedic projects in Afghanistan, the committee is running vocational training, a back-to-school programme, micro-credit schemes and a job centre to promote reintegration...The prevalent attitude among Afghans is that those maimed by mines are unworthy ex-fighters responsible for all the destruction in Kabul, rather than innocent victims who need public support and understanding. Victim support is part of the Ottawa convention, which the Afghan government signed up to in 2002. "I wouldn't agree that we are not assisting them. The government is well aware of the scale of the problem and is trying to assist victims as much as possible," Mohammad Haidar Reza, Afghan deputy foreign minister and chairperson of demining activities in Afghanistan, told IRIN. "But because of the limited resources that the government has, it cannot take care of all of their [the disabled] needs," he maintained." [40am]

**5.248** On 2 December 2004 the UN Children's Fund advised that their new report had shown people with disabilities in Afghanistan are hampered by negative attitudes from society.

> "The report, drawing upon a two month survey in Kabul, Jalalabad and Herat, identifies some of the key difficulties facing people with disabilities as they strive to play a role in reconstruction efforts and underlines the continuing stigma associated with disabilities in Afghan society. Segregation from society affects most disabled people, according to the report. This takes the form of verbal and physical abuse, lack of access to education and health care, lack of social opportunities, barriers to employment and discrimination. Such isolation affects not just people with disabilities, but also their families' status in society." [40al]

**5.249** On 2 December 2004, a UNAMA spokesman noted that

> "A global approach to disability will be implemented by the Ministry of Martyrs and Disabled (MMD), through the adoption of a comprehensive strategy for the next three years. The foreseen budget is US $9.4 million. Half of the funds will be dedicated to services for disabled people, such as physical rehabilitation, education or vocational training. The other half will be devoted to technical advice to partner institutions and ministries, such as the Ministry of Labor, Health or Education. This strategy, designed with the Comprehensive Afghan Disabled Programme (CADP) of the United Nations Development programme (UNDP) has been agreed last week Thursday and will be signed once the new Afghan government is in place.
>
> So far, estimates - and these are only estimates from various governmental and UN sources - indicate that 800,000 to 2 million Afghans are disabled. 25% of the disabilities would be related to war; others are due to poor maternal or preventative health as well as poor curative health care. According to consolidated data from the Ministry and the Comprehensive Afghan Disabled Programme, projects are mostly implemented by NGOs and have only reached 20 of the 34 provinces of Afghanistan, lacking in the south and the southwest. In addition, programs have primarily focused on physical rehabilitation while leaving aside people with sensory and psychological impairment." [40ak] (p1)

**5.250** The UNHCR paper of December 2004 advised that "Physically disabled Afghans who can not work or live on their own in Afghanistan, should not return unless they have family or community support. Examples are persons permanently disabled by diseases such as polio or meningitis, land mine victims, persons injured during the war, accident victims, persons with severe handicaps or birth defects, including blind, deaf and mute persons." [11d]

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## HIV/AIDS

**5.251** In June 2004 a World Bank Group Issue Brief noted that there was no reliable data on the prevalence of HIV/AIDS in Afghanistan. The brief noted that

"HIV/AIDS has surfaced in Afghanistan, but more information and better health services are needed for the government to develop a program of prevention and treatment...To date 23 cases have been reported through blood bank branches, however the actual number has been estimated at between 250 and 300 cases, using a point prevalence software package developed by UNAIDS and the World Health Organization. Sexual transmission has been predominant; however, transmission through blood transfusions and the sharing of contaminated needles during drug use is increasing." [69b] (p1)

**5.252** The World Bank brief also noted that

"Much of the population lacks access to basic health services, and there is an acute shortage of health facilities and trained staff, particularly female staff, in most rural areas. Of the facilities that exist, most are ill equipped and unable to protect staff and patients from HIV, treat opportunistic infections, or prevent mother to child transmission. WHO estimates that only half of the 44 medical facilities that transfuse blood are able to screen the blood for HIV...

"The Government of Afghanistan has established a National HIV/AIDS/STI-control department, developed a five-year (2003-2007) strategic plan, and drawn up an annual plan of action to combat HIV/AIDS. Focal persons for HIV/AIDS have been assigned at the Ministries of Religious Affairs, Education, and Women's Affairs. It has agreed to incorporate HIV/AIDS in the school curricula, which is under revision. Information, Education, and Communication materials have been developed and widely distributed throughout the country, targeting the general population. There are plans for conducting sero-prevalence studies among drug users and TB patients and for conducting behavior surveys among these and other vulnerable groups, subject to the availability of required funds." [69b] (p2)

**5.253** The World Bank Group brief further noted that "The World Bank has approved a $59.6 million project that will help rebuild the public health system in Afghanistan with a strong emphasis on prevention and education. Although there is no specific HIV/AIDS component due to more immediate priorities, interventions to improve maternal health and prevent STDs will also prevent the spread of HIV." [69b] (p3)

**5.254** On 1 December 2004, the UN Population Fund reported that three deaths to HIV/AIDS, an Afghan father and his two children, were registered in Afghanistan. The report also noted that

"Thirty-one HIV positive cases have been detected, and around three hundred cases of HIV are estimated in the country. Although available data on the prevalence of HIV/AIDS are very limited, some behaviors are already identified at high risk, especially drug consumers, IPDs [sic] and refugees...To support the Comprehensive National Strategic Plan to prevent the HIV/AIDS epidemic from spreading in the country, UNFPA Afghanistan, the Ministry of Health and the Global Fund, have inaugurated last November 25th [2004], the first Volunteer Counseling and Testing Center (VCT) for HIV/AIDS in the country. This VCT center enables a person to confidentially explore and understand his or her risk of HIV infection. It provides an opportunity to fully comprehend the implications of one's sero-status and explains [to] people precautions for protection and

prevention." [40aa]

(See also paragraph 5.228 above for UNHCR view on treatment for HIV/AIDS)

**Mental Health**

**5.255** The January 2004 report by the British Agencies Afghanistan Group (BAAG) stated that,

> "An important issue for the Government to address is the high incidence of mental health problems and disability brought about by years of conflict, bereavement and deprivation and this is therefore included in its Basic Healthcare Service Package. The aim is for all districts of the country to be covered...The Dutch NGO, Health Net International's (HNI) mental health programme aims to integrate mental health services within existing basic health care structures and provides a good model...Currently, one of the HNI mental health care programmes aims at local capacity building and is being implemented in cooperation with the Ministry of Health in Jalalabad, covering several districts of Nangahar. It provides training materials in Pashto for doctors, nurses/midwives and community volunteers and in clinics, where there are trained personnel; essential mental health drugs are supplied." [71a] (p22)

**5.256** In March 2004, an article on mental health in Afghanistan was published in Lemar-Aftaab, an independent magazine that focuses on Afghan culture. The report by Dr. Amin Azimi noted that

> "Currently, there are only a handful of mental health professionals in Afghanistan, mainly psychiatrists. They are poorly equipped to treat patients, and their only method of treatment is medication. These professionals don't have training in psychotherapy. Medication is helpful for treating the patients symptoms; however, individual and group psychotherapy is essential in order to resolve the internal psychological conflicts the Afghan population has been experiencing. Afghanistan is in need of trained psychologists to design mental health programs, treat these patients, and train the art of counseling to qualified individuals." [40a] (p1)

**5.257** The Danish fact finding mission of March/April 2004 reported that

> "The WHO [World Health Organisation] was of the opinion that there are [sic] very limited access to the treatment of mental illnesses, because of shortages of mental institutions and medicines. There is no treatment available, e.g. for schizophrenics or manic-depressive people. In Kabul there is a mental hospital, but the WHO was not acquainted with the standard of treatment. In the district hospitals, treatment for the mentally ill is not available although it may be possible to treat less serious depressive conditions. The WHO explained that the organizations in the rural districts are trying to instruct health and social workers and the families of psychiatric patients in order to provide some degree of treatment." [8] (section 9.3.3)

**5.258** An international NGO explained to the Danish fact-finding mission in March/April 2004 that

"The problem with treatment for mental deceases [diseases] is that treatment is highly work intensive. The source knew of an NGO-operated programme in Kabul where treatment is being offered to psychiatric patients. However, the programme offers treatment only to a few patients. At the present time they are providing treatment for approximately 50 (fifty) patients. Apart from this programme there are almost no possibilities for treatment. It may be possible to purchase anti-depressive medications in Afghanistan." [8] (section 9.3.3)

**5.259** In May 2004 the Afghanistan Research and Evaluation Unit (AREU) published a report on urban vulnerability in Afghanistan. The AREU report noted that "War victims, the disabled and women in general have a certain disposition to experience mental health problems, caused by overall worrying about household situation, problems of physical health or humiliating experiences in the past...In public realms, there is just no infrastructure addressing the specific needs of people with disabilities, and transport especially is a major problem. Apart from that, dissatisfaction and even anger about the lack of respect towards them is prevalent." [22b] (p21)

**5.260** In July 2004, the World Health Organisation (WHO) reported that

"Its [sic] estimated that 20-30% of population suffer from mental disorder in Afghanistan, along with that there are some 30-40% facing psychosocial problems interfering in their daily routines which could lead to serious mental disorders in the future. Mental Health situation in Afghanistan seems [to be] declining due to unavailability of services in different regions since there is no functional unit in MOH [Ministry of Health] to acknowledge current problems of mental health at national level. The existing facilities offering mental health services are about half is [sic] in the capital." [43] (p11)

**5.261** The WHO report also noted some achievements in the area of mental health including the establishment of four community mental health centres in Kabul city to offer services through consultations in clinics and community/home visits in Khair Khana, Central Polyclinic, Rahman Mina and Arzan Qeemat; the development of a strategy paper to integrate mental health service into primary care services in a three phase initiative (the first phase has started), and the procurement of essential psychotherapeutic medicine for mental health centres in regions and Kabul. [43] (p12)

**5.262** On 4 August 2004, Medical News Today reported that

"Exposure to trauma and mental health symptoms of depression, anxiety, and post-traumatic stress disorder (PTSD) are prevalent among people in Afghanistan but, often go untreated because of lack of resources and mental health care professionals, according to two studies in the August 4 issue of JAMA, the Journal of the American Medical Association, a theme issue on Violence and Human Rights...

Barbara Lopes Cardozo, M.D., M.P.H., from the Centers for Disease Control and Prevention, Atlanta, and colleagues, conducted a nationally representative survey of 799 Afghan adult household members (699 nondisabled and 100 disabled respondents) aged 15 years or older from July to September 2002 to assess respondents exposure to trauma during the previous 10 years, mental health

symptoms, resources for emotional support, and disability...

In conclusion, the authors write: "Our survey demonstrates a high prevalence of exposure to trauma and the magnitude of mental health problems among Afghan individuals in post-war Afghanistan. Prevalences of symptoms of depression, anxiety, and PTSD were high, even when compared with other communities traumatized by war and conflict. Women and disabled respondents had significantly poorer mental health status than men and nondisabled respondents. These data underscore the need for donors and health care planners to address the current lack of mental care resources, facilities, and trained mental health care professionals in Afghanistan."" [86]

**5.263** The second study reported by Medical News Today focused on residents of the eastern province of Nangarhar. The report noted that

"During the past 10 years, 432 respondents (43.7 percent) experienced between 8 and 10 traumatic events; 141 respondents (14.1 percent) experienced 11 or more. High rates of symptoms of depression were reported by 391 respondents (38.5 percent); anxiety, 524 (51.8 percent); and PTSD, 207 (20.4 percent)," the authors report. Symptoms were more prevalent in women than men. "The main resources for emotional support were religion and family. Medical care was reported to be insufficient by 228 respondents (22.6 percent)." [86]

**5.264** A UNHCR paper dated December 2004 advised that

"There is no form of psycho-social trauma support in Afghanistan. The concept of 'counseling' as a profession does not yet exist. All trauma is, if at all, dealt with by discourse with family and friends. Many Afghans, however, are seriously traumatized given their experiences of war and human rights violations. Of particular concern, in this regard, is the situation of women, many of who have suffered sexual violence, including rape. In addition, for both women and men who have suffered sexual violence, strong cultural taboos surrounding disclosure as a victim inhibit discussion, even with close family members. In more conservative areas, identification as a victim of rape or other sexual abuse can lead to family rejection and social ostracism, therefore it is reasonable to conclude that some victims of this form of trauma may fear return to Afghanistan on the basis that they will be discovered as a victim and face further persecution." [11d]

**5.265** The UNHCR paper also noted that "Mentally ill persons who need long term treatment or special care will not be able to cope in Afghanistan unless they have family to take care of them. There are no specialized institutions and personnel. This is particularly true for severe mental illness such that the person cannot be self-sufficient. Occasional drug users may not be mentally ill, although their families may think they are." [11d]

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**Other medical conditions**

**5.266** The January 2004 BAAG report noted that, "The WHO estimates that 150,000 people are suffering from TB in Afghanistan and approximately 23,000 of these die annually...A national TB programme has now been developed by WHO (World

Health Organisation) with the Ministry of Health and regional offices. Drugs and other essential medicines are supplied and the health care system developed." [71a] (p25)

**5.267** On 26 November 2004 the UN Secretary-General reported that

> "Tuberculosis remains a serious public health problem in Afghanistan. With support from the World Health Organization (WHO), 162 health facilities in the country are offering services in 141 districts that represent 54 per cent of the country's population. The treatment success rate was 86 per cent in 2002. Anti-tuberculosis medicines for 2004 and at least half of 2005 have been procured. These are sufficient to provide a full course of treatment to some 25,000 tuberculosis patients.
>
> Under the Roll Back Malaria project, WHO is assisting the Ministry of Health and local health authorities to combat malaria in 14 provinces where the disease is endemic. Through this project, 600,000 individuals are receiving full treatment for malaria every year. In addition 750,000 individuals are protected from malaria and leishmaniasis by sleeping under insecticide-treated nets provided under the project." [39p] (paras. 53 & 54)

**5.268** The Danish fact finding mission of March/April 2004 reported on the availability of treatment for certain illnesses. The report noted that

> "An international NGO mentioned that in general there is no treatment available for cancer in Afghanistan. The WHO was of the opinion that the capacity for treating cancer today is limited due to lack of medical expertise, the required physical equipment and medicines. However, the WHO said it is possible to treat some types of childhood leukaemia."
>
> "The WHO said that the treatment of malaria and tuberculosis are available for more than 70% (seventy) of the population. By the end of 2004 such treatment will be accessible for all Afghans. However an international NGO was of the opinion that only two to four % of the population has access to the treatment for tuberculosis and that the actual coverage in various parts of the country is random. There are some NGOs who are offering treatment for tuberculosis. The international humanitarian aid organization MedAid is especially active in this area. The NGO mentioned that in Kabul one can visit private doctors who offer treatment for tuberculosis. The source underlined that the treatment of tuberculosis takes considerable time. The result of the treatment depends on whether the patient participates carefully in the treatment, because otherwise there is a risk of developing resistance to the medicines."
>
> "The WHO was of the opinion that the initial treatment for diabetes can be carried out in Afghanistan but that there are problems with long term treatments. Insulin is very expensive and paid by the patient himself. Another problem in this context is the general lack of the required facilities to store medicines in a safe manner. An international NGO was of the opinion that no regular and continuous possibilities for treating diabetes exist in Afghanistan." [8] (section 9.3.3)

**5.269** The WHO told the Danish fact-finding mission that simple heart and lung diseases could not be treated in district or provincial hospitals, but required referral to larger hospitals where such problems could be dealt with to a certain extent. The Danish report noted "There is however no possibility for carrying out e.g. a bypass operation in the large hospitals. An international NGO found that treatment for serious heart and lung diseases is not available at all in Afghanistan. The source said in this connection that it is not possible to perform a bypass operation in Afghanistan. Patients in need of such an operation must travel either to Iran or Pakistan." [8] (section 9.3.3)

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**Educational System**

**5.270** A US State Department Report (USSD) of 22 June 2004 noted that,

"Women were systematically denied opportunities for education and vocational training under the Taliban, and female illiteracy was widespread even before the Taliban...Through decades of conflict, approximately 80% of Afghanistan's schools were damaged or destroyed, and over 8 million Afghans ranging in age from 6 to 30 had little or no education." [2a] (p10)

**5.271** The Constitution adopted in January 2004 recognised that education is the right of all citizens of Afghanistan. [81b] The Human Rights Research and Advocacy Consortium reported in March 2004 that, "In the newly adopted constitution education for all is free and compulsory until 9th grade. This is an ambitious and commendable target, but one that requires strategic and long term resource allocation, yet most donors only provide funding on a one year basis. "There are no quick fixes in education. The education system was on its knees in 2001. It will take sustained support to ensure that all Afghan children can enjoy a quality education" says Sally Austin, Care." [40o] (p2) The US State Department Report 2004 (USSD) recorded that "The Constitution makes education to the intermediate level mandatory, and provides for free education to the college, or bachelor's degree level." [2d] (p11)

**5.272** A report by the Human Rights Research and Advocacy Consortium (HRRAC) dated March 2004 reported that excellent progress had been made in the field of compulsory education since 2001 and the Afghan government had achieved the highest enrolment rates in the history of Afghanistan. [70b] (p1)

**5.273** The HRRAC report also noted that despite the achievements made only just over half of all Afghan children age 7-13 attended school. The report noted that "Where a child lives in Afghanistan has a huge impact on his/her access to education. There is a great divide between urban and rural areas in terms of enrollment figures...As well as an urban-rural divide there is a very significant geographical division between enrollment rates in northern and southern provinces." The report also noted that out of the nine provinces with the lowest enrolment rates, seven were southern provinces. [70b] (p2)

**5.274** The HRRAC report noted that "Children do not enroll and/or drop out of school for a whole range of reasons including: cultural restraints, economic constraints,

security, distance to school, poor teaching and inadequate buildings and supplies. When children's time or labour contributes to the household economy, going to school is an opportunity cost that many families can ill-afford." [70b] (p3)

**5.275** The same HRRAC report stated "The lack of teachers seems to be at crisis point. Teacher to student ratios are already high in some schools." The report also stated that, to improve the gender balance in enrollment more female teachers must be recruited. Ratios vary and, according to figures from the Ministry of Education in 2003, the total number of teachers for grades 1-9 in Kabul was 8821, 7028 of whom were female. However, in the southern province of Zabul, the total number of teachers was 860, 37 of whom were female and in Khost province 9 out of 1374 teachers were female. [70b] (p6)

**5.276** The Danish fact finding mission of March/April 2004 reported that "The UNAMA mentioned that the numbers of children who attending school are increasing. However, there are still problems with access to further education after primary school, since not enough money is being invested in secondary schools." The Danish report noted that, according to the Swedish Committee for Afghanistan (SCA),

> "The policy of the government is that no child should be denied access to school, which means that the number of children in each class is very high in some areas. According to the organization, it is not unusual to find up to one hundred pupils from the age of four to twenty-eight in one class, which was intended for 30-35 (thirty to thirty-five) students...The source stated that there is access both to primary and secondary schools in Kabul. However, the population had grown extensively during the last three years in Kabul and many schools are overfull." [8] (section 9.2)

**5.277** A June 2004 report from the Office of International Women's Issues, submitted to Congress by the USSD noted that

> "Educational opportunities in Afghanistan vary significantly among the country's different regions. Cultural barriers to educating girls persist, more strongly in some areas than in others, and are heightened by a lack of trained teachers, especially women teachers. Physical limitations such as insufficient or inaccessible spaces and structures, lack of access to safe water, lack of books and other materials, and inadequate sanitation mechanisms provide further barriers to educating all Afghan children. In many areas of Afghanistan, classes are held out-of-doors without books or materials." [2a] (p11)

**5.278** On 29 July 2004 the World Bank approved a US$35 million grant to improve access to and the quality of education in Afghanistan. The grant will support the Education Quality Improvement Program which will be implemented by the Ministry of Education. [40q]

**5.279** The World Bank reported in September 2004 that

> "Despite progress, education is still limited. While the net enrollment ratio in major cities is as high as 80%, it is only 47% in rural areas. Nationally, the female net enrollment ratio is 40% while that of boys is 67%. However, the net enrollment

ratio for girls is as low as 1% in some provinces. Missing out on primary education generally has irreversible negative effects on well-being, as there are few "catch-up" and adult-literacy services available." [69a] (para. 2.07)

**5.280** A Human Rights Watch report of October 2004 noted that

"Since late 2001, enrollment in schools has significantly increased, with over four million children in school. Despite this improvement, more than half of Afghanistan's children do not attend primary school. Approximately 34 percent of those enrolled are girls, but their drop-out rates are high. Of those attending primary school, only 9 percent go on to secondary school. While the government reports that over 80 percent of girls in Kabul attend primary school, in some provinces girls' enrollment rates have shown little or no progress. Only one out of every one hundred girls in Zabul and Badghis provinces attend primary school. Increasing the number of female teachers is essential to increase the enrollment of girls because many families forbid their daughters to attend schools with male teachers. Security is also key—the Taliban and local military factions have attacked or burned dozens of girls' schools in the past two years." [17j] (p7)

**5.281** On 22 December 2004, the UN Secretary-General reported that

"Article 44 of the new Afghan Constitution calls on the State to devise and implement effective programmes to create and foster balanced education for women and eliminate illiteracy in the country. According to UNICEF, about 80 per cent of women over the age of 15 are illiterate, compared to 51 per cent of men. Girls account for 34 per cent of the total enrolment of more than 4 million children throughout the country. However, wide gender disparities persist. In many provinces, girls represent less than 15 per cent of the total enrolment. UNICEF estimates that 1.5 million girls of school age are not enrolled in classes. The security situation, distance from home and inadequate facilities are the main reasons cited by families for not sending their children, particularly their daughters, to school.

A significant number of girls missed up to seven years of schooling during the Taliban era and, as a consequence, had to enrol in classes with younger children, which often discouraged them from attending school at all. To provide this group of students with "catch-up" classes, in the winter of 2004, UNICEF and the Ministry of Education managed an accelerated learning programme in five provinces. More than 45,000 children, over 80 per cent of them girls, benefited from these accelerated classes...

The increase of students has placed great strains on the school infrastructure, resulting in overcrowded classrooms with poor facilities. WFP [World Food Programme], in cooperation with the Ministry of Education and other partners, supported through a food-for-work scheme the building of 13 schools equipped with latrines, potable water facilities and furniture." [39l] (paras. 62 - 64)

**5.282** The same Secretary-General's report also noted that

"The Ministry of Education, with the support of UNICEF, has developed a new

curriculum, syllabuses and teacher education programmes for primary school grades, which are expected to be available in the form of new textbooks, and has improved teacher accreditation and standards in 2005. Since the shortage of female teachers remains an additional obstacle to girls' education, UNICEF organized programmes to improve the abilities of teachers. Of those participating in the programmes, about 30 per cent were women...

Given the high illiteracy rates and low education levels in the country in general, further intensified efforts are needed to accelerate the building of schools in all provinces and to increase the number of qualified teachers, in particular female teachers, at all levels of education. Continued efforts are needed to overcome resistance to girls' education, increase the enrolment rates of girls and support those women and girls who were excluded from education in the past." [39l] (paras. 65 – 67)

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# 6 Human Rights

## 6A Human Rights Issues

### Overview

**6.1** On 27 January 2005, the Afghan Independent Human Rights Commission (AIHRC) web site showed that Afghanistan is a party to the following principle international Human Rights Treaties:

1. The Optional Protocol to the Convention on the Rights of the Child (CRC-OP-AC) on the involvement of children in armed conflict, ratified on 24th Sept. 2003
2. The convention on the Elimination of all Forms of Discrimination against Women (CEDAW) ratified on 5th March 2003.
3. The Optional Protocol of the Convention of the Rights of the Child (CRC-OP-SC) on the sale of children, child prostitution and child pornography, ratified on 19th October 2002.
4. The Convention on the Rights of the Child (CRC), ratified on 27th April 1994.
5. The Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) ratified on 26th June 1987.
6. The International Convention on the Elimination of all Forms of Racial Discrimination (CERD) ratified on 5th August 1983.
7. The International covenant on Economics, social and cultural Rights (CESCR) ratified on 24th April 1983.
8. The International Covenant on Civil and Political Rights (CCPR) ratified on 24th April 1983. [78b]

Human Rights Watch (HRW) recorded in 2004 that Afghanistan had also ratified the International Criminal Court Treaty (ICC) on 10 February 2003. [17g]

**6.2** In March 2004, Amnesty International (AI) reported that

"Despite the scale of war crimes, crimes against humanity and other serious human rights violations committed in Afghanistan over nearly a quarter of a century, justice

to date, has been denied to the victim. Amnesty International welcomes the Afghan government's ratification of the Rome Treaty of the International Criminal Court (ICC) as a demonstration of its commitment to the principle of truth, justice and peace but concrete measures have yet to be taken to hold to account individual perpetrators of human rights violations in Afghanistan. No process has so far been set up to systematically investigate serious crimes both past and present.

Amnesty International welcomes the provision in the Constitution that persons who have been convicted by a court for committing a crime, specially mentioning crimes against humanity, are prohibited from holding public office. Given the weak state of the judicial system in Afghanistan and the lack of progress in ensuring accountability for past violations, this provision is at present meaningless as no one has yet been tried by a competent court for crimes committed during the long years of the conflict. In the meanwhile, suspects are free and in some cases holding government positions." [7a] (p4-5)

**6.3** On 21 September 2004, the first report of the UN appointed Independent Expert on Human Rights in Afghanistan advised that

"The human rights situation in Afghanistan involves an extensive range of issues, including past and present violations committed by both State and non-State actors, operating beyond the reach of the law as elements of widespread and systematic policies, and by individuals. The violations identified constitute gross violations of fundamental human rights such as extrajudicial execution, torture, rape, arbitrary arrest and detention, inhuman conditions of detention, illegal and forceful seizure of private property, child abduction and trafficking in children, various forms of abuse against women and a variety of other violations committed against the weaker elements of society, such as minorities, returning refugees, women, children, the poor, and the handicapped.

Key to understanding these violations are the problems of security in a country that is still dominated by the military power of warlords and local commanders and by the rising economic power of those engaged in poppy cultivation and heroin traffic. The absence of security has a direct and significant impact on all human rights." [39q] (Paras. 4 & 5)

**6.4** The Independent Expert's report also observed that

"The [human rights] situation is not, however, uniform throughout the country. In Kabul, where the Government's strength is concentrated and where ISAF and the international community are headquartered, violations are the fewest in number and improvements are most visible. Other regions also have more security and fewer human rights violations. As political tensions ebb and flow in different regions, the human rights situation worsens or improves. Consequently, any regional reporting will differ, not only according to place, but also to time and circumstances." [39q] (para. 54)

**6.5** The Human Rights Watch (HRW) Afghanistan World Report 2005 advised that

"Despite some improvements, Afghanistan continued to suffer from serious instability in 2004. Warlords and armed factions, including remaining Taliban

forces, dominate most of the country and routinely abuse human rights, particularly the rights of women and girls. The international community has failed to contribute adequate troops or resources to address the situation, and basic human rights conditions remain poor in many parts of the country, especially outside of Kabul... U.S. forces operating against Taliban insurgents continue to generate numerous claims of human rights abuses against the civilian population, including arbitrary arrests, use of excessive force, and mistreatment of detainees, many of whom are held outside the protection of the Geneva Conventions." [17f] (p1)

**6.6** The same HRW report also noted that "Without adequate international support, the government has continued to struggle in addressing Afghanistan's security and human rights problems. The central government has acted to sideline several abusive commanders, but in most cases the government has negotiated and cooperated with leaders implicated in abuses, as have U.S. government officials in the country, who continue to be influential actors in Afghanistan's political processes." [17f] (p3)

**6.7** On 12 December 2004 the Head of Human Rights Unit at UNAMA stated that

"The situation of human rights in Afghanistan has improved but there are still many challenges to overcome. Human rights violations continue to be committed in different parts of the country by both state and non-state actors. This has been documented by numerous agencies, including the AIHRC [Afghan Independent Human Rights Commission], the independent expert on human rights, Professor Cherif Bassiouni, and NGOs, as well as UNAMA. Violations continue to occur largely because the institutions of the state that should protect human rights are not yet strong enough to function effectively throughout the country. Human rights depends upon the rule of law and, despite progress by the Afghan Government, in quite a number of places the law is not followed and there are still a few actors who continue to behave as if they are above it. After decades of armed conflict when the power of the gun has dominated, it will take quite a long time to rebuild Afghan society based on respect for human rights. The approach of the UN in this respect is to help Afghanistan build strong, clean and effective institutions that administer laws consistent with the constitution and international human rights standards. In his inauguration speech, President Karzai committed his Government to "the rule of law, and the protection of civil liberties and human rights; the acceleration of administrative reform to strengthen administration, and to root out corruption." [40aq] (p2)

**6.8** The same source also observed "It is interesting to note that while the constitution of Afghanistan protects many rights and freedoms and Afghanistan is a party to most of the major international human rights treaties, relatively few Afghans are aware of their rights." [40aq] (p2)

**6.9** On 22 December 2004, IRIN reported an interview with the head of the Afghanistan Independent Human Rights Commission, Dr Sima Samar. Dr Samar was reported as saying

"The human rights situation in Afghanistan is better than in previous years.... But there are still some very serious violations of human rights in the country, which is

due to a lack of law and order. Some people are beyond the law. Meanwhile, lack of security is another issue. People don't feel secure and there is no government system to defend the rights of the people. The public has no trust in the government system. Lack of security fuels these violations as local powers [warlords] are beyond the law and do whatever they want. With the rule of the gun taking precedence over the rule of law, rights violations can take place as long as these powers remain in place." [40at]

**6.10** Dr Samar was also reported as saying that

"Some past violations still continue: arbitrary detentions, private jails, the torture of prisoners and detainees. The police still think it is their right to torture a suspect or culprit. Forced marriages and land grabbing are among the top violations that take place a lot. Lack of awareness [of human rights] is very widespread. Meanwhile there is no access to justice, there are no proper courts and some [adverse] cultural practices have influenced local courts. If a women goes to court she is seen as bad and of ill repute." [40at]

**6.11** An IRIN report of 9 December 2004 noted that

"As Kabul marks the International Human Rights Day on Friday, rights activists at the Afghan Independent Human Rights Commission (AIHRC) said the top human rights concerns in the country, still reeling from decades of conflict, were; land grabbing from farmers by local commanders; arbitrary killing and torture; and the general state of impunity. Moreover, violence against women continued unabated. But despite existing challenges, AIHRC believes there has been some improvement in the state of human rights in the country this year." [40ap]

**6.12** The IRIN report quoted the views of a commissioner of the AIHRC, Nader Nadery.

"According to Nadery, in the first six months of 2004 land grabbing accounted for 31 percent of all violations that AIHRC had investigated, while currently that figure has dropped to 18 percent. Some improvement has also been observed regarding the issues of torture, forced migration and forced marriages. But at the same time there are some concerning points like arbitrary arrests," he [the commissioner] maintained, adding that they increased from 16 percent of all investigated violations in the first six months of the year to 44 percent in the second half. There was also a further breakdown in law and order and a rise in kidnappings, he noted. "The level of violence is still very high. Over the past six months we registered more than 2,000 violations of human rights, which is a big number," he said." The commission also said that there was yet to be any judicial follow-up of these incidents. "The judiciary either ignores them or is unable to bring perpetrators to justice," Nadery claimed." [40ap]

**6.13** The IRIN report also stated that

"Political analysts in Kabul believe that the greatest challenge for human rights protection in Afghanistan is the state of law-enforcement bodies. In most of the rural areas the law abusers were local police who remained loyal to armed militia

and powerful warlords [rather] than to the central government. While there is an ongoing programme on police training, supported by Germany and the United States, much more work needs to be done before the provincial police departments become fully professional and centrally accountable institutions, Vikram Parekh, a Kabul-based analyst of the International Crisis Group (ICG), a multinational advocacy NGO, said. "In particular, disengaging the police from militia control should be prioritised by the new government - appointing militia leaders as police chiefs helps preserve their power and only delays the process of security sector reform," Parekh told IRIN." [40ap]

**6.14** On 12 December 2004, the Head of Human Rights Unit, UNAMA said that there is little doubt that past human rights violations need to be properly addressed. He stated "And I think we need to bear in mind that the functioning of the judicial system in Afghanistan still needs to be strengthened probably before it can take on some of these cases either from the past or in some cases, the serious cases in the present." [40aq]

**6.15** The US State Department Report 2004 (USSD), published on 28 February 2005, records that

"The Government's human rights record remained poor; although there were some improvements in a few areas, serious problems remained. There were instances where local security forces and police committed extrajudicial killings, and officials used torture in prisons. Efforts to bring to justice serious human rights offenders were often ineffective; impunity from the law remained a serious concern. Punishment of officials usually took the form of administrative actions rather than prosecution. Prolonged pretrial detention and poor prison conditions led to deteriorating health conditions and death among some prisoners. The Government generally provided for freedom of speech, the press, assembly, association, religion, and movement; however, problems remained. Violence-including rape and kidnapping-and societal discrimination against women and minorities continued. Trafficking of persons was a problem. There was widespread disregard for, and abuse of, internationally recognized worker rights. Child labor continued to be a problem." [2d] (p1)

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**Torture, inhuman and degrading treatment**

**6.16** A Danish fact finding mission of March/April 2004 reported that the Co-operation Centre for Afghanistan (CCA) had not heard of the present security forces using torture and committing mass murders like Khidamat-i-Ittala'at-i-Dawlati (KhAD), but found that the use of torture by the security forces could not be excluded. [8] (section 5.2.5) The UN appointed Independent Expert's report of September 2004 noted that "The independent expert has received reports of serious violations, such as torture committed in secret detention centres run by NSD, and has notified the Attorney-General." [39q] (para. 63)

**6.17** The Danish fact finding mission of March/April also reported that

"The Lawyers Union of Afghanistan stated that law forbids torture, but in practice

the situation is different. In the regions governed by warlords, it is common that people in custody are beaten up until they confess the crime of which they are being accused. The punishment depends on the crime and on the captive's relationship with the commander. The source was of the opinion that the police force's use of torture in Kabul is less widespread because of the presence of journalists and western organisations, etc, but even there the police can behave roughly. " [8] (section 5.2.5)

**6.18** A Human Rights Watch (HRW) report dated September 2004 stated that most of the military factional forces in Afghanistan were deeply involved in ongoing human rights abuses and criminal enterprises. HRW reported that

"The list of documented violations is extensive. Local military and police forces, even in Kabul, are involved in arbitrary arrests, kidnapping and extortion, and torture and extrajudicial killings of criminal suspects. Outside of Kabul, commanders and their troops in many areas are implicated in widespread rape of women and girls, rape of boys, murder, illegal detention and forced displacement, and other specific abuses against women and children, including human trafficking and forced marriage. In several areas, Human Rights Watch has documented how commanders and their troops have seized property from families and levied illegal per capita "taxes" (paid in cash or with food or goods) from local populations. In some remote areas, there are no real governmental structures or activity, only abuse and criminal enterprises by factions: trafficking in opium, smuggling of duty-free goods into Pakistan, and smuggling of natural resources or antiquities exploited from government-owned land.

In cities, militias are relatively less audacious, but abuses do occur—including extortion and harassment or sexual attacks against women and girls. High-level commanders in Kabul, Kandahar, Herat, and other cities have been directly involved in property seizures and forced displacement." [17i] (p13-14)

**6.19** The September 2004 report of the UN appointed Independent Expert on Human Rights in Afghanistan advised that

"Most human rights violations occur at the hands of warlords, local commanders, drug traffickers and other actors who wield the power of force and who exercise varying degrees of authority in the different provinces and districts. These actors' control and influence is in some provinces and districts absolute, while in others, it is partial or marginal. The Government is for the most part unable to exercise effective control over these actors, and has in that respect limited support from the Coalition forces and the International Security Assistance Force (ISAF)." [39q] (para. 6)

**6.20** The same report continued

"The Coalition forces, which at one time could have marginalized these warlords, did not do so, and even worked with them to combat the Taliban regime and to pursue Al-Qaida. This situation contributed to the entrenchment of the warlords. Subsequently, however, the Coalition forces and ISAF have supported the Government's programme of disarmament, demobilization, and reintegration (DDR) of combatants, with so far only marginal success... It is this power equation that has

an impact on the human rights situation and on the Government's ability to prevent and redress human rights violations that derive from it." [39q] (para. 7)

(See also Section 5 paragraphs 5.125 – 5.166 for information on the ISAF and the DDR programme)

**6.21** A nationwide survey by the AIHRC on past human rights violations, published in January 2005, found that

"The atrocities that were committed in Afghanistan are of an enormous scale, and the sense of victimization among the people we spoke to is widespread and profound. Almost everyone had been touched by violence in some way. When we asked 4151 respondents as part of the survey whether they had been personally affected by violations during the conflict, 69% identified themselves or their immediate families as direct victims of a serious human rights violation during the 23-year period. Out of over 2000 focus group participants, over 500 referred to killings among their relatives. Almost 400 had experienced torture or detention either themselves or in their immediate family. These are staggering statistics, in comparison to any other conflict in the world." [78a] (chapter 1.b)

**UNHCR and ECRE Guidelines**

**6.22** UNHCR (United Nations High Commissioner for Refugees) and ECRE (European Council on Refugees and Exiles) have both published profiles of persons who may be at particular risk of human rights violations:
The UNHCR report dated July 2003 advised that persons of the following profiles might be at particular risk of violence, harassment or discrimination:

i. "Persons associated or perceived to have been associated with the Communist regime, as well as others who have campaigned for a secular state";
ii. "Certain profiles of women";
iii. "Persons at risk of persecution on political grounds";
iv. "Persons originating and returning to areas where they constitute an ethnic minority";
v. "Persons who are perceived to have been associated with or supported the Taliban regime";
vi. "Non-Muslim religious minorities";
vii. "Converts".
[11i] (p 34-38)

**6.23** The European Council on Refugees and Exiles (ECRE) guidelines for the treatment of Afghan asylum seekers and refugees in Europe dated May 2004 stated that

"ECRE considers that certain categories of individuals amongst the Afghan population may have ongoing protection needs that remain unchanged despite recent political developments in Afghanistan. These groups include:

- Pushtuns, who have suffered violence and harassment in the northern provinces because of their perceived allegiance to the Taliban. Some 60,000 Pushtuns are said to be present in the southern provinces refusing to move back for fear of persecution.
- Many former members of the former ruling communist party PDPA and the agents of the secret service KhADD [sic] who still fear violence, harassment and discrimination for their roles in the communist government, despite the co-operation of many with the new administration.
- Former members of the Taliban, many of whom will have been forcibly recruited, who may be at risk from the Northern Alliance.
- Religious groups in areas where they constitute minorities at risk of persecution including Hindus, Sikhs, Shiites [Shias], Sunnis and Ismailis.
- Groups at risk of forced recruitment, which is still being carried out by militia groups in the North, with reports of executions of those refusing recruitment.
- People at risk of persecution on grounds of sexual orientation.
- Journalists who have been receiving anonymous threats, for example in Kabul and Herat.
- Others who fear that they would be victims of violence, in a situation in which there is no law or order, on the basis of a settling of old scores.
- Women and girls who suffer gender-based persecution such as forced marriages." [37] (p3)

For more information on the above categories, see Treatment of former KhAD members 6.283 – 6.288; Former members of the PDPA 6.289 – 6.298; Women 6.167 –6.246; Freedom of speech and media 6.40 – 6.62; Pashtuns 6.129 – 6.138; Former Taliban members 6.360 -6.367; Sikhs and Hindus 6.80 – 6.93; Converts 6.94 – 6.100; Persons in Conflict with present power brokers 6.384 – 6.387; Homosexuals 6.277 – 6.279

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**Afghanistan Independent Human Rights Commission (AIHRC)**

**6.24** The report of the UN appointed Independent Expert of the Commission on Human Rights dated 21 September 2004 noted that

> "AIHRC is the central human rights organization in Afghanistan. It was created in 2002 by presidential decree, and has 11 commissioners and a total of 315 additional staff. The Commission is based in Kabul and has eight satellite offices and two provincial offices. It has separate units for children's rights, human rights education, monitoring and investigation, transitional justice, and women's rights. The Commission receives complaints from people around the country and seeks to resolve them through negotiation, court cases, complaints to government ministries and general social activism. The independent expert commends AIHRC for its courageous efforts to document human rights violations throughout the country and to assist Afghans in seeking redress for harm." [39q] (para. 42)

**6.25** The Human Rights Research and Advocacy Consortium (HRRAC), which includes the AIHRC, was established in 2003. A November 2003 research report by the HRRAC recorded that, "The Human Rights Research and Advocacy Consortium is

a group of 12 Afghan and international NGOs working in the fields of humanitarian relief, reconstruction, human and women's rights, peace promotion, research, and advocacy. It was established in early 2003 to engage in proactive research and advocacy on human rights issues over a sustained period." [70a] (p1)

**6.26** The Danish fact finding mission to Kabul in March/April 2004 reported that "The UNAMA supports the AIHRC, which according to the UNAMA is an important organization in the promotion of human rights." The fact finding mission reported that, according to UNAMA, the AIHRC cannot follow up on many of the complaints on the abuses of human rights because the perpetrator may be a warlord or a powerful person within or close to the government. [8] (section 4.4)

**6.27** The Danish report also noted

"The AIHRC mentioned that they receive complaints from Afghan citizens regarding executions without trials, arbitrary imprisonments, torture in prison, forced marriages, kidnapping of women and the forcible exclusion of women from education. .. The AIHRC explained that even though they direct complains [sic] to the authorities, often nothing happens. In one very serious case, involving eight murders and eight cases of rape, the local governor did not want to persecute [sic] the perpetrators. Subsequently, the AIHRC approached the Minister of the Interior who did not react, and finally the President. None of these approaches have led to the prosecution of the perpetrators.

As an example of a case where the AIHRC have influenced the situation, they mentioned the Shirpul [Shirpur] case, where the AIHRC was instrumental in having the chief of Kabul police dismissed. A report, concerning the illegal eviction of a group of families from their homes has been submitted by the Commission. The report has led to the setting up of an independent commission to investigate the case. According to the source, it was necessary for the President to dismiss the chief of the Kabul police in order to retain his own credibility. Moreover, the AIHRC has initiated investigations against three provincial police chiefs and has later received threats from the police chiefs concerned.

The AIHRC explained that one of the Commission's major problems is the ensuring of the employees safety. According to the AIHRC, the warlords all around the country do not implicitly accept the Commission reports, and instead they try to maintain their present positions and power. Investigators of the AIHRC have been attacked and shot at. The source himself was hiding for two weeks due to death threats in the wake of the publication of the Shirpul [Shirpur] report." [8] (section 4.4)

**6.28** The Danish fact finding report noted that

"The EU Special Representative found that the establishment of the AIHRC is one of the best initiatives, which has been taken in the last two years in Afghanistan. The source was of the opinion that AIHRC jealously guards its independence and has a clearly developed strategy and aim and carries out a lot of good work. Nevertheless, the AIHRC is still in need of foreign support and economic assistance. The members of the AIHRC and employees receive threats from powerful people and are still lacking some professional experience.

EU Special Representative stated that AIHRC's regional offices are working well. The source explained, that the fact that the offices in Mazar and Herat are well functioning means that they are doing their best. Still, they cannot protect people who are subject to abuse, but they are good at monitoring and reporting violations. A more effective protection of people who are subject to abuse would require a proper operating legal system. At the same time powerful warlords counteract the work of the AIHRC. Some topics are sensitive to an extent that the AIHRC cannot raise them. This concerns cases involving conflicts with warlords. For this reason the AIHRC should be supported by human rights observers from the UN throughout the country." [8] (section 4.4)

**6.29** On 26 November 2004, the UN Secretary-General reported that

"Throughout the past year, the Afghan Independent Human Rights Commission continued to develop its institutional strength and to implement its work plan in five areas: monitoring and investigation, women's rights, children's rights, human rights education and transitional justice. It now has 10 offices and more than 300 staff. Major achievements included its establishment as a permanent body under the new Constitution; an extensive consultation exercise among the Afghan population on transitional justice; the joint Commission-UNAMA political rights verification campaign, which issued three public reports before the election on the conditions for the free exercise of political rights (the Commission was also an accredited election observer and monitored about 1,000 polling sites); successfully taking up high-profile cases; processing more than 100 complaints; and holding some 200 human rights education and training workshops. The Commission receives extensive institutional support from UNDP." [39p] (para. 41)

**6.30** On 22 December 2004, IRIN reported the comments of Dr Sima Samar, the head of the AIHRC, on the achievements of the AIHRC. Dr Samar was quoted as saying

"I think that one of the main achievements is justification of the commission by the people. We have offices in Kabul and some of the provinces. At least the people of Afghanistan have seen AIHRC as somewhere to share their concerns and complaints. It is a significant development. In this country, three years ago no one could even mention the phrase "human rights".

In the beginning, there was some propaganda against the commission among the public. Some elements who did not want public awareness on human rights spread allegations that the commission was against Afghan culture, and was spreading western culture and so on. But now we have proved that we are here to defend the rights of our suffering people and pursue the perpetrators of human rights violations.

As far as the development of human rights is concerned, we have noticed some improvements in the courts and prisons. We were able to create a national plan on child trafficking with the help of UNICEF [United Nations children agency] and Save the Children. For the first time a national action plan on child trafficking was drawn up. We were able to ensure women's rights in the new constitution. After much effort we could maintain equal rights for men and women in the constitution. Also,

after quite some time, we are now able to go inside prisons and talk to prisoners. This is some of the progress in the field of human rights. We have been able to tackle some 30 percent of human rights problems in the country but we have a long way to go...Unfortunately, the culture of protecting the human rights does not exist. We need the power to force [the implementation of] human rights on the ground." [40at]

**6.31** A further report of an interview with Dr Samar by the Institute of War and Peace Reporting (IWPR) dated 31 January 2005 noted that

"Samar does get frustrated by the commission's limitations. "We hand over all the reports of our investigations to the president's office," she said. His office is then responsible for following the cases up, but because central authority does not extend across the country, some cases are not taken further. She admits that some Afghans have unrealistic expectations of her staff. Some people even expect the commission to judge criminals –but it doesn't have that authority, she says.

And she and her staff do feel under a lot of pressure. "I am threatened every day – I've never counted how many times," she said. "I'm threatened by people who have no faith in human rights and by people who committed crimes and know that the very existence of the commission is a threat to them." [73o]

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**Domestic and International Non-Governmental Organisations (NGOs)**

**6.32** In a paper published in January 2004, the British Afghan Agencies Group (BAAG) reported that "The NGO sector is the largest implementer of humanitarian assistance in Afghanistan today." [71a] (p 50) Furthermore, "NGOs have worked in Afghanistan and Pakistan for decades providing humanitarian assistance to Afghans through agriculture, health, education, water supply, sanitation and income generation programmes." The paper highlights the challenges faced by NGOs working under different regimes and varying levels of insecurity. The paper also states that

"Post September 11th physical insecurities have increased to a point where many programmes have been suspended or in some cases halted, particularly in the South and South East of the country. Despite the dangers inherent in Afghanistan in the 1980s and 1990s, NGOs could carry out their work knowing they were relatively safe unless they fell victim to opportunistic crime or factional crossfire. Times have changed. NGOs and the UN are now being deliberately targeted and risks to aid personnel have become too great for programmes to continue in some areas." [71a] (p 6)

**6.33** The BAAG report also noted that "International organisations are being targeted by radical elements because of a perceived association with the West and Western values, and with what is seen as a US supported government. Particularly unsafe are the Pushtun areas, mainly in the south and southeast including Kandahar and Zabul." [71a] (p 50)

**6.34** On 30 December 2003, the UN Secretary-General reported that

"On 16 November [2003] an international staff member of the Office of the United Nations High Commissioner for Refugees, Bettina Goislard, was assassinated in broad daylight in the centre of Ghazni. This closely followed a car bomb attack on United Nations offices in Kandahar on 13 November, which damaged the premises but fortunately did not result in loss of life. In the affected areas, in the absence of sufficient forces to provide security, unarmed civilians cannot be asked to shoulder unreasonable risks and continue activities that make them targets. Accordingly, much of the south and south-east of the country is now effectively off limits to the United Nations, the assistance community and central Government officials, except under special escort." [39k] (p2)

(See also Section 4 paragraph 4.18 for information on arrests made in connection with the murder of the UNHCR member)

**6.35** On 28 July 2004, MSF announced the closure of all medical programmes in Afghanistan in the aftermath of the killing of five MSF aid workers in a deliberate attack on 2 June 2004, when a clearly marked MSF vehicle was ambushed in the northwestern province of Badghis. The MSF Press Release stated that

"Although government officials have presented MSF with credible evidence that local commanders conducted the attack, they have neither detained nor publicly called for their arrest. The lack of government response to the killings represents a failure of responsibility and an inadequate commitment to the safety of aid workers on its soil. In addition, following the assassinations, a Taliban spokesperson claimed responsibility for the murders and stated later that organisations like MSF work for American interests, are therefore targets and would be at risk of further attacks... This threat undeniably constitutes a refusal by the Taliban to accept independent and impartial humanitarian action." [72]

**6.36** On 14 December 2004, IRIN reported that

"Afghan planning minister Dr Ramazan Bashardoost resigned on Monday, following rejection by the government of his proposal that 2,000 aid agencies should be wound up. Bashardoost had called on central government last week to close down 80 percent of all national and international aid agencies, labelling them ineffective and corrupt.

According to the Agency Coordinating Body for Afghan Relief (ACBAR), an umbrella group representing over 90 national and international aid agencies in Afghanistan, NGOs were shocked that talk of decimating the country's fledgling NGO movement could seriously undermine the reconstruction efforts in Afghanistan. "The [humanitarian] work will be interfered with, which will result in the poor suffering. There will be chaos if there is liquidation of NGOs." Mohammad Hashim Mayar, a programme coordinator with ACBAR, told IRIN.

There are over 1,500 national and more than 300 international NGOs registered with the Ministry of Planning. ACBAR concedes that many such groups are not real NGOs. "We think there are many organisations doing good work, but they are not NGOs, they should be registered as private companies," Mayar added. NGOS have long been calling on the government for regulation and registration, which

would help sort out the real not-for-profit organisations from the many shoddy groups trying to capitalise on the aid coming into the country in the post-Taliban era." [40ah]

**6.37** On 5 January 2005 IRIN reported that

"Aid workers in the capital Kabul have raised concern about the increase in violent attacks on aid agencies over the last couple of months. In just four weeks, several NGOs have been targeted by gunmen and criminals in the capital... According to the Agency Coordinating Body for Afghan Relief (ACBAR), an umbrella group representing over 90 national and international aid agencies in Afghanistan, the problem is not confined to Kabul. "In addition to insurgent attacks, the NGOs are the victims of irresponsible and irregular militias in Kabul and the provinces," Mohammad Hashim Mayar, a programme coordinator with ACBAR, told IRIN... Since the fall of the hard-line Taliban late in 2001, dozens of aid workers have been killed in violent attacks in various parts of the country, particularly in the troubled south." [40y]

**6.38** The IRIN report continued

"The killings and robberies are part of a growing trend of criminality, rather than being politically or ideologically motivated, aid workers say. "The majority of the killings have not been conducted by the insurgency but are instead criminal killings by various people in different categories." Although tens of thousands of ex-combatants have been disarmed, poverty-stricken Afghanistan remains a dangerous and lawless place, according to NGO heads. "Jobs are scarce, weapons are still freely available and foreign organisations and NGOs make tempting targets because of their relative wealth," one told IRIN on condition of anonymity.

According to the Afghan NGOs Security Office (ANSO), in 2004 at least 24 aid workers were murdered, most of them Afghans. "The year before there were only 13 [murder cases]. There has been a very significant increase in violent attacks on aid workers in the last two years," Nick Downie, ANSO coordinator, told IRIN." [40y]

**6.39** The Human Rights Watch Afghanistan World Report 2005 noted that "Overall, nearly fifty aid workers and elections officials were killed in 2004, far higher than in any previous period." [17f] (p2)

(See also Section 4 History paragraphs 4.27, 4.38 – 4.39, 4.43, Section 5 Internal Security, paragraphs 5.121, 5.134, 5.139, 5.222)

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## Freedom of Speech and Media

### Overview

**6.40** The Freedom House Afghanistan Country Report 2004, published on 6 April 2004 recorded that "Although the situation for free expression and for independent media has improved dramatically over the past two years, a number of concerns

remain... A state monopoly on media has ended, but the central government and various political factions own most newspapers and almost all broadcast media outlets. Criticism of the authorities is rare in state-owned media, and self-censorship is common." [41a] (p16)

**6.41** The Danish fact finding mission of March/April 2004 reported that "A number of sources believed that freedom of speech have [sic] improved after the fall of the Taliban regime, although there are still limits to which extent this "freedom" is exercised." The AIHRC was reported as saying that freedom of speech has improved in Kabul but its limits depend on who is being criticized. The International Crisis Group (ICG) was of the view that people who openly report on human rights risk reprisals. ICG cited the example of a reporter from Human Rights Watch Afghanistan who was forced to flee the country after a July 2003 report criticising human rights conditions in southern and central Afghanistan was published.

**6.42** The EU Special Representative told the Danish fact finding mission that there continued to be problems concerning freedom of speech. According to the source,

> "Any criticism of the government, individuals in the government or the warlords lead to problems. People who utter such criticism risk being exposed to various annoyances or threats, being beaten up, tortured or shot. Hence both the media and political activists practice a wide degree of self-censure. The source stated further that newspapers and journals that criticize prominent persons by name could experience problems. This means that even new political parties are careful in expressing public criticism." [8] (section 5.3)

**6.43** The CCA (Co-operation Centre for Afghanistan) reportedly agreed that those who wrote about people in power, the policy of the government or about people in the government would have problems and a certain amount of self-censure was necessary. [8] (section 5.3) The Lawyers Union of Afghanistan was reported as saying "In Kabul everybody is very careful about what they say or write and in the provinces freedom of speech simply does not exist." [8] (section 5.3)

**6.44** The Reporters without borders third annual worldwide press freedom index dated 26 October 2004 placed Afghanistan in 97th place out of 167 countries and noted that the situation in the country had improved markedly with growing news diversity and the media daring to tackle sensitive topics. "But threats to journalists, especially from provincial warlords, remain very real." [62b] (p3)

**6.45** The US State Department Report 2004 (USSD) published on 25 February 2005 observed that

> "The independent media were active and publicly reflected differing political views, although this varied from region to region. The Government owned at least 35 publications and most of the electronic news media. Many other newspapers were published only sporadically, and many were affiliated with different provincial authorities. Factional authorities tightly controlled media in some parts of the country, and the degree of freedom of expression varied significantly between regions. The foreign media was covered under the freedom of speech law; however, they were prohibited from commenting negatively on the Islamic religion

and from publishing materials that were considered a threat to the President." [2d] (Section 2a)

**Media Law and Institutions**

**6.46** A media directory produced by Internews Kabul dated 31 March 2004 recorded that

> "After the fall of the Taliban in October 2001, the Afghanistan Interim Government ratified a law called "The Law of Media in Afghanistan." This law came into effect in April 2002 and allowed any citizen of Afghanistan to launch an independent publication. Since then, nearly 260 publications, including dailies, weeklies, bi-weeklies, monthlies and quarterlies have registered with the Ministry of Information and Culture. While this enthusiasm for media is exciting, the flood of publications on the market has hampered the development of a quality few.
>
> Numerous elements determine Afghanistan's current media landscape. These elements include the state of the existing local infrastructure, broadcasts from international stations reaching Afghan soil, media reconstruction activities and agencies, and barriers to independent expression ranging from military intervention to conservative social norms in the country." [77a] (chapter 1)

**6.47** The Internews media directory of 31 March 2004 noted that "Newspapers have enjoyed a quick resurgence following the fall of the Taliban...However, there are almost no financially independent papers; most are either sponsored by governmental agencies, international organizations, or political parties...There are nearly a dozen women's magazines." [77a] (chapter 1)

**6.48** The Internews Media Directory dated 31 March 2004 is the result of a media monitoring project. It is a lengthy document including in-depth information on media developments in Afghanistan, names of current publications (newspapers and magazines) and interviews with prominent media players. The entire report can be accessed via the link given for source [77a] in Annex E.

**6.49** Article 34 of the Constitution adopted in January 2004 states that "Freedom of expression is inviolable. Every Afghan has the right to express thoughts through speech, writing, or illustration or other means, by observing the provisions of this Constitution. Every Afghan has the right to print or publish topics without prior submission to the state authorities in accordance with the law. Directives related to printing house, radio, television, press, and other mass media, shall be regulated by the law." [81b]

**6.50** On 17 June 2004 a Guardian newspaper article on Kabul reported on Arman FM, Afghanistan's first 24-hour commercial station, which opened in 2002 and is staffed by a team of young journalists and DJs, male and female, many of whom are part-time students. The Guardian interviewed Saad Mohseni of Arman FM. The article reported that "There are now eight radio stations in Kabul and more are planned. " You have to abide by social and cultural conventions; we don't talk about religion at all," Mohseni said. "We had lots of problems with the state media initially criticising us but that's died down." [18c] The Reporters Without Borders (RWB) 2004 Annual Report noted that Radio Arman (Hope) was the first commercial station to be launched by an Afghan.

RWB noted that "It carried music and debates in which Afghans of both sexes expressed themselves freely about daily life in Kabul and Bollywood movie stars but it carefully eschewed politics... Some conservatives voiced outrage about the station because "young girls can be heard laughing on the air." But in what an Afghan journalist has called a "radio-centric" country, it quickly became the capital's most popular station, with many more listeners than the national and international news radio stations." [62a] (p1)

**6.51** On 17 July 2004, the Independent Afghan Human Rights Committee (AIHRC) published a report in conjunction with UNAMA, which reported on the political rights situation in the run up to the elections. The report noted that "A new Mass Media law has been passed and constitutes a clear improvement over the 2002 Press Law." [48a] (p1) The Institute for War and Peace Reporting (IWPR) reported on 7 April 2004 that the new law governing the news media, approved by President Karzai and his cabinet last month, bans criticism of Islam or insults to officials. IWPR noted

> "The statute also creates a seven-member commission with powers to decide whether journalists accused of violating the new law should face prosecution in the courts. The law has come under attack from both journalists and legal experts for its vague provisions and imposition of a form of censorship....Among the most controversial provisions of the law are prohibitions against journalists writing articles that are critical of Islam or are insulting to public or private individuals. Journalists complained that the law lacks specific definitions of what constitutes either an insult or a criticism of Islam, leaving both offences open to interpretation by the commission or religious authorities....The new law does eliminate some of the restrictions included in earlier statutes. For example, criticism of the national army and the publication of photos of partially clothed women are no longer banned." [73f]

**6.52** The US State Department Report 2004 (USSD) published on 28 February 2005 reported that

> "Article 34 of the Constitution provides for freedom of speech and of the press; however, some senior officials, particularly at the local level, attempted to intimidate journalists and influence their reporting. The 2002 Press Law contained an injunction against information that "could mean insult to the sacred religion of Islam and other religions." The ambiguity about offensive material offered the potential for abuse of this clause in order to restrict press freedom. On April 1 [2004], President Karzai signed an amended Press Law following its review by the Ministry of Information and Culture. The new law retains the broad and vague content restriction on "subjects that are contrary to principles of Islam and offensive to other religions and sects," but excludes any reference to Shari'a and created a government commission with powers to decide whether journalists accused of violating the law should face court prosecution or an administrative punishment, such as a fine." [2d] (Section 2a)

**6.53** The USSD 2004 also noted that

> "In practice, many persons listened to the dozen international stations that broadcast in Dari or Pashto. The BBC, Voice of America, Radio Liberty, and Radio Free Afghanistan were available throughout the country. In the countryside, some

radio and television stations were under the control of local authorities. There were approximately 300 publications, 40 radio stations, and several television stations in the country. Mazar-e-Sharif alone had an estimated 50 publications. On September 12 [2004], the first independent radio station established entirely by private sector funds was inaugurated in Ghazni Province...

There were a few reports that government forces prohibited music, movies, and television on religious grounds. For example, in January [2004], the Supreme Court briefly stopped a television station from airing female singers. The Government lifted the ban in late January, saying female singers on television were permitted under the new Constitution. In April, officials in Nangarhar Province briefly banned the performance of female singers on television and radio; however, this decision was reversed a few days later. The central Government has not banned any form of media, although there was a brief ban on cable television in early 2003. Cable operators provided a wide variety of channels, including Western movie and music channels. The Government did not restrict the ownership of satellite dishes by private citizens." [2d] (Section 2a)

**6.54** On 18 January 2005, BBC News reported that

"The first radio station dedicated to the interests of women has been relaunched in Afghanistan. The Voice of Women station promises to help women deal with the violence and discrimination they still face in many parts of the country. It is expected to reach hundreds of thousands of women in the capital, Kabul, and more distant provinces. The station was taken back on air by its director – and one of the country's most famous women – Jamileh Mujahed...She told the BBC that forced marriages, violence in the home, the rearing of children and women's participation in social and political institutions would be regular themes. The station's relaunch was attended by cabinet ministers in Kabul, and President Hamid Karzai sent a message of support." [25q]

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**Political expression in the run up to the presidential elections**

**6.55** The July 2004 AIHRC-UNAMA report commented on freedom of expression in respect of political rights in different parts of the country in the run up to the presidential elections,

"In Kabul a degree of freedom of expression is reflected by the press, which has carried articles openly discussing the performance of key political actors. On 19th - 20th May [2004], the Ministry of Information and Culture hosted over 40 registered and non-registered [political] parties and invited debate and discussion on the political future of the country. The event was repeatedly broadcast on radio and television and was positively received.

The political climate in the east has considerably improved and political actors and activists are openly engaging in discussion and debate...In Khost, the presence of a wider spectrum of public and private media outlets, the existence of a relatively developed civil society and the emergence of active political parties reflects a more

open and conducive environment for political expression than other areas in the region.

The television and radio media in the North and Northeast are tightly controlled by factional authorities in power. However, in Mazar alone there are also over 50 periodical publications registered with the Information and Culture Department. These outlets cover a broad range of issues, including political perspectives. The environment in the Northeast is far less open; independent media outlets exercise a large degree of self-censorship and are particularly careful not to cover anything that would involve a high-ranking or powerful government official or commander.

The western region is perhaps seen as least accessible for political expression. There is little independent media and – as in the northeast- self censorship is a routine practice. The State owned media gives selective coverage of electoral issues and is largely limited to promoting registration... Private media is rarely seen to cover political issues and printing houses reportedly refuse to print or photocopy letters, articles or interviews released by political leaders in Kabul.

In the southern region, while the environment is generally open for political expression in Kandahar, the security situation and the pervasive presence of anti-governmental forces in districts of Urozgan and Zabul make political expression in general very difficult. Moreover, political activists fear that their rivals might label them as "Taliban" or "Al-Qaeda" and denounce them to Coalition Forces. This concern is cited by some political parties as reason for not operating openly in the area." [48a] (p2-3)

**Journalists**

**6.56** The 2004 Reporters Without Borders Annual Report, published on 3 May 2004, noted that

"The many physical attacks and threats against journalists in March and April [2003] forced the information ministry to set up a protection programme. "When a journalist fears for his safety, we immediately inform the interior ministry to obtain protection," the deputy information minister said... Journalists tried creating a single independent journalists' union at the start of the year [2003] but failed because of political conflicts, attempts to manipulate the process, and the considerable antagonism already existing between progressive journalists and members of the conservative Jamiat-e-Islami party. The editor of an independent publication exclaimed at a preparatory meeting: "I see so many warlords here that I wonder when they became journalists." On the other hand, Kabul's first independent press club open[ed] on 29 April [2003] on the initiative of the Afghan Centre for the Promotion of Communication (ACPC)." [62a] (p2)

**6.57** The Amnesty International Afghanistan country report, covering events from January to December 2003, reported that "Many independent newspapers, periodicals and radio stations were operating, although journalists regularly received threats for criticizing the authorities. Two journalists, Sayed Mirhassan Mahdavi, editor of Aftab newspaper, and Ali Payam Sistani, the newspaper's designer, were arrested on 17 June [2003] and accused of "insulting Islam" for publishing an article criticizing the

involvement of religion in politics. They were released after just over a week, but President Karzai stated that both men would be tried. After their release the men went to live in exile. [7f] (p3) In their 2004 Annual Report on Afghanistan, Reporters Without Borders (RWB) noted that the two journalists left for Pakistan with their families, where they were recognised in their Islamabad hotel by Afghan mujahideen, who attacked them and threatened to kill them. With UNHCR help the men obtained asylum in a western country. [62a] (p3)

**6.58** UNHCR advised in July 2003 that, "Although not systematic, political repression may particularly affect certain categories of people perceived by commanders/factions to represent a threat to their power. These vulnerable categories include media and journalists, civil society organisations such as women's associations and professional *shuras* (councils), as well as witnesses of gross human rights violations." [11f] (p36)

**6.59** The US State Department Report 2004 (USSD), published on 28 February 2005 noted that

> "During the year [2004], some government departments were predisposed to crack down on journalists, and members of the intelligence service reportedly intimidated and threatened journalists. General unspecified threats against media organizations were also a common occurrence.
>
> While some independent journalists and writers published magazines and newsletters, according to Reporters Without Borders, circulation largely was confined to Kabul, and many publications were self-censored…Journalists were subjected to harassment, intimidation, and violence during the year. In June [2004], authorities in Herat interfered in the functioning of an independent women's community radio station, Radio Sahar. The situation was resolved through negotiation and dialogue with the authorities, according to Internews. In August, the Ministry of Information and Culture announced the creation of a commission of religious clergy to monitor the media, but its authority in practice to censor content was not specified." [2d] (section 2a)

**6.60** The first Internews newsletter on the freedom of journalism in Afghanistan, included in a September 2004 Media Monitor report on elections, noted that

> "The fact that journalists in Afghanistan work under extremely difficult circumstances is well-established. The problems faced by them range from violence, threats, intimidation to harassment and hurdles that prevent them from carrying out their work. The perpetrators vary: government officials, members of the security apparatus, political figures, war lords, extra-constitutional authorities, armed militias and hostile groups. While some of the incidents are publicized and documented by international bodies working for the protection of media, the majority of incidents go unreported. Not only is the international community unaware of them, but even journalists are often uninformed about what is happening to their colleagues.
>
> The reasons for this are fairly straightforward- the absence of adequate communication, the difficulties of investigation and the fear of repercussions prevent the documentation of most instances. Many journalists, especially in the provinces, regard it as a way of life, concomitant with their profession. For the

various vested interests which are challenged by the media, journalists are fair game in a context where institutional structures of protection are still in a nascent stage." [77b] (Appendix A)

**6.61** The September 2004 Internews report details cases in which journalists have experienced difficulties in working and other information on the situation for the media in the run up to the elections. The report can be accessed via the link given for source [77b] in Annex E.

**6.62** On 20 November 2004, BBC News reported that "An Afghan accused of killing four journalists in 2001 has been sentenced to death by a court in Kabul. Reza Khan was convicted of robbing and shooting the three foreigners and an Afghan after holding them up on a road east of Kabul in 2001." [25v]

(See also Section 6A paragraph 6.23 for ECRE guidelines)

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## Freedom of Religion

### Background and Demography

**6.63** The US State Department Report on Religious Freedom 2004 (USSD) published on 15 September 2004, noted that reliable data on the country's religious demography was not available as a census had not been taken for decades. The USSD 2004 further noted that

"In the past, small communities of Hindus, Sikhs, Jews, and Christians lived in the country; however, most members of these communities have left. Even at their peak, these non-Muslim minorities constituted less than 1 percent of the population. Most of the country's small Hindu and Sikh population, which once numbered about 50,000 persons, emigrated or took refuge abroad during the many years of conflict. However, after the fall of the Taliban, some minorities have begun to return. Non-Muslims such as Hindus, Sikhs, and Jews were estimated to number only in the hundreds at the end of Taliban rule. According to a Sikh community leader in Kabul, an estimated 3,000 Sikh and Hindu families were living in the country at the end of 2003; however, this figure could not be verified." [2c] (p2)

**6.64** In July 2003, UNHCR reported that "The official religion in Afghanistan is Islam. The great majority of the population, about 80 per cent, is Sunni Muslims. They are followed by the Shi'a (including a smaller group of the Ismailiyya Shi'a), comprising an estimated 20% of the population, and by an insignificant number of Hindus and Sikhs...A small Jewish community could once be found in urban centres, but by 1985 virtually all of them had emigrated." [11j] (p5-6)

**6.65** On 25 January 2005, BBC News reported that "A 45-year-old man is believed to have become the last Jew in Afghanistan after the death of the caretaker of the only functioning synagogue in Kabul. It has emerged that the caretaker, Ishaq Levin, aged about 80, died of natural causes about a week ago...Correspondents say that around 5,000 Afghan Jews left the country after the creation of Israel in 1948, with others leaving after the 1979 Soviet Invasion." [25r]

**6.66** The USSD 2004 on Religious Freedom noted that,

"Traditionally, Sunni Islam of the Hanafi school of jurisprudence has been the dominant religion. For the last 200 years, Sunnis often have looked to the example of the Darul Uloom madrassah (religious school) located in Deoband near Delhi, India. The Deobandi school has long sought to purify Islam by discarding supposedly un-Islamic accretions to the faith and reemphasizing the models that it believes were established in the Koran and the customary practices of the Prophet Mohammed. Additionally, Deobandi scholars often have opposed what they perceive as Western influences. Much of the population adheres to Deobandi-influenced Hanafi Sunnism, but a sizable (sic) minority adheres to a more mystical version of Islam, generally known as Sufism. Sufism, which could be characterized as a branch of Sunni Islam, centers on orders or brotherhoods that follow charismatic religious leaders.

Several areas of the country are religiously homogenous. Sunni Muslim Pashtuns, centered around the city of Kandahar, dominate the south and east of the country. The homeland of the Shi'a Hazaras is in the Hazarajat or the mountainous central highlands around Bamiyan. Northeastern provinces traditionally have Ismaili populations. Other areas, including Kabul, the capital, are more heterogenous. For example, in and around the northern city of Mazar-e Sharif, there is a mix of Sunnis (including ethnic Pashtuns, Turkmen, Uzbeks and Tajiks) and Shi'a (Hazaras and Qizilbash), including Shi'a Ismailis." [2c] (p 2)

**6.67** The Freedom House 2004 country report noted that

"The state does not interfere in the appointment of religious leaders or the organizational activities of faith-related groups and members of the government have publicly stated a commitment to religious tolerance. Since the fall of the Taliban, the small numbers of non-Muslim residents in Afghanistan have generally been able to practice their faiths, although Hindus and Sikhs have had some difficulty in obtaining cremation grounds and building new institutions of worship. Relations between Sunni Afghans and the minority Shias, who make up roughly 15 to 20 percent of the population, remain somewhat strained. Historically, Shias were not accorded equal rights under law and sometimes faced persecution from the majority Sunnis." [41a] (p6)

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**Constitutional Rights, Religious Law and Institutions**

**6.68** Article 2 of the Constitution adopted on 4 January 2004 states that "The religion of the state of the Islamic Republic of Afghanistan is the sacred religion of Islam. Followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law." Article 3 states that "In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam." [81b]

**6.69** On 26 January 2004, the Institute of War and Peace Reporting (IWPR) reported that the discussion of religious issues throughout the three week Constitutional Loya Jirga in December 2003 had been heated. IWPR noted that

"Whilst Islamic law is given an explicit place in the final draft [constitution] it is at least on the face of it, a limited role. Article 130 says that Hanafi jurisprudence – the school of Sunni law that prevails in Afghanistan – should provide a guide when no explicit laws apply. At the same time, Article 131 says Shia jurisprudence should be used in personal matters affecting the minority religious community, or when no other laws apply.... But much could depend on Article 3 – "In Afghanistan, no law can be contrary to the sacred Islamic beliefs and commands" which some say could, in the hands of a conservative Supreme Court, open the back door to Sharia law." [73b] (p4-5)

**6.70** The US State Department Report 2004 (USSD) on Religious Freedom, published on 15 September 2004, recorded that

"After the fall of the Taliban, there continued to be episodic reports of individuals at the local level using coercion to enforce social and religious conformity. During the reporting period, President Karzai and other moderates in the central government opposed attempts by conservative elements to enforce rules regarding social and religious practices based on their interpretation of Islamic law. The Taliban's religious police force, the Department of Vice and Virtue, was replaced by the Department of Accountability and Religious Affairs, with a stated goal of promoting "Islamic values"; however, the department lacks any enforcement or regulatory authority." [2c] (p7)

**6.71** The USSD 2004 report on religious freedom also noted that

"The Government has stressed reconciliation and cooperation among all citizens. Although the Government primarily is concerned with ethnic reconciliation, it also has expressed concern about religious tolerance. The TISA responded positively to all international approaches on human rights, including religious freedom. The Government emphasized ethnic and intra-faith reconciliation indirectly through the creation and empowerment of the Judicial, Constitutional, and Human Rights Commissions, comprised of members of different ethnic and Muslim religious (Sunni and Shi'a) groups. The Constitutional Commission also included a Hindu member to represent non-Muslim religious minorities." [2c] (p5)

**6.72** The US State Department Report 2004 (USSD) published on 28 February 2005, records that

"The new Constitution proclaims that Islam is the "religion of the state," but provides that non-Muslim citizens are free to perform their rituals within the limits determined by laws for public decency and public peace; however, there was some harassment of foreign missionaries and others. The Constitution also declares that no law can be contrary to the beliefs and provisions of the sacred religion of Islam. The new Constitution does not grant preferential status to the Hanafi school of Islamic jurisprudence associated with the Sunnis, and makes no reference to Shari'a law. The Government continued a policy of religious tolerance during the year; however, custom and law required all citizens to profess a religious affiliation. Historically, the minority Shi'a community faced discrimination from the majority Sunni population. The authorities did not require licensing and registration of religious groups in any part of the country. There were no laws forbidding proselytizing, although proselytizing was viewed as contrary to the beliefs of Islam.

Blasphemy and apostasy were in theory punishable by death under the current, unreformed penal code. In early September [2004], the Supreme Court ruled that presidential candidate Latif Pedram be disqualified for making allegedly un-Islamic remarks in public. After some government offices, the AIHRC, and the international community questioned the constitutionality of this ruling, Pedram was allowed to remain in the race." [2d] (section 2c)

(See also section on Converts and Christians paragraph 6.94 for more information on religious freedom under the constitution)

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**Religious Groups**

**Shia (Shiite) Muslims**

**6.73** In a report of July 2003 UNHCR noted that

"The two major Shi'a communities in Afghanistan are the Twelvers, also called Imami, and the Ismaili, sometimes called the Severners...The most numerous Imami Shi'a groups in Afghanistan are the Imami Hazara living in the Hazarajat of central Afghanistan, and the Imami Persian speakers of Herat province. Mixtures occur in certain areas such as Bamiyan Province where Sunni, Imami and Ismaili may be found. Imami Shi'a are also found in urban centers such as Kabul, Kandahar, Ghazni, and Mazar-i-Sharif where numbers of Qizilbash and Hazara reside. Urban Shi'a are successful small business entrepreneurs; many gained from the development of education that began in the 1950s." [11i] (p5)

**6.74** The US State Department Report 2004 (USSD) on Religious Freedom, published 15 September 2004, noted that

"Relations between the different branches of Islam in the country have been difficult. Historically, the minority Shi'a faced discrimination from the majority Sunni population. Some conservative elements advocated that a new constitution should favor the Hanafi school of Islamic jurisprudence associated with the Sunnis over the Jafari school used by the Shi'as. In family disputes, courts relied on a civil code that is based on the Sunni Hanafi school, regardless of whether the parties involved were Shi'a or Sunni; the civil code also applies to non-Muslims. The Shari'a Faculty of Kabul University followed the Hanafi school of jurisprudence. Conservative elements also called for the primacy of Shari'a law in the country's legal system. However, the new Constitution does not grant preferential status to the Hanafi school, nor does it make specific reference to Shari'a law. The Constitution also grants that Shi'a law will be applied to cases dealing with personal matters involving Shi'as; there is no separate law applying to non-Muslims." [2c] (p1-2)

**6.75** The Institute for War and Peace Reporting (IWPR) reported that Shia Muslims made important gains in the new constitution passed on 4 January 2004 at the end of the Loya Jirga. The IWPR reported that "Unlike the previous constitution of 1964, when the king who then ruled Afghanistan had to be a follower of the Hanafi Sunni school of Islam, a Shia Muslim can now become leader of the country. The qualifications for the president under the new constitution only require a candidate to be a Muslim. It recognises in Article 131 that Shia – who represent perhaps 15 per

cent of the population – can use their own school of law in court cases involving personal matters... The Shia have their own school of law, Jafari." [73c]

**6.76** The USSD 2004 on religious freedom also noted that

> "The Shi'a community in the country is able to celebrate openly the birthday of Imam Ali, one of the most revered figures in the Shi'a tradition, as well as commemorate the 10th of Muharram (Ashura), which marks the murder of the Prophet Mohammad's grandson, Hussein. Under the Taliban, Shi'a could not celebrate their holy days openly, although they were able to do so in prior years. There were no reported incidents surrounding Shi'a religious celebrations during the year-and-a-half following the Taliban's fall, but there was an incident during the reporting period (See Section III)." [2c] (p3)

**6.77** Section III of the USSD 2004 recorded that "On March 1 [2004], a riot that began when 2 individuals were seen mocking a Shi'a procession in Kabul to commemorate the Battle of Karbala led to 2 deaths and over 30 injuries. This was the only reported incident surrounding Shi'a religious celebrations during the reporting period [1 July 2003 –30 June 2004]." [2c] (p6)

(See also Section 6A paragraph 6.23 for ECRE guidelines and Section 6B Hazaras paragraphs 6.156)

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**Ismailis**

**6.78** In July 2003 the UNHCR advised that

> "The Ismailiyya Shi'a is a Muslim minority group that split from the main Shi'a in the year 765. They are estimated to make up 2% of the total Muslim population in Afghanistan and live mainly in Baghlan, Bamyan, Maidan/Wardak, and in some of the North-eastern provinces. Ismaili Muslims have been regarded as "non-Muslims" by radical elements of the Muslim population, mainly the Shi'a (they believe that their spiritual leader, Karim Aga Khan, is a direct descendant of the Prophet Mohammad). Ismaili Muslims have also fought for the Northern Alliance and suffered reprisals when the Taliban captured territories previously held by Ismaili Muslims. In addition to mistreatment at the hands of the Taliban, Ismaili Muslims now face security problems and denied access to their houses and land. In the Behsud [Beshud] 1 and 11 districts of the Maidan-Wardak province, their houses were burned during the conflict. In Doshi district of the Baghlan province, Ismaili Muslims were denied access to their land by local commanders, and in some areas of Bamyan, they faced security problems." [11i] (p20)

**6.79** The US State Department Report 2004 (USSD) on Religious Freedom, published15 September 2004, noted that the active persecution of Afghanistan's Shi'a minority, including Ismailis, under the Taliban regime had ended. Although some discrimination continued at the local level, Shi'a generally were once again free to participate fully in public life. [2c] (p6)

(See also Section 6A paragraph 6.23 for ECRE guidelines)

**Sikhs and Hindus**

**6.80** A report by the Afghan Professional Alliance for Minority Rights (APAMR) on 22 May 2003 stated that the mass migration of Sikhs and Hindus from Afghanistan increased when the Taliban took over Kabul and began to discriminate against them. The Taliban called them "infidels living in Muslim lands." Following the fall of the Taliban, some Sikhs and Hindus, mostly from India returned to Afghanistan to see if they could rebuild their lives again in Afghanistan. Many of their houses and temples were found to be totally ruined and many of their shops, houses and lands were being occupied by some powerful commanders and armed groups. [64a] (p3)

**6.81** In comments submitted to the Advisory Panel on Country Information (APCI) in September 2004, UNHCR stated that "According to available information, there are around 3500 Sikh and Hindu families that live in Afghanistan today. They are based mainly in Kabul (350 families), Jalalabad (120 Sikh families; 10% of the original population and 18-20 Hindu families); Kandahar, Helmand, and Ghazni. Previously, there were as many as 200,000 Sikhs and Hindu individuals living in Afghanistan." [11c]

**6.82** The US State Department Report 2004 (USSD) report on religious freedom published on 15 September 2004, noted that "The fall of the Taliban and the subsequent establishment of the AIA [Afghan Interim Authority] and TISA [Transitional Islamic State of Afghanistan] resulted in a major improvement in religious freedom. Sikh and Hindu representatives at the Emergency Loya Jirga in June 2002 reported that they no longer were repressed and felt free to practice their religions. The Government encouraged Sikhs, Hindus, and other minorities to return, and there was a small but steady flow of returnees during the year." [2c] (p5)

**6.83** In June 2003, an Amnesty International report noted that

> "Three Sikh asylum seekers, who were forcibly returned by the UK, were forced to seek shelter in a Sikh temple in Kabul as they had nowhere else to go. Two of them were originally from Jalalabad but had no idea whether they had any relatives still left in that city and so were reluctant to return. Yet, they also felt vulnerable as potential targets of persecution in Kabul as the majority of the Afghan Sikh population has not returned to that city. Three days after their return, they reported that they had been singled out for abuse in a market place in Kabul." [7f] (p12)

**6.84** In October 2003, a HRW open letter to President Karzai expressing concerns about the CLJ election process noted that a grenade had been thrown into a Sikh temple in Kabul the previous week. HRW also noted that "A prominent leader for the Sikh community in Kabul recently received anonymous threats on the telephone, telling him not to favor a secular government when he represents the community at the constitutional loya jirga." [17a]

**6.85** The USSD 2004 report on religious freedom noted that

> "Sikh and Hindu leaders were consulted regularly during the preparation of the draft Constitution and elected three delegates, including a woman, to the CLJ.... The Human Rights Commission also advocated for the rights of Sikhs and Hindus, when

this community complained in late 2003 that it was being denied access to its traditional cremation ground in Kabul by local residents. The Ministry of Hajj and Religious Affairs was also sympathetic and responded to this complaint. In March [2004] Kabul municipal authorities allocated an alternative cremation site to the Sikh-Hindu community; however, by the end of the reporting period, this community had not yet assumed control of the allocated site. During the reporting period, the Government provided guards for the five or six unused Sikh gurdwaras in Kabul, as well as a shuttle for worshippers." [2c] (p6)

**6.86** The USSD 2004 further noted that "Non-Muslim minorities such as Sikhs and Hindus continue to face social discrimination and harassment, but this circumstance is not systematic and the Government is trying to address their concerns." [2c] (p6) The Freedom House 2004 country report noted that Hindus and Sikhs have had some difficulty in obtaining cremation grounds and building new institutions of worship. [41a] (p5)

**6.87** In March 2004, the Secretary General of APAMR reported to the United Nations Working Group on Minorities that

"In Hilmand [Helmand] province:
- The governor to the province demolished Hindu minority shops in the centre of provinces and the governor allocated some lands for the Muslims whose shops were demolished but refused to allocate lands for Hindus.
- As a policy, people leasing their houses to the Hindus were pressurized by the governor to expel the Hindus from their houses.

In Kabul city:
- Some of returnee Hindu minority are not able to get back their houses from powerful commanders, which is a violation of article 40 of the new constitution.
- The returnee Hindu minority are left to live inside temples
- Their children don't have facilities to go to Muslim schools, due to discrimination in violation of the provisions under the Convention on the Rights of the Child.
- They don't have a special place to burn their dead, which is contrary to item 2 article of UN declaration on Minority Rights.
- They have not receive [sic] sufficient assistance to rebuild their houses, temples or schools.
- They are not exempted from paying electricity taxation in temples, which is opposite item 2 article 4 UN declaration on Minority Rights." [64b] (p2-3)

**6.88** The Danish fact finding mission of March/April 2004 reported that "The AIHRC mentioned that Sikhs and Hindus had some problems under the Taliban, but today they can generally practice their religion without encountering any major problems." The Co-operation Centre for Afghanistan (CCA) told the delegation that Sikhs and Hindus can practice their religion without any risk of harassment. The EU Special Representative had no information on Sikhs or Hindus being subjected to any form of harassment but had the impression that they might be subjected to discrimination. [8] (section 5.4)

**6.89** In comments submitted to the Advisory Panel on Country Information (APCI) in September 2004, UNHCR stated that

"There are three temples that operate today in Kabul. There used to be 8 Sikh and 4 Hindu temples, but since the early 1990s, most of these were destroyed or used as military bases during the fighting. In Jalalabad, there are two Sikh temples and one Hindu temple. Many have left Kabul and Jalalabad following the arrival of the Mujahideen in 1992. This was due to the general increase in insecurity and reported increase in discrimination against the group. Until 1992, they had not suffered from discrimination and exercised their religion freely. Another wave left after 1996 when the Taliban came to power. While in power, the Taliban passed a law that stipulates that Hindus and Sikhs should wear a yellow marker to distinguish them from other Afghans and that they should place a sign over their shops and businesses marking them as Sikhs. The law was never strictly enforced.

The Sikh and Hindu communities have complained of experiencing harassment. They face intimidation and abuse in public places, and have tomatoes and potatoes thrown at them." [11c]

**6.90** UNHCR further noted that

"In terms of property, many homes and businesses were lost during the fighting due to the destruction and occupation. Some Sikhs and Hindus in Kabul continue to experience property occupation by commanders. In both Jalalabad and Kabul, the community representatives have expressed concerns that they will not be able to accommodate returning families. The Jalalabad representatives had written to the Governor of Nangarhar requesting land allocation but no response has yet been forthcoming.

With regard to education, parents are hesitant to send their children to mainstream school. Prior to 1992, Sikh and Hindus attended school with other Afghan children and were allowed to leave the classroom during the time scheduled for their religious instructions. During the past, there were also some Sikh-run schools for learning Punjabi. These schools were attended in addition to the mainstream schools. Today, parents are nervous about their children experiencing discrimination and harassment at school. As Sikh and Hindu children have not yet returned to mainstream schools, it is not in fact possible to assess the reaction of the local community towards these children. At present, Sikh Children are educated in the temples.

Sikhs do have recourse to dispute resolution mechanisms such as land and property court, and, some have considered taking cases of property occupation to the court. In practice however, where property occupation is by a commander, the community feels unprotected and very nervous and has therefore chosen not to pursue matters through the courts for fear of retaliation. A common complaint from the community is that although they have raised their concerns about accommodation and education with various ministries and with representatives of the international community, they believe that no action has been taken to alleviate the problem of the Sikh and Hindu communities.

A positive development for the Sikh community has been that it was represented at the Loya Jirga and a member of the community is in the Electoral Commission." [11c]

**6.91** UNHCR also commented on the situation for Sikhs in Ghazni:

"There are currently around 30 houses, totalling 70 Sikhs that are living in Ghazni city. An additional 30 families still remain in asylum, mostly in London and in India. In Ghazni, most of these families live in Shahmir in Plan 3. The majority of these families have their own houses and also their own shops.

Since the collapse of the Taliban regime, under whom they have suffered, five families returned from India. Two of these returnee families owned property and did not face any difficulty in recovering them. The other three families did not have any property and lived in rented houses. According to them, they are not facing any problems with the authorities or the communities. The three other families that did not have any property are living in rented houses

As far as education is concerned, there are two schools for their children, both for girls and for boys. One school is for religious subjects and the other one is for formal primary education, run by the NGO Ockenden International. The representative of the Sikh community mentioned that they requested some land from the provincial authorities in order to build a new school. According to their representative, the Head of the Education Department explained that, as they constitute a part of the Afghan people, their children should study with other students in the same schools." [11c]

**6.92** On 25 October 2004, the Navhind Times reported that

"The Afghan Sikhs, slowly trickling back to their homeland after the ouster of the fundamentalist Taliban regime, have appealed to the Indian government to allow them travel between the two countries overland via Pakistan. Mr Ravinder Singh, a member of the Afghan Gurdwara Prabhandak Committee, complained to visiting Indian newsmen here recently that most of the Sikh families could not afford direct air travel to India... The Indian government had imposed a ban on overland entry of Afghan Sikhs following warning from intelligence agencies that Pakistani agencies were trying to infiltrate Sikh extremists in the garb of Afghan Sikhs... Mr Ravinder Singh said Sikhs and Hindus, who once constituted a population of over 500,000 in Afghanistan, now account for only a hundred families that had come back after the ouster of the Taliban regime, still faced hardships in getting back their homes, shops and other assets.

Most of the Sikh and Hindu families, who have been living in Afghanistan for over a 1,000 years, have settled, besides capital Kabul, in the Pushtu heartland of southern Afghanistan with a fair sprinkling in Jalalabad, Khost, Kandahar, Ghazni and few in Mazar-i-Sharif and Kunduz in northern areas. Afghan Sikhs and Hindus were predominant in Afghanistan's unique 'money market' working as commission money changers, while others had shops and trading establishments. However, after the fall of Najibullah regime, the Sikhs and Hindus fell prey to bloody inter-Mujaheddin warfare. "For the past few years we have been trickling back and trying to reclaim our properties. We are facing lot of hardships," the Sikh leaders said. "But we are upbeat. The recent events taking place in the country are very positive," said Mr Avtar Singh, another prominent Sikh leader." [84]

**6.93** The US Department of State Report 2004 (USSD), published on 28 February 2005, recorded that "Sikhs and Hindus returning to the country faced difficulties in obtaining housing and land in Kabul and other provinces. Both communities did not receive land on which to cremate their dead; however, unlike in previous years, the Hindu and Sikh communities reportedly did not face any acts of discrimination." [2d] (section 2c)

(See also UNHCR/ECRE guidelines paragraphs 6.22 – 6.23)

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**Converts and Christians**

**6.94** The World Evangelical Alliance (WEA) Geneva Report 2004, last modified on 1 April 2004, stated that

> "The U.S.-led war on terrorism abolished the oppressive Taliban regime with its strict Islamic code, yet concerns about the future of religious freedoms for Christians in Afghanistan still remain. Though the U.S. has been pushing for a new governmental system in the country that recognizes religious freedoms and that allows for conversion from the majority religion, doubts remain as to whether such freedoms could ever exist in an Islamic state. The Afghan Minister of Justice, Asharaf Rasooli, stated openly that "no Muslim is allowed to convert to another religion. But if a person wants to convert to Islam, there is no problem with that." Afghanistan's Supreme Court Chief Justice, Mullah Fazul Shinwari, also issued a warning that if anyone is found guilty in his courtroom of professing the Gospel, he or she may face the death penalty.
>
> The new constitution for Afghanistan, passed in early January [2004] by the Loya Jirga, provides little guarantee that religious persecution will be diminished under the new Islamic government. For, missing from the constitution is the essential assurance of the protection for freedom of thought, conscience, and religion. Islam remains the supreme religion in the country, with a constitutional declaration that "no law can be contrary to the beliefs and provisions of the sacred religion of Islam." This wording allows for much interpretation of difficult issues by the future Afghan Supreme Court, a body of judges who will be educated in Islamic law. If these judges believe that Christian practices are contrary to Islamic law, there is great potential for believers to continue to suffer persecution.
>
> Thus, while Afghanistan's new constitution claims to allow for religious freedom, Nina Shea, a member of the U.S. Commission on International Religious Freedom states that "religious freedom means educating your children in the faith or being able to possess religious literature, Bibles, being able to designate your leaders, being able to meet with co-religionists, being able to carry out charities, being able to raise money, or to take collections." With a constitution still entrenched in Islamic law, it is doubtful that any of these freedoms will be enjoyed by non-Muslim Afghani citizens in the near future." [82] (p3-4)

**6.95** The Danish fact finding mission of March/April 2004 reported that the sources consulted said that conversion from Islam to other religions is not allowed. The AIHRC said that there were no reports on whether Christian families have any difficulties practising their religion. People converting from Islam to other religions, however, are

sentenced to death. According to the CCA "Conversion is not permitted and the CCA did not know of persons who have converted from Islam to other religions in Afghanistan. The CCA assumed that a person who has converted will in the first instance encounter problems with his/her own family and social network, which will not accept the conversion, and later he/she will get problems with the surrounding community." [8] (section 5.4)

**6.96** On 1 July 2004, Reuters reported that "Afghanistan's Taliban guerrillas say they cut the throat of a Muslim cleric after they discovered him propagating Christianity and warned foreign aid workers they would face similar treatment if they did the same. Taliban spokesman Abdul Latif Hakimi telephoned Reuters on Thursday to say that the guerrillas killed Maulawi Assadullah in the remote Awdand district of Ghazni province the previous day.... Hakimi charged that a number of foreign aid agencies were also involved in spreading Christianity in Afghanistan, where the adherents to the religion are in a tiny minority. "We warn them that they face the same destiny as Assadullah if they continue to seduce people," he said." [24a] The US State Department Report 2004 (USSD) published on 28 February 2005 recorded that "There was an unconfirmed report that the Taliban killed a former Muslim cleric on June 30 [2004], allegedly for preaching Christianity." [2d] (section 2c)

**6.97** The US Department of State recorded in their 2004 report on religious freedom published on 15 September 2004 that "Conversion from Islam is considered apostasy and is punishable by death under Shari'a. During the reporting period, there were unconfirmed allegations that converts to Christianity faced societal discrimination and threats. There was no information available concerning restrictions on the general training of clergy. Immigrants and noncitizens were free to practice their own religions. In Kabul 200 to 300 expatriates meet regularly at Christian worship services." [2c] (p4) The US Department of State also advised in the same report that there had been no reports of forced religious conversion in the reporting period of 1 July 2003 to 30 June 2004. [2c] (p5) The report also noted that "In at least one instance, U.S. officials met with and assisted an Afghan Christian allegedly being persecuted for his faith." [2c] (p8)

**6.98** The USSD 2004 recorded that "Militants sometimes harassed foreign missionaries and other religiously oriented organizations...There were unconfirmed allegations that converts to Christianity faced societal discrimination and threats." [2d] (section 2c)

**6.99** In comments submitted to the Advisory Panel on Country Information (APCI) in September 2004, UNHCR stated that

> "The risk of persecution continues to exist for Afghans suspected or accused of having converted to Christianity, or Judaism.
>
> The current constitution of Afghanistan does not provide sufficient protection for converts. Article 2 of the Constitution states: Followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law. The boundaries of the law however are open to interpretation. The situation for converts is further compounded by the fact that Article 3 of the 2004 Constitution states that "In Afghanistan, no law can be contrary to the sacred religion of Islam and the values of this Constitution".

If conversion is suspected or known and given the fact that the judicial system is largely comprised of conservative Islamic judges who are in favor of enforcement of provision of Hanafi or Jafari doctrines, execution of a convert would be the result. In Islamic Law, conversion is punishable by death throughout Afghanistan. UNHCR is however not aware of reports of any Afghans who have been punished by death due to conversion by the formal judicial system. The state structures, excluding the judiciary system, are not in a position to take appropriate action for the protection of this category of Afghans. There are reports that would point out to the existence of a small community of Afghans who have converted to Christianity. They continue to practice their religion in secrecy." [11c]

**6.100** UNHCR also noted that

"Afghans who are involved in activities that criticize the practical application of Islamic norms in the country could also be falsely accused of promoting Christian values or having converted. Members of the Hizb-Islami [sic] or the Mujahideen factions have been known to target persons working with the media on issues such as religious freedom, or uncovering abuses by members of the clergy or religious leaders.

Persons perceived to have converted, or have done so, are likely to face serious problems first and foremost by the members of the communities in which they live, and also their family members. Converts would face strong pressure to reverse their decision and to repent. In case of refusal, family members would resort to threats, acts of intimidation, and in some cases physical abuse that could be life-threatening. Conversion to Christianity is seen by family members as a source of shame and embarrassment for them in the community." [11c]

(See also UNHCR and ECRE guidelines paragraphs 6.22 – 6.23)

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**Mixed marriages**

**6.101** The Danish fact finding mission of March/April 2004 reported that

"The UNHCR stated that the organization does not have any information concerning governmental persecution of people in mixed marriages. The source informed that the government has announced that all Afghan citizens can return to Afghanistan with a partner of non-Afghan origin, and that citizenship will automatically be given to the non-Afghan partner [in accordance with the provisions of Afghan law on nationality [11c].] However, the source was of the opinion that foreign women generally have more problems than foreign men, of being made an integral part of the community.

The source stated that, the question as to whether the couple will be subject to persecution from their families depends on the attitude of the families. The source knew about cases where mixed couples had returned from their exile to Afghanistan without encountering problems. However the source was of the opinion that partners in mixed marriages should return to larger cities to avoid problems. The source explained that the UNHCR had been involved in a case in which a

mixed couple, an Afghan Hazara man and a Pakistani woman were subject to persecution and threats from their families due to their marriage. The couple had tried to settle in various towns in Afghanistan but in the end they had been forced to leave the country." [8] (section 6.9)

**6.102** The same Danish report also noted that

"The CCA mentioned that it was almost impossible for a Muslim Afghan woman to marry a non-Muslim man. The source found that in the majority of cases the families would not accept the marriage. The marriage will not be recognized and the relationship will be regarded as co-habitation outside marriage, which is severely punished. A woman who violates these norms runs a severe risk of being rejected by her family or, in the worst case, being murdered. A Muslim man can marry a woman with a Jewish or Christian background, but not a woman who is a Sikh or a Hindu.

The CCA knew of a number of cases in which women from the former Soviet Union had moved to Afghanistan because of their marriage to Afghan men. Such couples do not encounter any problems in Afghanistan, but in several cases the source found that the women could have difficulties in settling down in Afghanistan due to the traditional view on women." [8] (section 6.9)

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## Freedom of Assembly and Association

**6.103** Article 35 of the new Constitution adopted in January 2004 states

"The citizens of Afghanistan have the right to form social organizations for the purpose of securing material or spiritual aims in accordance with the provisions of the law. The citizens of Afghanistan have the right to form political parties in accordance with the provisions of the law, provided that:
1.The program and charter of the party are not contrary to the principles of sacred religion of Islam, and the provisions and values of this Constitution.
2.The organizational structure, and financial sources of the party are made public.
3.The party does not have military or paramilitary aims and structures.
4.Should have no affiliation to a foreign political party or sources.
Formation and functioning of a party based on ethnicity, language, religious sect and region is not permissable.
A party set up in accordance with provisions of the law shall not be dissolved without lawful reasons and the decision of an authorized court." [81b]

Article 36 states "The citizens of Afghanistan have the right to un-armed demonstrations, for legitimate peaceful purposes in accordance with the law." [81b]

**6.104** On 17 July 2004, a report by AIHRC-UNAMA noted that

"In Kabul, the politically diverse environment has generally allowed for peaceful assembly. In the last two months, two different political parties held demonstrations in which participants criticized authorities openly. In addition, there have been numerous political conferences, workshops and forums in which

attendance has been unrestricted. However, isolated incidents have been reported of government authorities disrupting political activities. On 18 June [2004] a meeting of party activists was disrupted by the police in District Two. Party members were harassed and warned not to register with the party. The police denied that this incident had taken place." [48a] (p3)

**6.105** The AIHRC-UNAMA report also noted that

"The northeast and east have witnessed a marked improvement in the environment, allowing for greater openness of political activities. In Nangarhar, over 16 political parties are active. Even those that have thus far been working clandestinely have started venturing out and meeting publicly. The Governor has also hosted a gathering of political actors at his office. However, some complaints have been reported. On 15 June [2004], two party representatives reported that they were called to the District Administrator's office for questioning after convening a meeting with their constituencies in Hazarnaw, Mohmandara District. The men were released after questioning without any charge. "

The report also noted that there was little political activity in Nuristan, Konar and Laghman. [48a] (p4)

**6.106** The AIHRC-UNAMA report further noted that "Freedom of expression and association is particularly curtailed in Herat where even registered political parties are prevented from establishing offices and operating openly." [48a] (p7) However, a later AIHRC-UNAMA report covering the period 24 August to 30 September 2004 recorded that a noteworthy event relating to freedom of expression was the Government's decision to change the Governor of Herat. " The new Governor has opened up political space and one of his first initiatives included appointing a new head of TV and radio. There has also been a noted improvement in programming, with the introduction of a weekly public opinion show and the broadcasting of programs aired in Kabul." [48b] (p6)

**6.107** The AIHRC-UNAMA report of 17 July 2004 concluded that verification efforts had indicated that the last 2 years had led to the emergence of a more robust political life in Kabul, the east and other areas. The report notes that "This trend towards pluralism – contrary to the view that political activities are destabilizing – has in fact provided a peaceful venue for working out political differences, thereby strengthening stability in these regions. This model should be popularized and disseminated throughout the country by civil society, provincial authorities and local actors." [48a] (p7-8)

**6.108** The US State Department Report 2004 (USSD), published on 28 February 2005 records that

"The Constitution provides for freedom of assembly, association, and the right to form political parties without prior permission; however, this right was restricted in practice. Insecurity and interference from local authorities inhibited freedom of assembly and association in some areas outside Kabul. Political parties based on ethnicity, language, Islamic school of thought, and region were not allowed; however, political parties generally were able to conduct activities throughout the country without opposition or hindrance, except in regions where antigovernment

violence affected overall security. The October 2003 Political Parties Law obliges parties to register with the Ministry of Justice and requires political parties to pursue objectives that are consistent with the principles of Islam. There was a report that Noorulhaq Olomi's Afghanistan National United Party was denied the right to registration, allegedly because Noorulhaq was a communist, despite meeting all legal requirements.

(See Annex B for list of registered and unregistered political parties)

**6.109** The USSD further stated that "In Herat Province, party activists did not conduct political activities openly because of Governor Ismail Khan's intolerance of political activities...On September 12 [2004], Afghan security forces killed seven demonstrators in Herat. In September, demonstrators protesting the removal of Ismail Khan as Governor allegedly attacked U.N. offices and government-allied forces." [2d] (section 2b)

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## Employment Rights

**6.110** Article 48 of the new Constitution adopted in January 2004 states "Work is the right of every Afghan. Working hours, paid holidays, right of employment and employee and other related affairs are regulated by law. Choice of occupation and craft is free within the limits of law." [81b]

**6.111** The US State Department Report 2004 (USSD), published on 28 February 2005 recorded that

"The Constitution and a mixture of labor laws from earlier periods provide broad provisions for protection of workers; however, little was known about their enforcement or practices. Labor rights were not understood outside of the Ministry of Labor, and workers were not aware of their rights. There was no effective central authority to enforce them. The only large employers in Kabul were the minimally functioning ministries and local and international NGOs." [2d] (Section 6a)

**6.112** The USSD 2004 also noted that

The law does not provide for the right to strike; however, the country lacks a tradition of genuine labor-management bargaining. There were no known labor courts or other mechanisms for resolving labor disputes. Wages were determined by market forces, or, in the case of government workers, dictated by the Government. There were no reports of labor rallies or strikes. [2d] (Section 6b)

The Constitution prohibits forced or compulsory labor, including by children; however, little information was available. [2d] (Section 6c)

The Constitution prohibits children under the age of 15 from working more than 30 hours per week; however, there was no evidence that authorities in any part of the country enforced labor laws relating to the employment of children. Children from the age of 6 often worked to help support their families by herding animals, collecting paper, scrape metal and firewood, shining shoes, and begging. Some of

these practices exposed children to the danger of landmines. [2d] (Section 6d)

There was no available information regarding a statutory minimum wage or maximum workweek, or the enforcement of safe labor practices. Many workers were allotted time off regularly for prayers and observance of religious holidays. [2d] (Section 6e)

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## People Trafficking

**6.113** A report by the International Organisation for Migration (IOM) in October 2003 advised that

> "Trafficking in Afghanistan includes many forms, including forced marriages through abduction and for debt release; early marriages; the exchange of women for dispute settlement; abductions of women and children, including boys, for sexual and domestic servitude; situations of forced labour; forced prostitution and sexual exploitation of children.... Other human rights abuses with trafficking-related elements are also being inflicted upon Afghans. These include forced recruitment into armed groups, forced labour for poppy cultivation activities, such as harvesting and transportation, hostage-taking of smuggled persons subjected to forced labour and other forms of exploitation, and the abduction or deception used for forced religious training of minors." [38a] (p65)

**6.114** The IOM report also stated that "Over 22 years of internal conflict, the continued presence of armed militias across the country, the present stage of national reconstruction, and lack of central government authority in the provinces, are all factors and security concerns that have a direct impact on the prevalence of trafficking in Afghanistan." [38a] (p 66)

**6.115** A US State Department (USSD) Report on Trafficking in Persons, published on 14 June 2004, stated that

> "Afghanistan is a source and transit country for women and children trafficked for the purposes of sexual exploitation and labor. Children are trafficked to Pakistan, Iran, and Saudi Arabia for begging, labor, and prostitution. Children are often trafficked with the consent of their parents who are told they will have better educational and job opportunities abroad. Over 200 Afghan children were repatriated from Saudi Arabia in early 2004. Women and girls are kidnapped, lured by fraudulent marriage proposals, or sold for forced marriage and prostitution in Pakistan. Women and girls are also trafficked internally as a part of the settlement of disputes or debts as well as for forced marriage and labor and sexual exploitation. Boys are trafficked internally mainly for labor and sexual exploitation. Iranian women transit Afghanistan to Pakistan where they are forced into prostitution." [2b] (p1)

**6.116** The US State Department Report 2004 (USSD) published on 28 February 2005 recorded that

"The law does not prohibit trafficking in persons; however, traffickers were prosecuted under other legislation...The few quantitative data available suggested that trafficking in children, mainly boys, was the predominant form of trafficking, at least across borders...

Some girls reportedly were kept in brothels. There were continued reports of poor families promising young girls in marriage to satisfy family debts. There were a number of reports that children, particularly from the south and southeast, were trafficked to Pakistan to work in factories. UNICEF cited unconfirmed reports of the abduction of women and children in the southern part of the country. Although prosecutions of traffickers increased, and the Government devoted greater attention to trafficking in persons during the year, prosecution of perpetrators continued to be inconsistent. During the year, the AIHRC received 198 reports of child trafficking, and there were approximately 20 arrests and 7 convictions of child traffickers. The Ministry of Interior reported 198 cases of kidnapping in 2003, but it was unclear how many of these cases had a trafficking element. President Karzai issued a decree mandating the death penalty for child traffickers convicted of murder, and lengthened prison terms. Trafficking victims, especially those trafficked for sexual exploitation, faced societal discrimination, particularly in their home villages, and the risk of contracting sexually transmitted diseases.

At year's end, according to the AIHRC, approximately 314 children were repatriated after having been allegedly trafficked to Saudi Arabia, Pakistan, Zambia, and Oman. The Ministry of Labor and Social Affairs, with the assistance of UNICEF, set up a transit center to assist with these returns, and other agencies such as the AIHRC helped with the children's reunification and reintegration." [2d] (section 5c)

**6.117** A 2004 review paper by the International Organization for Migration (IOM) reiterated that their assessment of trafficking in persons in Afghanistan led them to conclude that the following forms of trafficking are taking place:

- "Exploitation of Prostitution (forced prostitution and prostitution of minors);
- Forced Labour;
- Slavery and Practices Similar to Slavery (abductions for forced marriage, marriage for debt relief, and exchange of women for disputes settlement);
- Servitude (sexual servitude and domestic servitude); and,
- Removal of Organs.

IOM Kabul has commenced a one-year project to increase the capacity of the Islamic Republic of Afghanistan (IRA) to address trafficking through technical assistance and awareness raising activities." [38b] (p3)

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## Freedom of Movement

**6.118** The US State Department Report 2004 (USSD), published on 28 February 2005 reported that the Constitution provides for freedom of movement but certain

laws limited citizens' movement. The USSD records that

> "The passport law requires women to obtain permission from a male family member before having a passport application processed. In some areas of the country, women were forbidden by local custom or tradition to leave the home except in the company of a male relative. The law also prohibits women from traveling alone outside the country without a male relative, and male relatives must accompany women participating in Hajj. Additionally, sporadic fighting, brigandage and landmines hampered travel within the country. Despite these obstacles, many men and women continued to travel relatively freely, with buses using routes in most parts of the country. Taxi, truck, and bus drivers complained that militia and police personnel operated illegal checkpoints and extorted them for money and goods; however, the number of such checkpoints decreased during the year [2004]. In March, local militants shot and injured a police chief at an illegal checkpoint in Mazar-e-Sharif." [2d] (Section 2d)

**6.119** A UNHCR report issued in July 2003 stated, however, that "UNHCR continues to advise against resort to the notion of an internal flight or relocation alternative in the Afghan context. This advice takes into account that the traditional family and community structures of the Afghan tribal system constitute the main protection and survival (coping) mechanism. The protection provided by families, extended families and tribes is limited to areas where family or community links exist, in particular in the place of origin or habitual residence." [11i] (p 41)

**6.120** The Danish fact finding mission of March/April 2004 reported that "The UNHCR pointed out that women are dependent of [sic] a network in order to settle down in another place in the country. As a result, they do not have a real opportunity to move to another part of the country to avoid a forced marriage etc." [8] (section 5.5)

**6.121** The Danish fact finding mission also noted that

> "The UNHCR found that an internal flight alternative is not possible in Afghanistan. The organization was of the opinion that it is only possible to settle down in an area if there is a network that can assist in the establishment and provide protection. One cannot use Kabul or any other city as an internal flight alternative if one has a conflict somewhere else in the country, because the networks of clans and the political networks are very closely linked up throughout Afghanistan, and the central government are not able to offer protection."

Furthermore, "The UNHCR explained that Kabul is the only town in Afghanistan where one can survive economically without having a network, but this requires a certain level of professional experience in order to get a job with a NGO or the like. The situation for single women however is complicated." [8] (section 5.5.)

(See also Section 6A Single Women and Widows paras 6.187 to 6.196)

**6.122** The Danish fact finding report noted that

> "The IOM explained that Afghans from country districts are migrating to larger cities to look for work and housing. The source mentioned that apart from

Kandahar, the population in the large towns is ethnically mixed. In spite of this it is rare that people try to settle down in towns where they do not have a network or where they have not lived earlier. The source was nevertheless of the opinion that the Afghan people are very mobile and do not have problems in settling down in a new place if possible." [8] (section 5.5.)

**6.123** On 17 July 2004, a report by AIHRC-UNAMA noted that

"In parts of the country, the security situation leaves many people fearful of traveling [sic] beyond urban areas. There have been a number of improvised explosive device (IED) attacks by anti-governmental forces against the vehicles of the Joint Electoral Management Body (JEMB) Secretariat, NGO and UN vehicles and government representatives. The incidents have been particularly prevalent in the south, but have also become more frequent in the east, southeast, center and northeast." [48a] (p5)

(See also Section 6B Women paragraphs. 6.167 – 6.169 for further information on restrictions on movement for women)

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## 6 B Human Rights Specific Groups

### Ethnic Groups

### Introduction

**6.124** The Freedom House Afghanistan Country Report 2004 records that

"Afghanistan is made up of a mélange of ethnic groups, the largest of whom are the Pashtuns, Tajiks, Uzbeks and Hazaras. Historically there has been a certain level of inequality between ethnic groups, as well as discrimination based on ethnicity. The predominantly Shia Hazaras, who are believed to make up between 15 percent and 20 percent of Afghanistan's population, have traditionally been the most politically and economically disadvantaged group. Observers believe that protracted wars and instability have led to an increase in ethnic polarization, tension, and conflict." [41a] (p6)

**6.125** In July 2003 UNHCR reported that "Ethnic discrimination has occurred in some parts of the country, often affecting different groups perceived within the community as linked to a particular political/military faction. A particularly serious feature of the security situation are confirmed reports about serious human rights abuses against members of the Pashtun ethnic minority communities in the northern and western regions of Afghanistan by local commanders." [11i] (p19)

(See also section on Pashtuns below)

**6.126** A report published in September 2003 by the International Crisis Group (ICG) stated that

"Ethnic polarisation has increased over the last 25 years, particularly in areas like

Hazarajat where successive power shifts have displaced Hazaras and Pashtuns alike. But despite the long history of violent conflict and the wide rifts in the country, Afghans have a strong a sense of national identity, and many dispute that ethnicity is important. However, it clearly is a factor in both national and local divisions that those who oppose peace exploit. Long-standing discrimination and inequalities have prepared the ground for many of these problems but they are also being deliberately fanned by commanders, particularly in the north where conflicting ethnic groups have been relocated over the years on contested land." [26c] (pi)

**6.127** Article 22 of the new Constitution adopted in January 2004 states that "Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan –whether woman or man - have equal rights and duties before the law" [81b] On 4 January 2004, the Institute for War and Peace Reporting (IWPR) noted that the final document named fourteen different ethnic groups as comprising the nation of Afghanistan. The IWPR reported that the national anthem will be in Pashtu, but will include the phrase "Allah-o-akbar" – the jihadi rallying cry - and mention all the names of Afghanistan's ethnic groups. [40n]

**6.128** On 10 January 2005, the Special Representative of the Secretary-General reported that the new Afghan cabinet inaugurated in December 2004 broadly reflected the ethnic composition of the country, with ten Pashtuns, eight Tajiks, five Hazaras, two Uzbeks, one Turkmen and one Baloch. [40k]

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**Pashtuns**

**6.129** UNHCR in July 2003 advised that Pashtuns are the largest ethnic group, constituting about 38% of the population. [11i] (p 5) The World Directory of Minorities (1997) records that Pashtuns are Sunni Muslims, living mainly in the east and south of the country adjacent to Pakistan. Pashtuns have always played a central role in Afghan politics, and their dominant position was a major catalyst in triggering the civil war. President Rabbani's regime represented the Tajik minority, whereas troops led by Gulbuddin Hekmatyar (and later those of the Taliban) were mainly Pashtun. [27] (p 539)

**6.130** A1997 UNHCR background paper on refugees and asylum seekers from Afghanistan noted that the Pashtun tribal population of Pakistan's North-West Frontier Province (NWFP) still had much in common in terms of culture, language and traditions with their fellow Pashtu-speakers across the border (the 'Duran Line') in Afghanistan. The Duran Line of 1893 demarcated the border of modern-day Pakistan and Afghanistan. There is a long tradition of mobility among the Pashtuns who live in the NWFP and those of eastern Afghanistan. [11a] (p 5)

**6.131** The World Directory of Minorities (1997) notes that "The social structure of the Pashtuns is based on the Pashtunwali (or Pukhtunwali) code. This requires the speaking of Pashtu and adherence to established customs. Hospitality is an important principle, as are a reliance on the tribal council (jirga) for the enforcement of disputes and local decision-making, and the seclusion of women from all affairs outside the home." [27] (p 539)

**6.132** A Christian Science Monitor report dated June 2004 noted that

"Most Pashtuns are divided into two major tribes, the Ghalji and the Durrani. The Ghalji are larger in number, but the Durrani have long been dominant. Mr. Karzai is a Durrani. In parts outside Afghanistan's Pashtun-dominated south, tribal identity takes a backseat to broader ethnic, sectarian, and regional affiliations which form the backbone of support for many of the country's powerful warlords. But in southern Afghanistan, where the tribal system has primacy, power is much less concentrated. Within the two larger tribes there are numerous sub-tribes, conflicting claims to leadership, and small-scale militias. Each village has a tribal chief, and these chiefs choose from among their own ranks leaders who will represent the tribe in Kabul. Most tribes, however, have a number of factions claiming to represent the whole tribe, leading to rivalries and chaos." [75]

**6.133** The Freedom House Afghanistan Country Report 2004 recorded that

"Pashtuns, who are the largest ethnic group in Afghanistan, are predominant in the southwest and southeast of the country. Pashtun leaders have controlled political power for most of Afghanistan's history as a state, and most recently some Pashtun leaders were broadly supportive of the Taliban regime. Following the collapse of Taliban rule, Pashtun civilians residing in the north were targeted in a wave of ethnically motivated violence that left a large number displaced and dispossessed of their land. Although the UN and central and regional authorities established the Return Commission in October 2002 to aid Pashtuns who wish to return to some provinces, there remain roughly 60,000 Pashtun internally displaced persons (IDPs) scattered throughout Afghanistan, mostly in camps near Kandahar. While Pashtuns in Kabul have not been systematically targeted to the same extent, they do face some harassment and discrimination by local police and intelligence officials." [41a] (p6)

**6.134** The UNHCR report dated July 2003 noted that

"Since April 2002, the situation for Pashtun minorities in the North and West has progressively improved. UNHCR has been actively supporting initiatives to prepare for the voluntary, safe and dignified return of displaced Pashtuns to the North, and the major party leaders in the North have given assurances that their rights will be respected. Although the situation has calmed in certain regions, particularly in Badghis as well as in the North-East where there have been larger Pashtun refugee and IDP returns, the situation of Pashtun communities remains precarious in the North West, where harassment and opportunism by local commanders have not ceased." [11i] (p19)

**6.135** On 21 March 2004, a UNAMA spokesman announced that "Go and See" visits were underway in the Northern Provinces. The spokesman reported that

"The Ministry of Refugees and Repatriation (MoRR) and UNHCR have organized the second "go and see" visit by leaders of internally displaced people (IDPs) as well as refugee representatives from Balochistan Province in Pakistan... (As you know,) the first "go and see" visit organized last month to Faryab Province has proven very useful in helping IDPs make decisions about their possible return back to their places of origin...Many of these families had fled the northwestern

province nearly three years ago and were staying in Zar-e-Dasht camp in Kandahar Province. They are of Pashtun ethnicity and had left their homes due to conflict and human rights violations after the fall of the Taliban regime. The return momentum is picking up, taking advantage of improved conditions in the Northwest. About 100 more internally displaced families have expressed their willingness to return to their places of origin in Badghis Province and another 40 families are eager to return back to Faryab Province." [40p]

**6.136** The Danish fact finding mission of March/April 2004 reported that General Dostum had allowed Pashtuns to return to the northern province of Faryab. [8] (section 3.2.4) The report also noted, however, that "The UNHCR informed that internally displaced Pashtuns, returning to northern Afghanistan on "go and see" visits, have had security problems with the local warlords of the northern provinces of Faryab and Jowzjan. The source mentioned further, that some of the Pashtuns who have been repatriated to these areas have had problems in getting access to resources in the local community. The source added that a number of Pashtuns have expressed that they do not want to return to areas controlled by Panjshiris." According to the Danish report, IOM (International Organization of Migration) had also been involved in the "go and see" visits and stated that there had been security problems for Pashtuns in connection with the visits. [8] (section 6.1)

**6.137** A review paper of 31 December 2004 by the International Organization for Migration (IOM) stated that "This year [2004] has seen the first returns of ethnic Pashtuns to their places of origin in Faryab and Badghis provinces in northwestern Afghanistan." [38b] (p1) The US State Department report 2004 (USSD) published on 28 February 2005 recorded that "There was no further significant displacement of Pashtuns and others from Faryab, Jawzjan, and Badghis Provinces; however, continued harassment and insecurity limited the return of Pashtun families to their villages in northern areas." [2d] (section 1g)

**6.138** The USSD 2004 also noted that "According to the U.N., 100,000 Pashtuns, displaced from northern areas after 2001 because their ethnic group was closely associated with the Taliban regime, remained displaced." [2d] (section 2d) In addition, "Pashtuns in Herat Province accused [former] Governor Ismail Khan, a Tajik, of discrimination and abuses against their ethnic group." [2d] (section 5)

(See also UNHCR and ECRE guidelines paragraphs 6.22 – 6.23)

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**Tajiks**

**6.139** The World Directory of Minorities (1997) records that "Most [Tajiks] are Sunni Muslims and speak a form of Farsi close to the national language of Iran. Tajiks are of Central Asian origin and 4 million of this ethnic group live in the neighbouring Central Asian state of Tajikistan. Tajiks have significant political influence in Afghanistan because of their level of education and wealth. Unlike in the case of Pashtuns, there is no specific Tajik social structure. They are divided between the north, the west and Kabul and have adopted the social and cultural patterns of their neighbours." [27] (p 540)

**6.140** UNHCR in July 2003 noted that Tajiks comprise about 25% of the population making them the second largest ethnic group and they are Persian speaking Afghans.

[11i] (p5) According to a UNHCR paper published in June 1997, most Tajiks are Sunni Muslims, but Shia Muslim Tajiks are also found in the west of the country (in and around the city of Herat) and in Kabul. [11a] (p 5)

**6.141** The Danish fact finding mission of March/April reported UNHCR as saying that "Previously there have been conflicts between Tadjiks [Tajiks] and Hazaras, not only in Bamian district but also in the districts of Shiber and Yakaowlang. These conflicts no longer exist. The Tadjiks, who earlier had to flee from the region due to conflicts with the Hazaras have now returned and live in peace with the Hazaras. Moreover, the Tadjiks have been able to reclaim their houses." [8] (section 3.2.2)

**Hazaras**

**6.142** The World Directory of Minorities (1997) records that "Economic pressures and social and political repression have resulted in Hazaras combining with other Shi'a minority groups during the 1960s and 1970s and playing a prominent role in the prolonged civil war for the past two decades. Hazaras have always lived on the edge of economic survival." The directory notes that, having lost most of their fertile land to the Pasturs during the reign of the Pastun ruler Amir Abdul Rahman (1880-1901) and to the nomads later, Hazaras were forced to occupy the dry mountains of the central highlands. Many Hazara males migrated to major Afghan cities and towns, particularly Kabul. [27] (p 540) UNHCR in July 2003 advised that Hazaras constitute about 19% of the population. [11i] (p5)

**6.143** A Minority Rights Group (MRG) briefing dated November 2003 stated that Hazaras have been traditionally marginalised in Afghan society. MRG reported that

> "The Hazaras are thought to be descendants of the Mongol tribes who once devastated Afghanistan, and are said to have been left to garrison the country by Genghis Khan. The Hazaras have often faced considerable economic discrimination – being forced to take on more menial jobs – and have also found themselves squeezed from many of their traditional lands by nomadic Pashtuns. Starting at the end of the nineteenth century, successive Pashtun leaders pursued active policies of land colonization, particularly in the northern and central regions, rewarding their supporters, often at the expense of the Hazaras. This policy was partially reversed during the Soviet occupation, but started again under the Taliban." [76] (p6)

**6.144** The MRG Report also noted that a Hazara-backed political party/militia group, Hisb-e-Wahdat, had sought to expand its influence when the Mujahidin captured Kabul in 1992. Hisb-e-Wahdat had been formed as a result of an initiative by the Iranian government. "They [Hisb-e-Wahdat] were opposed on this occasion by a Saudi-backed Pashtun militia, Ittihad-I-Islami, and eventually driven back from the city after suffering heavy casualties. Five years later [1997] the Hazaras helped to inflict a significant defeat on the Taliban in the northern town of Mazar-e-Sharif. Thousands of Hazara civilians were systematically murdered in retaliation when the Taliban finally recaptured Mazar in 1998." MRG also reported that Hazara civilians were massacred by the Taliban at Robatak Pass in 2000 and Yakawlang in 2001. [76] (p6)

**6.145** Amnesty International reported in June 2003 that some Hazara returnees in

western Kabul had been targets of violence and petty crime in that area, some of which was carried out by rival ethnic groups. Returnees alleged that the police usually made no attempt to investigate their complaints. [7f] (p24)

**6.146** In a paper dated July 2003, UNHCR reported that Hazaras from the Kamard district of Bamian had complained of persecution by Tajik or Tatar commanders, including extortion, beating and intimidation and this had caused population movements throughout 2002 and into 2003. [11i] (p 20)

**6.147** In a report on land issues published in September 2003, UNHCR noted a land tenure problem in Kabul involving Hazaras. In sub-districts 8 and 10, a number of Hazara families from Sharistan, had claimed that persons affiliated to two major commanders Toran Abdiul Ali and Arif Dawari had occupied their houses and land. [11g] (p4)

**6.148** On 12 November 2003, BBC News reported that

> "The central Afghanistan region of Bamiyan became the focus of world attention in February, 2001, when the ruling Taleban destroyed two giant statues of the Buddha there that were 1,800 years old. The bitter international condemnation of the Taleban also brought to light the suffering of the local Hazara people at the hands of the Taleban. Now the people are getting much better food, health and education. And officials say that much of the thanks for that goes to the international troops now stationed there. "The people of Bamiyan are very happy with this force" Muhammad Raheem Alliyah, governor of Bamiyan province, told the BBC World Service's Assignment programme. "Its presence here is a big help both for security and for the economy." [25ad]

**6.149** On 7 January 2004, Reuters reported that unidentified gunmen had killed 12 ethnic minority Hazaras in southern Afghanistan. It was reported that "The Hazaras were travelling in a vehicle when they came under attack in Baghran district of Helmand province on Tuesday night [6 January], said Haji Mohammad Wali, spokesman for the province's governor." Reuters reported that the victims were residents of neighbouring Uruzgan province, where tension had reportedly erupted recently between some Hazaras and ethnic Pashtuns. [40ai] The USSD 2004 report on religious freedom noted that "According to the Human Rights Commission, the motive for the attack was a family feud." [2c] (p7)

**6.150** The Danish fact finding mission of March/April 2004 reported that UNCHR had advised that there were ethnic conflicts in the Ghazni and Uruzgan provinces between the Hazaras and the Pashtuns. "In some areas the Hazaras cannot travel through areas controlled by Pashtuns. Moreover the source stated that there have been tensions in Ghazni province between the Hazaras and the Kuuchis [Kuchis], Afghanistan's nomadic people. These disputes were concerning the right to land and water and have not resulted in major fights." [8] (section 6.1)

**6.151** On 28 June 2004, Agence France-Presse (AFP) reported that most of the 16 people killed in an attack by suspected Taliban in Uruzgan province the previous Friday were Hazaras who had recently returned from Iran. The report noted that the Interior Ministry Spokesman said that most of the people had registration cards and

some of them were due to get cards and participate in the elections. AFP reported that "Uruzgan has a small ethnic Hazara population but is mainly ethnic Pashtun." [40m]

**6.152** On 29 July 2004, the Pakistan Tribune reported on the position of Hazaras in Bamian [Bamiyan]:

> "Armed with a new constitution that guarantees equal rights to minority groups, Hazaras are engaged in an intense campaign to grasp some power and lift themselves from the bottom of Afghan society. The Hazaras have a great stake in seeing that the Taliban does not return to power. When the extremist Islamic movement controlled Afghanistan in the 1990s, its fighters killed hundreds – by some estimates thousands – of Hazaras in an effort to break the back of resistance to Taliban rule. Now, the Hazaras' efforts to maintain the peace before the election have helped make Bamian one of the safest areas of the country...Mohammed Mohaqiq, the first Hazara presidential candidate, said the new constitution had improved morale among Hazaras, who toil in the fields or do menial work in the cities." [30]

**6.153** On 26 August 2004, UNHCR announced that "All 5,000 residents of Bassu camp [in Pakistan], members of the minority Hazara ethnic group, decided to move back to Afghanistan when UNHCR announced that assistance to the "new" camps established as an emergency measure less than three years ago – food, water, health clinics, schools and other support – would cease on September 1." The head of the UNHCR sub-office in Peshawar said that the refugees were returning mainly to Hazarajat and Ghazni province. [11b] An earlier report by Ockenden International dated 29 July 2004 reported that refugees in Pakistan had raised serious concerns about the impending closure of refugee camps along the border between Pakistan and Afghanistan. One refugee in Bassu camp, which housed mainly Hazaras, said that his family felt "betrayed" by UNHCR. [40ao]

**6.154** In a report dated 21 September 2004, the UN appointed Independent Expert of the Commission on Human Rights in Afghanistan commented on a case of human rights violations, which UNHCR had verified and brought to his attention. The case involved approximately 200 Hazara families (about 1,000 individuals) displaced from Daikundi over the last decade by local commanders and now living in Kabul. The independent expert noted that

> "Some members of the community arrived during the past year, having fled ethnically based persecution, including the expropriation of land and property, killings, arbitrary arrests and a variety of acts of severe intimidation perpetrated by warlords and local commanders who control the Daikundi districts and who are directly linked to a major political party whose leader occupies a senior governmental post. Some of the displaced families have petitioned the Ministry of the Interior, AIHRC, UNAMA and UNHCR, requesting intervention on their behalf. The newly appointed governor has pledged to tackle the ongoing human rights violations and the monopoly of power by warlords and commanders in the region. However, the fact that the main protagonists reportedly enjoy the support of a senior member of the Government means that a satisfactory solution is highly unlikely unless there is concerted and meaningful pressure exerted by the international community in tandem with internal actors." [39q] (para. 72)

**6.155** On 10 January 2005, the Special Representative of the Secretary-General reported that the new Afghan cabinet inaugurated in December 2004 included five Hazaras. [40k]

**6.156** The US State Department report 2004 (USSD), published on 28 February 2005 noted that "The Shi'a religious affiliation of the Hazaras was historically a significant factor leading to their repression, and there was continued social discrimination against Hazaras. " [2d] (Section 2c) The USSD 2004 also recorded that "Ethnic Hazaras prevented some Kuchi nomads from returning to traditional grazing lands in the central highlands for a number of reasons, including allegations that the Kuchis were pro-Taliban and thus complicit in the massacres perpetrated against Hazaras in the 1990s. Hazaras also found difficulty in returning to the country. In December [2004], a local leader from Karukh district in Herat blocked the return of approximately 200 Hazara refugees from Iran." [2d] (section 2d)

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**Uzbeks and Turkmens**

**6.157** The World Directory of Minorities (1997) records that "Uzbeks and Turkmens are Sunni Muslims. They are ethnically and linguistically Turkic, closely related to the people of modern Turkey to the west, and identical to the majority Muslim population of Central Asia across the border to the north. They occupy the greatest share of Afghanistan's arable land in the north. In addition, the production of carpets by Uzbek and Turkmen women has brought considerable supplementary income. Cotton production has added significantly to the wealth of these two groups. Because of their relative prosperity, Uzbeks and Turkmens have not been dependent on the central government and not attempted to gain political influence." [27] (p 540) A UNHCR background paper recorded in June 1997 that "The Far Eastern Economic Review also reported that a significant Turkoman population in Western Afghanistan has historically been victimised by the Pashtuns." [11a] (p 21)

**6.158** UNHCR in July 2003 advised that Uzbeks constituted about 6% of the population. Turkmen, together with Aimaks and Baloch ethnicities and many other smaller ethnic groups constituted about 12% [11i] (p5)

**6.159** The Institute of War and Peace Reporting (IWPR) in January 2004 reported that arguments took place during the Loya Jirga in December 2003 about which languages should be named "official languages" in the new constitution. The IWPR reported "Where the original draft named Dari and Pashtu, it was eventually concluded that six further languages including Uzbek, widely spoken in the north, should also be official in the areas where they are most widely spoken. The northern leader General Abdul Rashid Dostum was influential in promoting language rights for the Uzbeks – his own group – and the related Turkmen." [73b] (p6-7) Article 16 of the constitution approved in January 2004 states that six additional languages, besides Dari and Pashtu, will be recognised as official languages in the regions where they are spoken by the majority of the population. These include Uzbek and Turkmen. [81b]

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**Baluchis**

**6.160** The World Directory of Minorities published in 1997 records that Baluchis numbered around 384,000 in Afghanistan, around 2% of the population. The directory also noted that

> "They live in the pastoral lands of the south-west and south and practise Sunni Islam. Their language is Baluchi, and their main economic activity is agriculture and animal husbandry. Divided between three countries - Pakistan, Iran and Afghanistan – they have a tradition of rebellion against their respective central governments to maintain their autonomy, and they have also had ambitions to create an independent state of Baluchistan. In the past their demands have faded after they experienced political repression at the hands of all three countries.... The Baluchis' struggle for independence has rarely attracted attention in the outside world." [27] (p 541)

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**Nuristanis**

**6.161** The World Directory of Minorities (1997) records that Nuristanis had a population of around 100,000 in Afghanistan residing mainly in the east and the north. The Directory notes that

> "Their scattered settlement is another result of Amir Abdul Rahman's late 19th Century expansionism. During his rule, what was then called Karifistan was converted to Nuristan ('land of light') by forced Islamization of the tribe. Even in recent times, many other ethnic groups were suspicious of them for still being 'kafirs' – a word which can be interpreted as 'infidel'. Nuristan is located in the middle of the Hindu Kush mountain range in four valleys, with each valley having its own distinct language/dialect: Kati, Waigali, Ashkum and Parsun. Nuristan has very little arable land, the vast majority of the territory being covered by forest. The main base of the economy is animal husbandry – mostly goat herding...Very few Nuristanis have had access to education. Yet, among those who have travelled to Kabul and been able to gain access to schools, some have gained prominence as well-known figures in the army and the government in Kabul." [27] (p 541)

**Panjsheris**

**6.162** In comments prepared for the Advisory Panel on Country Information meeting on 8 March 2005, UNHCR stated that "Panjsheris are not ethnically a separate group or sub-group." They are of Tajik ethnic origin and define themselves by the location in which they reside, that is, the Panjshir valley. "The Panjsheris are also Tajiks, practise Sunni Islam, and speak Dari with Panjsheri dialect." [11h]

**6.163** The World Directory of Minorities (1997) records that Panjsheris live in the mountainous areas north of Kabul and traditionally derive their livelihood from animal husbandry. The Directory further notes that "Socially and politically, Panjsheris have been as insignificant as Hazaras and Nuristanis, with only a few people in high-ranking positions in the army and government in Kabul. All three groups initially remained independent, without affiliation to any political party, during the war with the Soviet Union, but Panjsheris later achieved prominence under the command of Ahmad Shah

Masoud, when their army came to control vast areas of northern Afghanistan [Northern Alliance]." [27] (p541)

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### Kuchis

**6.164** In December 2003 Refugees International (RI) reported that Kuchis are Pashtuns from southern and eastern Afghanistan. RI noted that "Kuchi means "nomad" in the Afghan Dari language. The livelihood and culture of the Kuchis have been all but destroyed by conflict, drought, and demographic shifts. Some 200,000 Kuchis are displaced in Afghanistan; an equal or larger number are refugees in Pakistan; and hundreds of thousands of others are eking out a precarious existence in urban or rural areas in Afghanistan. Only a small number of Kuchis still follow their traditional livelihood of nomadic herding." [40l] (p1)

**6.165** The RI report also noted that

> "In the south, Kuchis lost most of their animals due to a severe drought from 1998 to 2002. Pastures and water sources in the drought stricken areas still have not recovered. In the northwest, Uzbeks and Tajiks resent the presence of Kuchis, and have forced them to flee their lands. Many ended up in dismal displaced person camps near Herat or Kandahar or in dangerous and isolated refugee camps in Pakistan. Kuchis who have livestock are often unable to drive their flocks to their traditional summer grazing pastures in the central highlands. On a visit in June 2003, RI encountered few Kuchis in the highlands, and the local Hazaras were hostile to the Kuchis due to association with the hated Taliban. In some areas, landmines hinder access to grazing land." [40l] (p2)

**6.166** The US State Department Report 2004 (USSD), published on 28 February 2005 recorded that "Ethnic Hazaras prevented some Kuchi nomads from returning to traditional grazing lands in the central highlands for a number of reasons, including allegations that the Kuchis were pro-Taliban and thus complicit in the massacres perpetrated against Hazaras in the 1990s." [2d] (section 2d) In addition, "The nomadic Kuchis expressed concern that the voter registration process underrepresented their population; however, the Government and the Joint Electoral Management Body (JEMB) worked with this group to address their concerns." [2d] (section 5)

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## Women

### Overview

**6.167** The Freedom House Afghanistan Country Report 2004, published in May 2004, records that

> "Under the Taliban, the situation for women was arguably worse than in any other country, and the strictures under which women were compelled to live received widespread condemnation. Both the media and human rights groups have given attention to whether their condition has improved during the past two years. During 2002 and 2003, the Karzai government took a number of steps to improve

women 's positions and to facilitate their reentry into the public sphere. Women in some areas of the country regained access to available education, health care, and job opportunities and were able to participate more freely in public life. However, continuing problems with personal security, coupled by the strength of custom and the conservative attitude of some local authorities, mean that most Afghan women remain subjected to serious restrictions and discrimination...

Many women, particularly outside Kabul, continue to wear the burqa for reasons of custom or security, although it is no longer compulsory to do so. Women 's choices regarding marriage and divorce, particularly their ability to choose a marriage partner, remain circumscribed by custom, and the forced marriage of young girls to older men or of widows to their husband's male relations is a problem. Domestic violence as well as rape and kidnapping by armed groups are widespread, and women's recourse to justice in such cases is limited. Furthermore, Afghanistan does not yet have legislation in place that prohibits trafficking, and the trafficking of Afghan women and children both within the country and to destinations abroad is a growing concern." [41a] (p5-6)

**6.168** In an October 2004 report, Human Rights Watch (HRW) reported on women and girl's status in post-Taliban Afghanistan. The report noted that

"Women's and girls' lives have improved since the overthrow of the Taliban in late 2001. Once confined to their homes, over one million girls are enrolled in school. Women and girls no longer confront Taliban-era restrictions to gain access to health care services. The Afghan government and NGOs have initiated several programs targeted at improving women's status and public participation. Improvements in women's and girls' rights can especially be seen in urban centers such as Kabul, where security is stronger, infrastructure has improved, and the central government exercises firm control.

Still, many Afghan women and girls continue to struggle to exercise fundamental rights to health, education, work, and freedom of movement. Scarcity of data makes it difficult to assess the full scope of the situation or to monitor changes over time. Despite increased flows of international aid after the fall of the Taliban, poor security in many parts of the country, lack of infrastructure, and inadequate numbers of trained personnel have limited real change. For example, Afghan women's reproductive health and mental health indicators are alarming. A 2002 study found that Afghan women's maternal mortality rate stood at 1,600 deaths per 100,000 live births, and the eastern province of Badakshan had the highest rate ever recorded in the world at 6,500 per 100,000 live births." [17]] (p6-7)

(See also Section 5 Medical Services paras 5.230 – 5.243 for more information on medical services for women and Educational System 5.270 – 5.282)

**6.169** The HRW report continued

"Restrictions on movement and continuing security threats continue to affect women's lives and in particular impede their ability to travel, study, and work. Under the administration of the recently deposed governor Ismail Khan, women and girls in Herat had little freedom to engage in public life or to travel freely, at times even

being subjected to virginity tests. The continuing control of some areas by conservative military commanders, the social barriers imposed by some religious leaders, and the lack of effective control by the central government means that women do not have choices about traveling [sic] with mahram (close male relatives), wearing the burqa, or restricting their movements.

Violence against women and the absence of effective redress for victims, whether through informal or formal justice mechanisms, is a pervasive human rights problem in Afghanistan. The practice of exchanging girls and young women to settle feuds or to repay debts continues, as do high rates of early and forced marriage. According to a study by the Ministry of Women's Affairs and women's NGOs, approximately 57 percent of girls get married before the age of sixteen. The Afghanistan Independent Human Rights Commission (AIHRC), women's activists, and NGOs point to domestic violence being a widespread problem for which there is still little public awareness, prevention effort, or response. Local commanders and their men have also been implicated in cases of sexual violence against women and girls." [17j] (p7-8)

**6.170** A report by the UN Secretary-General on the situation for women and girls in Afghanistan dated 22 December 2004 advised that "During the past few years, Afghan women have made important strides in the enjoyment of their human rights and political participation...This remarkable progress, however, is overshadowed by the persistently volatile and unstable security situation, the ongoing violence against women and girls as well as extreme poverty." [39l] (paras. 3 & 4)

**6.171** The UN Secretary –General continued

"Women's full enjoyment of human rights continues to be limited due to the overall lack of security, different forms of violence, lack of a functioning law enforcement system and the dominance of social and cultural norms that discriminate against women. Women and girls continue being abducted for forced marriage for debt release and as a means of dispute settlement or the cessation of blood feuds. The practice of giving young girls in marriage as a payment for so-called blood money continues to violate girls' right to life and physical integrity. Women are also victims of so-called honour crimes and death threats when they try to escape from a forced or arranged marriage. The lack of legal and social protection systems has left many women trapped in abusive situations which have caused a number of women to commit suicide or self-immolation. There are also continuing reports of kidnapping of girls and forced virginity tests. The United Nations Children's Fund (UNICEF) is supporting the establishment of a nation-wide birth registration campaign, which would safeguard children's right to an identity and age and provide girls with some protection against early marriage." [39l] (paras. 38 & 39)

**UNHCR/ECRE Guidelines**

**6.172** A UNHCR position paper published in July 2003 noted that, despite encouraging developments, the persistence of discrimination and conservative cultural practices, at times leading to acts of violence including death (honour killing), meant that the following categories of women should be considered to be at risk and exposed to possible persecution, if they returned to Afghanistan:

a) "Women without effective male and/or community support; and
b) Women perceived as or actually transgressing prevailing social mores. This latter group may include 1) Afghan women who have married foreign nationals in countries of asylum; this would particularly concern women who have married non-Muslims and are perceived as having thus violated tenets of Islam; and 2) Afghan women who have adopted a Westernised behaviour or way of life which (i) would be perceived as transgressing social mores in Afghanistan and (ii) has become so fundamental a part of their identity that it would be persecutory for them to have to suppress it." [11i] (p35)

The UNHCR report also included women's associations in the category of vulnerable groups who may be particularly exposed to acts of political intimidation. [11i] (p36)

**6.173** In May 2004, the European Council on Refugees and Exiles (ECRE) issued guidelines for the treatment of Afghan asylum seekers and refugees in Europe. The guidelines included women and girls who suffer gender-based persecution such as forced marriages in the categories of individuals who may have ongoing protection needs, which have remained unchanged, despite the recent political developments in Afghanistan. [37] (p3)

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**Violence against women and girls**

**6.174** An Amnesty International report published on 8 December 2004 advised that

"Despite the formal cessation of hostilities and the establishment of an interim government in Afghanistan, various armed groups continue to control large parts of the country. Women and girls continue to be threatened with violence in many aspects of their life, both private and public. The disarmament and demobilization process has made progress, albeit slowly, but weapons remain a mainstay of Afghan men's lives. Violence against women and girls, including rape, mental and physical cruelty, forced marriages and exchange of girls to settle disputes are widespread. Institutions for the protection of human rights and the implementation of the rule of law remain weak. As a consequence, a climate of impunity prevails, enjoyed by armed groups across Afghanistan. In the absence of protection and justice, women remain extremely vulnerable." [7l] (p13)

**6.175** The US State Department Report 2004 (USSD), published on 28 February 2005 records that

"Violence against women persisted, including beatings, rapes, forced marriages, and kidnappings. Such incidents generally went unreported, and most information was anecdotal. The Ministry of Women's Affairs estimated that more than 50 percent of marriages involved women under 16, the legal minimum age of marriage for women. It was difficult to document rapes, in view of the social stigma that surrounded them. Information on domestic violence and rape was limited. In the climate of secrecy and impunity, domestic violence against women and rape remained a serious problem...

In previous years, women in the north, particularly from Pashtun families, were the targets of sexual violence perpetrated by commanders from other ethnic groups. During the year, there were at least four credible reports of soldiers and commanders loyal to local warlords raping girls, boys, and women in provinces in the eastern, southeastern, and central part of the country. In one of these cases, a perpetrator was arrested and his trial was ongoing at year's end." [2d] (p10)

**6.176** In 17 July 2004, a report by the AIHRC and UNAMA on the political rights situation noted that

"In a number of areas in the country, particularly in the east and the south, threats against women have been made, particularly those involved in the electoral process. In Kabul, a women political activist was the target of an attack by unknown perpetrators. While the verification has not yet been completed, it is suspected that she was targeted due to her political background. In Gardez, campaign material of a female candidate have been repeatedly torn off and defaced. In the center and in the east, night letters warning women, particularly female election officials, to halt their work have been prevalent. On 25 June [2004], a bomb went off aboard a privately hired minivan, carrying mostly female election workers. The tragic incident left three women dead, and twelve injured (11 females, one male). In the South, threats, compounded by cultural restrictions, have curtailed women's involvement in the registration process." [48a] (p5)

**6.177** The HRW report "Between Hope and Fear" published on 5 October 2004 reported on the current situation for women's rights activists. The report noted that

"Politically powerful military factions, the Taliban, and conservative religious leaders continue to threaten and intimidate women who promote women's rights. Human Rights Watch interviewed a wide range of women targeted for intimidation and harassment. These women had chosen to participate in public life as journalists, potential political candidates, aid workers, teachers, and donors. Women whose behavior [sic] challenged social expectations and traditional roles also faced harassment. In other cases, factional leaders or Taliban have launched rockets and grenades against the offices of women's development projects, such as those providing health, literacy, and rights awareness programs. Such symbolic attacks sent a clear message that women and girls seeking to claim the most basic rights could face retaliation.

Continuing violent attacks and threats against women in the public sphere have also created an environment of fear and caution. Women's rights activists and journalists carefully word their statements or avoid publishing on some topics because they are afraid of violent consequences. Many women, ranging from community social workers to Afghan U.N. officials, told Human Rights Watch they wore burqas when traveling [sic] outside of Kabul. These decisions were made not out of choice, but compulsion due to the lack of safety guarantees. Many women blamed the failure of disarmament, the entrenchment of warlords in both regional and central governments, and the limited reach of international peacekeeping troops as the reasons why they felt unsafe." [17] (p11)

**6.178** The HRW report continued,

"Using threatening phone calls, "night letters," armed confrontations, and bomb or rocket attacks against offices, factional and insurgent forces are attempting to scare women into silence, casting a shadow on the Afghan women's movement and governmental attempts to promote women's and girls' development. [Note: "Night letters" refer to threats or letters that arrive at night, often directly to the recipient's home or office, demonstrating that whoever is threatening her knows where to find her.]

Women rights activists expressed frustration at the inadequate security provided to them by the central government and international peacekeeping forces. After facing an attack, one women's rights activist who had been unable to obtain adequate security from the central government said, "After that, I said I am not going to the provinces anymore. I used to be involved in election [campaigning], but not anymore. Why should I care who wins the presidential elections, Karzai or Jalal, if they do not care for my life or protection?" [17] (p12)

**6.179** The HRW report also noted that,

"Armed groups have targeted prominent women government officials who have been active in promoting women's rights. In mid-July, 2004, an official with the Ministry and Rehabilitation and Rural Development and prominent women's rights activist, Safia Sidiqui, was traveling [sic] in Nangarhar province. As her convoy left a gathering where she had been the key speaker, her vehicle came across three men who were apparently trying to plant a landmine ahead of her convoy. After a gun battle, one man committed suicide and the other two escaped. She echoed the frustration of many other women about the government's inability to provide adequate security:

Sometimes the government cannot intervene and that is a fact. The [central] government does not have full authority in Afghanistan. The gun is still leading the people. The people with guns are the ones who cause problems...especially for women." [17] (p12)

**6.180** The October 2004 HRW report also gives detailed examples of the types of threats and intimidation experienced by Afghan women, including women's rights advocates and women's development projects, in the previous twelve months. See source [17] for more detailed information.

**6.181** On 12 October 2004, Amnesty International (AI) reported that women continued to face the threat of rape and abduction by armed men. According to AI,

"Seventeen-year-old Zarmina (not her real name) was abducted by three armed men from her aunt's home in Kapisa province in May 2004. Her uncle was shot and wounded as he tried to stop the men. Zarmina was returned to her parents in Kabul after they filed a complaint with the authorities, police, courts and the Afghan Independent Human Rights Commission. She said she had refused to marry one of the gunmen, and fears they could track her down in Kabul.

The culture of the gun is deeply embedded in Afghanistan. Women and girls are at risk of abduction, sexual violence and intimidation as lawlessness spirals. Despite the ending of 23 years of conflict, a glut of weaponry remains in the hands of civilians, including ex-combatants. Rape, forced marriage and the trafficking of women and children are rife...

The survivors of sexual violence often do not speak out. They face the very real danger of being killed by relatives for being seen as dishonouring the family or for "immoral" behaviour. Most never receive justice for the crimes against them. Informal justice systems discriminate against women. Traditional councils of men, sitting as courts, frequently agree to an exchange of girls in settlement of family or tribal feuds. Very young girls are sometimes married off to much older men. No figures exist for the number of women abducted, raped or killed by armed groups, but the threat alone limits women's rights and freedoms. The lack of security for girls and women is cited by their male relatives as grounds for denying them access to education and jobs. " [7d]

**6.182** In a further report dated 28 October 2004, AI reported that

"The New Constitution guarantees fundamental equality for men and women. However, implementing legislation is not yet in place and there is a lack of both understanding and implementation of those rights that are protected by law. Women rarely report rape and sexual abuse due to the social stigma attached to the victim and her family, ineffective investigation mechanisms and almost complete failure of the state to provide justice to victims.

Kabul has four shelters operating to provide assistance to survivors of sexual violence, but these remain almost non-existent outside the capital. Measures to protect women remain ineffective with a justice system that is weak and ineffectual. The general population has little confidence in the independence of the judiciary. This is particularly the case for women, who have reported being further victimised by the legal system, through the application of ""customary law"" that violates women's human rights." [7k] (p1)

**6.183** The same AI report also noted that

"Violence against women is widespread, but it is still seen as a private matter. There is a debilitating stigma attached to women seeking justice for sexual crimes, in particular. The state's institutions remain weak and the real power in the community is exerted by males. Prosecutions for violence against women are rare and with limited resources for investigation, prosecutors mostly argue cases on the basis of allegations rather than evidence. In addition, the majority of women remain unaware of their legal rights and do not have the support of the community to pursue their cases." [7k] (p1-2)

**6.184** The AI report also noted that

"The United Nations Development Fund for Women (UNIFEM) began to coordinate a working group on violence against women in 2004. This group was created in order to facilitate and coordinate with various inter-governmental

organizations (IGOs), non-governmental organizations (NGOs) and government bodies on gender-based violence. UNIFEM is also guiding and funding the Ministry of Women's Affairs, which is looking into the areas of legal research for women, legal education and advocacy. Representatives of Afghan civil society are also part of the UNIFEM Coordination group. Judges and prosecutors from the Ministry of Justice are currently being trained by the International Development Law Organisation (IDLO), whose primary donor is the Italian government.

However, a lack of action from the Afghan Transitional Administration (ATA) in enforcing protection of women and girls remains. Armed groups have not been held to account for their actions, they exert power in key regional and provincial institutions, further eroding the confidence of women in the justice system. Perpetrators of violence against women are rarely prosecuted and AI has evidence of judges making discriminatory remarks and humiliating women during court proceedings. There has been little noted pressure on the judiciary to uphold the rights of women and both opportunities and rights of women continue to be severely restricted throughout the country." [7k] (p2)

(See also Section 5 Legal Rights/Detention paragraph 5.73)

**6.185** On 2 December 2004, a UNAMA spokesman reported that, according to the Ministry of Women's Affairs, the ministry had analyzed and solved 193 cases of violence against women in 2003. [40ak] (p3)

**6.186** The UN Secretary-General's report of 22 December 2004 noted that

"On the occasion of the International Day for the Elimination of Violence against Women on 25 November 2004, a number of events were held across the country. The Afghan Independent Human Rights Commission organized a march in Kabul with over a thousand participants, and issued a resolution condemning all forms of violence against women. The Ministry of Women's Affairs established an inter-ministerial commission to work on an ongoing basis on violence against women. The commission includes the ministries of justice, foreign affairs, the interior, hajj and religious affairs, as well as the justice reform Commission and the Supreme Court.

Efforts to assist women at risk of, or survivors of, violence are starting to gain roots in Kabul, Herat and Mazar-i-Sharif, where a few shelters for women are operating. The shelters also accommodate women who, because of homelessness or being single and without family support, would be at risk of abuse or violence. UNIFEM created a forum for discussion on violence against women among actors from different governmental institutions, civil society organizations, international organizations and donors. These meetings focused on issues of violence in relation to health, education, judicial institutions and research." [39l] (paras. 41 & 42)

(See also UNHCR and ECRE guidelines paragraphs 6.22 and 6.23)

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**Single Women and Widows**

**6.187** An Amnesty International report of June 2003 noted that "Many unaccompanied returnee women have been forced to beg on the streets of Kabul as their only means of survival." Amnesty International advised that they had received reports of verbal and physical harassment of women returnees to Kabul. [7f] (p24)

**6.188** A Danish fact finding mission of March/April 2004 reported the views of a variety of sources on the position of single women in Afghanistan. The UNHCR and the Vice Minister for Women's Affairs were both reported as being of the opinion that Afghan culture does not include the concept of "a single woman" and there is no understanding of such a concept. According to the report, UNHCR said that "A woman always belongs to a relative. For example, a widow will usually be married again, but can be treated very badly. The UNHCR has knowledge of a case where a group of single women had returned to Afghanistan from Iran, and the only way of ensuring their safety was if they remarried. The UNHCR stated further that often the only way in which a single woman can return to Kabul is by getting married." [8] (section 6.2.5)

**6.189** UNHCR further explained that single women find it very difficult to get by. The source was reported as saying that "A survey on how different groups of repatriated refugees survived the winter in Afghanistan showed that female-headed households were the group, which found it significantly more difficult getting through the winter." [8] (section 6.2.5.)

**6.190** The same Danish report noted that

> "The EU Special Representative mentioned that it is very difficult for single women to settle down in Afghanistan. It is not possible without some kind of social network. The Vice Minister for Women's Affairs explained that in the Afghan society single women's safety cannot be guaranteed.... A woman who returns to Afghanistan alone and lives alone risks being robbed, raped or murdered. If she is robbed people will believe that she has also been raped. The source explained that she returned from Germany without her husband after the fall of the Taliban. The Vice Minister is a highly educated woman who is married and has children. Nevertheless she was not able to settle down alone in Kabul, but had to get in contact with an uncle on her mother's side and ask if she could live in his house.
>
> The AAWU found that a single woman can only settle in Kabul if she is very rich and can afford security guards and can get work within a NGO that is able to offer her protection, and is clever enough to know how to avoid problems. The source mentioned that a normal single woman will be getting problems if she returns to Afghanistan." [8] (section 6.2.5)

**6.191** On 20 July 2004, Christian Science Monitor reported that

> "In Afghanistan, where many families have lost husbands and sons during 23 years of continual warfare, widows have suffered a particularly severe fate. In a nation with a fractured infrastructure and, at $250 a year, one of the lowest per-capita incomes in the world, many widows are left without relatives able to take

them in or offer even modest financial support. In Kabul alone there are an estimated 30,000 to 50,000 of these women. Only about one in five Afghan women can read and write, one of the lowest rates in the world. Uneducated, illiterate, and lacking basic job skills, many widows are left to fend for themselves.

During Taliban times, severe restrictions on women denied them the right to leave their home. Even today, with the Taliban defeated, many Afghan women are still reluctant to step outside their houses, and traveling or walking anywhere without a male escort can be an uncomfortable experience for some.

Their attempts to earn a living usually mean fighting against societal taboos. Without education, these widows at best can only use the skills they know from home life. They might clean houses or become tailors. The most desperate are reduced to begging or even to prostitution." [40z]

**6.192** The Christian Science Monitor report also noted that "Aware of the widows' plight, the international relief group CARE started the Kabul Widows Emergency Food Program in 1996. Today, approximately 10,000 widows and their families - about 60,000 people - receive food assistance every month...Yet as grateful as the widows are for the assistance, simply feeding them will not liberate them from a life of dependency." The report noted that in order to help further, CARE's program for Humanitarian Assistance for Women of Afghanistan (HAWA) included vocational training and literacy classes designed to help widows become self-supporting. [40z]

**6.193** A UNHCR paper dated December 2004 advised that

"Single women who do not have family or other close relatives in Afghanistan who are willing to support them, should be allowed to remain in countries of asylum, where support mechanisms are in place and a less difficult social environment for their well-being exists. Long term solutions are not available for most single females in Afghanistan unless they have effective male family or community support. Their vulnerability is the result of social traditions and gender values in Afghanistan, where women cannot live independently from a family. Where there is no family to take care and protect them, single women can only be accommodated temporarily in shelters run by some NGOs in Kabul and Herat, which have a negative reputation (as hosting criminals or prostitutes) and constitute but a short term 'safe haven'." [11d]

**6.194** UNHCR also noted in the same paper that "Single parents (especially women) with small children who do not have the support of relatives or the community) and no member of a household with the ability to act as the breadwinner, will be unable to sustain their lives in Afghanistan." [11d]

**6.195** In his report of 22 December 2004, the UN Secretary-General advised that "Women returnees, widows and female-headed households face numerous obstacles to their right to adequate housing. This is mainly due to: forced eviction and the illegal occupation of land; difficulties in claiming inheritance; increased speculation on housing and land; forced marriages of widows to ensure that land and property remain within the family; and the inability to obtain access to courts." [39l] (para.47)

**6.196** A report by the Institute of War and Peace Reporting (IWPR) dated 31 January 2005 noted that

"Afghanistan is full of young widows. The wars and violence that have plagued the country for the past 25 years have decimated the male population. According to Fauzia Amini, head of the legal branch of the ministry of women's affairs, "The large number of widows is due to the fighting that began when Russia invaded Afghanistan in 1979. This was followed by more fighting between Afghans themselves."

These widows are caught between Afghan culture and Islamic law. According to Afghan tradition, they can only marry close relatives of the deceased husband. But six years ago, during the Taleban's ultra-conservative reign, its leader Mullah Omar issued a decree allowing widows to marry whomever they wished. Since the fall of the Taleban, a little over three years ago, the temporary freedom of choice accorded them has eroded, leaving a woman who has lost her husband very little choice about her future. If she is allowed to marry again, it will be to her brother-in-law or another close relative in her husband's family...

The government is attempting to help. Fauzia Amini told IWPR, "The custom of forcing a widow to marry her brother-in-law or another close relative of her dead husband is very bad; we are trying to break the hold these traditions have on the population." The ministry is working with mullahs, or religious leaders, she said, to try and get more freedom of choice for women whose husbands have died." [73p]

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**Legal Provisions and Access to the Law**

**6.197** A Human Rights Watch Briefing Paper dated October 2004 stated that

"The Afghan Constitution of 2004 contains specific provisions guaranteeing certain women's rights. Article 22 guarantees women's equal rights and duties before the law. Article 44 states: "The state shall devise and implement effective programs for balancing and promoting of education for women, improving of education of nomads and elimination of illiteracy in the country." Analysts point to provisions in the Constitution barring any laws contradicting the beliefs and provisions of Islam, which could facilitate punitive adultery laws and could be used in efforts to block measures to protect women's equal rights in divorce or inheritance.

The Constitution also guarantees seats for women in Afghanistan's bicameral National Assembly. Approximately 25 percent of the seats in the Wolesi Jirga (House of the
People) are reserved for women and the president must appoint additional women to the Meshrano Jirga (House of the Elders). The Constitution also obliges the government "to create a prosperous and progressive society based on social justice," and to "protect human rights." The Constitution expressly requires the state to "abide by the U.N. charter, international treaties, international conventions that Afghanistan has signed, and the Universal Declaration of Human Rights." Afghanistan acceded to the Convention on the Elimination of All Forms of

Discrimination against Women (CEDAW) without any reservations on March 5, 2003." [17j] (p10)

**6.198** In a report published in October 2003, AI noted that

"The ratification of CEDAW was a major development. Afghanistan has made a specific commitment to address women's rights in law and practice; in public, political, social and cultural life; as well as in personal status laws, education, health and work. The ATA has also ratified the Rome Statute for the International Criminal Court (ICC), which contains gender sensitive definitions of crimes and procedures to protect vulnerable victims and witnesses. This constitutes a model for domestic legal reform." [7c] (p2)

**6.199** A US State Department report on Afghan women, children and refugees dated 22 June 2004 noted that "Implementing the new Constitution, which is one of the most progressive on women's human rights of any in the entire Muslim world, is one of the many challenges ahead for women in Afghanistan. It will take time and effort to translate this model document into living, lasting reality." [2a] (p13)

**6.200** In March 2004, AI reported that

"Despite ratification of United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by the government, Afghanistan's obligations under the treaty are not yet reflected in domestic legislation. Rape is not yet criminalized nor is the giving of girls in marriage as means of dispute resolution or the (of) forcing [of] women and girls to marry against their consent. In the absence of effective mechanisms to investigate gender related violence, the vast majority of all such violations continue to not be reported to the criminal justice system and almost none are subject to investigation or prosecution... Legal provisions to protect the rights of women remain inadequate. Legal protection despite signing CEDAW is not yet reflected in law or practice." [7a] (p3-4)

**6.201** The Danish fact finding mission of March/April 2004 reported that,

"The AIHRC was of the opinion that the existing legal system is not adequate and is problematic for women. The source explained that the AIHRC cannot do anything if a woman is forced into marriage. This does not apply, however, if a warlord has forced a girl to marry him against the family's wishes. However, the source complained that warlords often go free in such cases." [8] (section 6.2.3)

**6.202** The Danish fact finding mission also reported that

"The AAWU [All Afghan Women Union] found that women's access to rule of law has not improved substantially during the last 18 months. The source was of the opinion that the authorities can offer no protection to women. If a husband accuses his wife of infidelity, she will very often be imprisoned.... The source explained furthermore that women who have been in prison are later branded by the community and are considered as having brought shame to her family. They have major problems in being reintegrated and some end up as prostitutes. The source mentioned an example from Herat where a woman was arrested in the

street and taken for a gynaecological examination because she had been talking to a man. An international NGO explained that access to the legal system is especially difficult for women. Women who turn to the police run a considerable risk of running into trouble with the police." [8] (section 6.2.3)

**6.203** The same Danish report also noted that

"The Lawyers Union of Afghanistan stated that women are very heavily punished for infidelity; likewise a lot of women are imprisoned accused of infidelity. Furthermore the source stated that women who wished to leave their husbands generally have no protection. A woman's husband can institute legal proceedings against her if he wants to. The President of the Supreme Court nevertheless stated that women have access to the legal system on the same level as men. He stated that a woman who wishes to be granted a divorce should go to a certain family law court, which will deal with the case. If the husband does not wish to permit the divorce, it can be difficult for a woman to achieve it, but according to the source it is possible if she has weighty arguments. The source explained that a new law on marriage rules has been passed, which allows women to be divorced if their husbands have been missing for more than four years." [8] (section 6.2.3)

**6.204** The Danish fact finding report also noted that "The UNHCR found that the situation for a woman who has violated the social norms in her family is very serious, because she will no longer have protection from her family. If she brings shame upon her family, she runs the risk of being killed. According to the source, there is no internal flight alternative available for such women." According to the Vice Minister for Women's Affairs, "A girl who comes into conflict with her family cannot get protection anywhere." [8] (section 6.2.3)

**6.205** The Vice Minister was also reported as saying that in situations where girls are kidnapped by local warlords, the family can turn to the police. According to the source, "The Ministry also operates a complaints unit, which takes up such cases. The unit has problems operating in areas where the government has no influence. According to the source, a father who murders or abuses his daughter will nevertheless go to prison." [8] (section 6.2.3)

**6.206** The Amnesty International report of 28 October 2004 observed that "Efforts are underway to train police recruits to be aware of gender issues, but AI found that such training has been brief and perfunctory so far. AI has also received testimonies about bribery and corruption among police and of failure to follow up on cases involving violence against women. There are virtually no effective safeguards to protect women in custody." [7k] (p1)

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**Women's Participation in Public Life and Institutions**

**6.207** The Human Rights Watch Report "Between Hope and Fear" dated October 2004 recorded that

"Women comprised approximately 12 percent of the [June 2002] Emergency Loya

Jirga delegates. Intimidation, threats, and the participation of powerful commanders accused of war crimes marred the process. Many women participants felt they were prevented from giving any substantive input. Only a few women were able to speak, and some reported their microphones were cut off after five minutes. In contrast, powerful mujahidin leaders, some of whom are alleged war criminals, were given half-hour-long speaking slots. Despite pressure to withdraw and vote for Hamid Karzai, Massouda Jalal, a physician and U.N. staff member from Kabul stood for the presidency at the Emergency Loya Jirga and went on to win 171 votes, second to Karzai's 1,295.

Women participated with greater freedom in the [December 2003] Constitutional Loya Jirga. Intimidation still figured strongly, however, and many observers accused military factions of preventing some individuals from standing as candidates, buying votes, and unfairly influencing the election of delegates. Despite improvement compared to the Emergency Loya Jirga, many female delegates still faced threats and harassment during the proceedings, or censored themselves due to fear of retaliation upon return to their home communities. Human Rights Watch interviewed several delegates who left the country temporarily or delayed their returns home because of such fears. One woman said, "Many delegates were commanders who had killed a lot of people, who had weapons and money. The things that we wanted to say in the Loya Jirga - we were afraid to say them, because these [commanders] were sitting behind us."

In one of the most dramatic moments of the meetings, a young female delegate from Farah province, Malalai Joya, publicly demanded that former warlords be tried in national and international courts. Other participants tried to expel her from the assembly. Despite becoming a heroine to many Afghans, she has received numerous death threats." [17]] (p9)

**6.208** The HRW report continued

"Human Rights Watch spoke with several women participants who subsequently faced retaliation in the form of harassment, dismissals from their jobs, and transfers to less desirable positions. Because of the small number of female delegates from each province, they requested that we not publish their locations as their identities would be clear and they would risk further harassment. One woman delegate from northern Afghanistan reported: "After I participated in the Loya Jirga, I did not receive my salary for six months." Another delegate was dismissed from her job as a teacher after the Emergency Loya Jirga. Other women delegates said that local authorities and commanders directly harassed them through phone calls or in face-to-face meetings upon their return from the loya jirgas." [17]] (p10)

**6.209** The Foreign and Commonwealth Office 2004 Annual Report on Human Rights stated that

"The new Afghan constitution [of January 2004] includes an explicit statement of the equality of men and women, and includes guarantees for women's representation in the legislative assembly. Implementation of these provisions in legislation is the next step, and the AIHRC and the Judicial Commission have an

important role in ensuring that women's rights are included in future legislation. Women are represented throughout the ministries of the Afghan transitional administration, and on the Judicial Commission and the AIHRC.

In Kabul, at least, life has improved for many ordinary women, who are now able to work and move about freely in a way that was impossible under the Taliban." [15a] (Chapter 1.3)

**6.210** The US State Department Report 2004 (USSD), published 28 February 2005, recorded that

"Women in urban areas regained some measure of access to public life, education, health care, and employment; however, the lack of education perpetuated during the Taliban years, and limited employment possibilities, continued to impede the ability of many women to improve their situation. In February [2004], the Government established the first unit of female police, and small numbers of women began to join the police force during the year... Government regulations prohibited married women from attending high school classes; however, during the year this regulation was changed, and married women are allowed to attend high school classes." [2d] (p10)

**6.211** The HRW report dated 28 October 2004 advised that

"The dominance of armed political factions and continuing attacks by the Taliban and other insurgent forces have greatly impeded women's participation in the public sphere, and also present grave obstacles to implementing desperately needed women's development projects, including education, health, and income-generating programs. When insurgent forces or armed factions attack a women's rights NGO staff member or the office of a women-focused development project—they affect the provision of services and opportunities to dozens and sometimes hundreds of women. This intimidation is often symbolic, as with attacks on girls' schools, and it creates an atmosphere of fear sending a message to women, girls, and their families that they may be targeted if they participate in these programs. Local commanders, Taliban, and other insurgent forces have attacked dozens of girls' schools in the past two years.

The presence of international security forces makes a critical difference. In places with greater assurances of safety and where NGOs feel safe to work, for example, Kabul, Afghan women and girls have participated enthusiastically in education, rights awareness programs, and other activities. In other locations, threats and harassment of staff working on women's development projects, intimidation of beneficiaries, and attacks on offices and vehicles has contributed to premature closure of projects or has prevented projects from even getting started." [17j] (p16)

**6.212** On 22 December 2004, a report by the UN Secretary-General advised that

"The Constitution provides for a minimum representation of women in both houses of parliament. According to article 83 of the Constitution, at least two women should be elected from each province with the aim of guaranteeing a minimum of 68 seats or 27 per cent for women in the lower house, which consists

of 249 seats and is proportional to the population in the provinces. This provision was included in the Constitution as a result of intensive lobbying and advocacy by women in the Government and non-governmental organizations (NGOs). For the house of elders, the Constitution provides in article 84 that the President appoints one third of the members, of which 50 per cent are to be women." [39l] (para.24)

**6.213** In the same report, the UN Secretary-General noted that

"There is a growing number of national NGOs working on women's issues. The Ministry of Women's Affairs made efforts to bring together the main NGO coordinating bodies in Afghanistan and to foster a shared commitment to women's rights and gender equality. Recently, the Afghan Women's Network, the Agency Coordinating Body for Afghan Relief, the Afghan NGOs Coordination Bureau and the Afghan network of women councils formed the Afghan NGO Coordination Council... The growing involvement of women in NGOs and community groups is an important opportunity for women to increase their role in public life. Consequently, any reports of targeted attacks and threats against women's rights advocates must be taken seriously, and stronger measures are needed to ensure safety and to identify and bring to justice those who seek to undermine the work of women's NGOs." [39l] (paras. 73 & 76)

**6.214** The UN Secretary-General also noted that one woman, Masooda Jalal, a physician, ran as an independent candidate in the presidential election on 9 October 2004. "She polled sixth with 1.1 per cent of the votes, ahead of 12 other candidates." [39l] (para.23)

**6.215** The HRW Afghanistan World Report 2005, published on 13 January 2005, noted that

"Afghan women who organise politically or criticize local rulers face threats and violence. Soldiers and police routinely harass women and girls, even in Kabul city. Many women and girls continue to be afraid to leave their homes without the burqa. Because many women and girls continue to fear violence by factions, many continue to spend the majority of their time indoors and at home, especially in rural areas, making it difficult for them to attend school, go to work, or actively participate in the country's reconstruction. The majority of school-age girls in Afghanistan are still not enrolled in school." [17l] (p3)

**6.216** In their report dated 28 October 2004, Amnesty International advised "With the exception of the heads of the juvenile and family courts in Kabul, women continue to be excluded from key positions in the judiciary. Where women do serve as judges, they do not perform the same functions as their male counterparts. Female judges tend to act in the capacity of judicial clerks and are rarely involved in the adjudication of cases. Female judges outside Kabul are rare." [7k] (p1)

**6.217** On 9 December 2004, the Institute of War and Peace Reporting reported that

"In a country where their activities are still often severely restricted, women are playing a leading role in developing small businesses all across the country. At an awards ceremony last month honouring entrepreneurs who have successfully

started up small businesses with the assistance of various microfinance programmes, 18 of the 23 recipients were women... While the ministry of commerce could not provide figures on how many women work outside the home, Mina Sherzoy, head of the Entrepreneurship Development Office for Afghan Women at the ministry of commerce, said that the number is increasing day by day.

Sherzoy noted that women make up more than half the country's population and more than half are widows. It makes sense, then, that they should play a leading role not only in supporting their families but also in the country's economic development... She said the ministry is working on a five-year plan to implement policies and programmes for women entrepreneurs. The ministry has already established an Afghan Women's Business Association, and plans to build business centres throughout the provinces for women that will include training and workshops and to develop a marketing strategy for exporting products made by women." [73q]

**6.218** In his report of 22 December 2004, the UN Secretary-General noted that "The Ministry of Women's Affairs continued to gradually extend its reach from Kabul to 31 provincial departments of women's affairs. [39l] (para.30) On 20 December 2004, IRIN reported that

"Afghanistan's Ministry of Women's Affairs (MOWA) is seeking employment opportunities for tens of thousands of unqualified women in the country. The initiative is part of newly created UN backed employment services centres which are expected to operate in nine provinces of the country, according to MOWA. The centres will be established to tackle unemployment and provide training opportunities for unqualified job seekers, according to the International Labour Organisation (ILO).

"Unemployment is very, very high among women. In fact most Afghan women are dependent on men as they lack skills due to illiteracy and years of conflict," Habiba Sarabi, Afghan women's affairs minister, told IRIN. The minister established the first women's employment centre in Kabul last Thursday. Sarabi said the only skill most of the women job seekers had was tailoring and embroidery, which was not applicable to the current labour market...

Women suffer not just a lack of skills but also cultural barriers to the world of work. In many rural areas of male-dominated Afghan society, women are not allowed to even leave the house...Meanwhile, according [to] Sarabi, in some provinces MOWA was not even able to find capable women to work in the women's affairs departments. "We could not find a single woman to work in a MOWA department in certain provinces of the south," she said. More than 25 percent of work-eligible people are jobless and most of these need proper training to gain up-to-date skills. "There are 260,000 civil servants in the government and only 25 percent are women," Mohammad Ghaus Bashiri, deputy ministry of labour and social affairs, told IRIN." [36a]

**6.219** BBC News reported on 26 February 2005 that Habiba Sarabi, Afghanistan's former women's minister is set to be appointed governor of Bamiyan province by

President Karzai after being selected from an all-women shortlist. [25w]

**6.220** A paper by the Asia researcher for the women's rights division of Human Rights Watch on the struggle for rights faced by women in Afghanistan was published on 1 March 2005. The paper noted that

> "In theory, women's political rights are clearly outlined in the new constitution. It guarantees men and women equal rights and duties before the law, and reserves a quarter of the seats in the lower house of parliament, the Wolesi Jirga, for women. One-sixth of the upper house, the Meshrano Jirga, is also reserved for women, by presidential appointment. In practice, things look very different. Independent candidates face violent retaliation if they run campaigns advocating justice and women's rights. The worry is that the only women who will feel safe enough to stand [in the parliamentary elections] will be compliant daughters, sisters and wives of local commanders, or other proxies, who promise to toe the party line." [17h] (p1)

**6.221** The paper continued

> "Women still struggle to participate in the country's evolving political institutions. This is not just a question of social expectations, or about the conservatism of Afghan society, it is to do with power. Those who put their heads above the parapet powerfully describe the dangers that they face. From Kabul to Kandahar to Herat, women talk of how the failure of disarmament and the continued dominance of regional warlords threatens their ability to work and speak freely.
>
> Women aid workers, government officials, and journalists face harassment, violent attacks, and death threats. Those who challenge the powerful, conservative elements of the country's political structures are targeted because they can be made into chilling examples for other women considering political activity." [17h] (p1)

**6.222** The same paper also noted that

> "Part of the underlying problem is that many of the men who replaced the Taliban share the same views on women that made the Taliban so notorious. But another key reason is that the United States and its allies have helped prop up regional warlords and their factions – many with atrocious human rights records– in the fight against the Taliban and Al Qaeda. These warlords have had a chokehold on regional and local governments.
>
> There has been no coherent strategy for helping President Hamid Karzai remove the warlords from power and replace them with civilians loyal to the central government. The replacement of General Mohamed Qasim Fahim as defence minister in Karzai's new cabinet, is welcome. However, the president failed to appoint women to powerful cabinet posts, relegating them to traditional roles overseeing ministries for women and young people. And at the local level, many influential provincial governors – in effect, more militia leaders than civilian governors – remain in place." [17h] (p2)

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**Marriage/Divorce/Child Custody**

**6.223** Following visits to Afghanistan in 2002, the International Committee of Jurists (ICJ) issued a report in November 2002, which said that "Many aspects of Islamic family law as applied in Afghanistan accord differential rights to men and women. A Civil Code promulgated in 1977 did, however, introduce some significant reforms." [57] (p24) The ICJ report pointed out, however, that "In actual practice the provisions of the 1977 Civil Law no longer appear to be applied. The demise of governmental institutions across Afghanistan means that marriages are generally no longer registered. This would render them void under the 1977 Law. In practice, however, unregistered marriages are regarded as valid. The withering away of the 1977 Civil Law has reintroduced largely unreformed Hanafi family law and customary law into the sphere of family law." [57] (p25)

**6.224** In September 2003, an International Crisis Group (ICG) report advised that

> "Marriage is still mostly a question of relationships between families rather than individuals. Few are free simply to marry whom they please, though the degree of choice can vary from marriage even against wishes, to an (sic) joint agreement between individual and family. Women in particular are seen as the repository of family honour and have even less space than men to follow their own wishes. Those who become widows are often expected to marry their deceased husband's brother, which may provide for her and her children but often does not accord with her wishes. When an individual transgresses the norms, either by refusing to marry the designated person or by committing adultery, serious conflict can follow.... The price to be paid for the resolution of such conflicts is high – in terms of both the monetary compensation involved and the woman's rights, which are often sacrificed to get a family/community level solution. At their most extreme, such disputes can often involve killings. Once they have reached this level, they are not, according to all interviewees, easily solvable by the elders, and certainly not by official, governmental, processes." [26c] (p10)

**6.225** In October 2003 Amnesty International (AI) reported that

> "The legal age for marriage in Afghanistan for men is 18 and for women is 16 years of age. Clear data on actual marriage age is lacking as provisions to register marriage and birth are absent in many areas, and many people do not know their exact age. Age of marriage varies between urban and rural areas and according to ethnic background and economic circumstances. However, a clear pattern of widespread underage marriage of girls emerges, particularly in rural areas. It appears relatively rare for girls to remain unmarried by the age of 16." [7c] (p9)

**6.226** The same AI report noted,

> "In a number of interviews and group discussions, women reported that divorce never or almost never happened, because "it is not an Afghan tradition". Others spoke of women who sought divorce being perceived by the community as acquiring a negative reputation. Women also indicated that the risk of losing their

children following divorce and the absence of provision to seek custody of children prevented them leaving abusive relationships. Non-discriminatory access to divorce is an essential remedy against violence against women. Its absence contributes to violence against women continuing. In Afghan law, interpretations of which partly constitute custom and tradition, women and men have an unequal right to divorce. Men have the right to divorce their wives, whereas women have only the right to seek divorce on prescribed grounds. Such inequality is a barrier both in the formal justice system and in the community. Women must first negotiate support within their families if they are to seek divorce." [7c] (p17)

**6.227** A Danish fact finding report of November 2004 noted that

"According to the EU Special Representative, it is customary practice that young women are married against their will to older men, which contributes to a high incidence of suicide among young women. An international NGO stated that marriages between minors are of common occurrence. Marriages between children of 7 years up to 15-17 years of age occur quite frequently. It is similarly common that 13 year-old girls already have children.

The Vice Minister for Women underlined that forced marriages are widespread. It is also common that a 12-year-old girl has to marry a 50-year-old man. A woman runs the risk of being murdered by her family, if she does not marry the person whom the family has chosen. The source said that it is not in reality possible for a young girl to seek support from the authorities or the police against a marriage her parents have decided upon." [8] (section 6.2.4)

**6.228** The AAWU was also reported as saying that "Women are still subject to forced marriages, where young girls as young as nine years are forced to marry older men of 50-60 years of age". [8] (section 6.2.1) The President of the Supreme Court, however, held a different view and stated that according to Islamic law, it is not permitted to force women to marry against their will. He stated that a woman could always make a complaint to the courts in such a situation. [8] (section 6.2.4)

**6.229** The Danish fact finding report also noted that, according to the AAWU, a man can order his spouse to leave if he wants to remarry. She will then be forced to go to live with her family. "The man can go to the police after two or three months and say that his wife has run away, and she will risk being imprisoned. The source explained that it is very rare that a man will grant his wife a divorce, partly in respect of his own honour and partly because he might have to pay money to the divorcee." The Vice Minister for Women's Affairs said that "It is common that women who run away from their husbands end up in prison. This creates major problems for women because after being imprisoned they no longer are regarded as honourable." [8] (section 6.2.3)

**6.230** On 27 August 2004, the Institute of War and Peace Reporting (IWPR) reported that

"Although the numbers are still small, women are increasingly turning to the courts to end their marriages. Since the fall of the Taleban, more and more women have been reclaiming the legal right to initiate divorce that they always

had but were too afraid to exercise under the mujahedin and Taleban regimes.

According to Aziza Adalat Khwa Kohistani, an attorney who works for Medica Mondiale, an international women's organisation operating in Kabul, women have always been able to seek a civil divorce on the following grounds; if her husband cannot financially support her; disappears for a set period of time; harms her without cause; or is weak. Kohistani said that "harm" covers inhumane treatment while "weak" can apply to men who are impotent, insane, or have a serious disease that cannot be cured or treated. Women now have an additional option that was not available under the Taleban. Hamida, the president of the family court in Kabul, which handles divorce cases in the capital, said a woman will also be granted a divorce if her husband agrees to end their marriage and she consents to pay him an agreed amount of money.

Interpretation of the nation's divorce laws often depend on attitudes of the regime in power. According to Ali Mateen, a family court judge, a husband needed to be missing for 90 years before a woman could be granted a divorce under the Taleban regime. But under the current regime, that period has been reduced to three years. This difference is because the Taleban follow the Hanafi branch of Islam, and the current administration adheres to the Shafee variant." [73g] (p1)

**6.231** The IWPR also reported that "According to Mateen, the family court in Kabul, which was founded on March 21, 2003, granted divorces to 39 women during the first seven months of this year, compared to 22 for nine months in 2003. Outside the capital, women can also file for a divorce in district courts, but there was no available data on how many were granted." [73g] (p2) According to the family court judge, the court usually attempted to reconcile the couple before granting a separation. The court also has the authority to block marriages and the judge said that 17 potential unions have been stopped so far this year. [2004] Although men could initiate divorce proceedings through the courts, most men preferred to obtain divorces without going through the court system and this is their right according to civil law. [73g] (p2-3)

**6.232** The IWPR report of 27 August 2004 noted that, according to a Kabul city government official, a man could divorce his wife under Islamic law in three ways. By declaring to her without becoming angry that she is no longer his wife and that they are divorced; or by angrily telling his wife that she is divorced; or by telling her three times that they are divorced. The report noted that "If he later wants to take her back as his wife, he could do so without having to remarry her in the first case; would have to remarry her in the second; and could not have her back as a wife in the third (she is free to marry someone else after three months, but until she remarries, he will be responsible for her living costs)." [73g] (p3)

**6.233** IWPR noted that, according to Kohistini, the attorney working for Medica Mondiale, Afghanistan still has further to go in implementing civil law and women are still learning about their rights. ""The difference between the capital and the provinces is that [in the latter] we have warlords, people are using weapons, and women still do not know their rights and they feel they cannot say anything against their husbands," Kohistani said. In an effort to mitigate this, the ministry of women has formally requested to the government that the family court be established in all

the provinces, said Hamida, president of the family court. This would take family cases out of the district courts to a more private setting." [73g] (p3-4)

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**Self Harm**

**6.234** An article by an independent journalist in the New York Times on 8 March 2004 advised that doctors and human rights workers have reported cases of young women who have set themselves on fire. The report stated that

> "Doctors and nurses in Kabul and Jalalabad say they have seen more cases recently, partly because the population has been swollen by the return of two million refugees and because cases are being tracked for the first time by rights groups, hospitals and the government. But the trauma and social upheaval of decades of war, poverty and illiteracy in Afghanistan have also intensified the traditional pressures on young women, they say.
>
> The recently formed Afghan Independent Human Rights Commission recorded 40 such cases in just the past six months in Herat, a western city of half a million people. Karima Karimi, one of the commission's officers, says she suspects that the actual figure is higher, and President Hamid Karzai has ordered an investigation. Officials at the commission said it was reasonable to estimate that Afghanistan had hundreds of such cases in a year. "It is not only in Herat; it is in all of Afghanistan," said Dr. Soraya Rahim, deputy minister of women's affairs, on her return from a government investigative trip to Herat. "It takes different forms in different provinces," she said in a telephone interview. "Some take tablets. Some cut their wrists. Some hang themselves. Some burn themselves. "But the reason is very important. The first reason is our very bad tradition of forced marriage. Girls think this is the only way, that there is no other way in life." [28]

**6.235** The report of the UN appointed Independent Expert of the Commission on Human Rights dated 21 September 2004 noted that the absence of a legal and social support system had left many women trapped in abusive situations and had possibly led to an increased incidence of suicides, in particular through self-immolation. [39q] (para. 56)

(See also paragraphs 6.238 and 6.239 below)

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**Situation of Women and Girls in Herat.**

**6.236** On 9 December 2004, the Institute for War and Peace Reporting (IWPR) reported that Ismail Khan, who had run Herat as a private fiefdom for many years, had been dismissed from his position as formal governor in September 2004. [73d]

**6.237** In their October 2004 report, "Between Hope and Fear", Human Rights Watch (HRW) reported that "Under the administration of the recently deposed governor Ismail Khan, women and girls in Herat had little freedom to engage in public life or to travel freely, at times even being subjected to virginity tests." [17] (p7)

**6.238** A Radio Free Europe/Radio Liberty (RFE/RL) report dated 4 February 2005 reported that

> "Self-immolation by women in the western Afghan province of Herat continues to alarm officials and aid workers more than a year after a delegation from Kabul investigated the trend. The delegation determined that within just a few months, at least 52 women in the province had burned themselves to death – often to escape an abusive marriage. Afghan doctors and officials say at least 184 woman brought to Herat's regional hospital are thought to have set themselves on fire during the past year – and more than 60 have died as a result. The real number of self-immolation suicides and attempted suicides is likely to be even higher because only those brought to a hospital are being registered." [29d]

**6.239** The RFE/RL report also noted that there were several teenagers in a Herat hospital recovering from burns they say they received when their mother-in-laws poured boiling water on them. The views of Zama Coursen-Neff, a researcher with Human Rights Watch were reported. "Coursen-Neff says that, regardless of whether a woman is burned because of attempted suicide or attempted murder, both instances demonstrate a lack of choice for women in Herat and the failure of the provincial government to provide protection for those in abusive, forced marriages." [29d]

**Situation for women in other regions**

**6.240** The Danish fact finding mission of March/April 2004 reported that "The UNHCR found that most areas in Afghanistan are still very conservative regarding the treatment of women. The source mentioned that especially in the Pashtun areas, women have almost no rights. It is the father or spouse who makes decisions on the woman's behalf." The EU Special Representative also noted that the position of women in Pashtun areas is very bad. According to the Vice Minister for Women's Affairs, most women in Afghanistan are not in control of their own lives and it is difficult for them to change this situation, as they are economically dependent on their husbands or fathers. [8] (section 6.2.1)

**6.241** The Danish report noted the view of the EU Special Representative that the situation for women, even in the towns, had changed very little in the last 18 months. The All Afghan Women's Union (AAWU) agreed and said that in certain regions the situation had become worse. This was despite the positive surface changes of women now having access to schools and employment and some women being less limited in their choice of clothing. The AAWU agreed with the Vice Minister that one of the big problems for Afghan women was that they were economically dependent. UNHCR advised that women have a better chance of getting work in Kabul than in other places. [8] (section 6.2.1)

**6.242** The Danish fact finding mission interviewed a number of sources in March/April 2004 about the security situation for women.

> "The UNHCR stated that in northern Afghanistan there has been an increase in the number of rapes of girls and women, and that similarly there has been an increase in trafficking of women and girls.... The AIHRC explained that they have received reports concerning cases where local commanders have kidnapped

women for forced marriages and rape. The sources mentioned a case where a 16 year-old girl had been kidnapped in Mazar-e-Sharif...The AAWU explained that kidnapping of women is a major problem especially in Kabul. The source had personal knowledge of a case where a young girl was kidnapped in Kabul a few months ago. The family turned to the police, but nothing happened." [8] (section 6.2.2)

(See also Section 5 Medical Services paragraphs 5.230 – 5.243 for more information on health care facilities for women)

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**Imprisonment of women**

**6.243** The report of the UN appointed Independent Expert of the Commission on Human Rights dated 21 September 2004 noted that

"The human rights situation of women in Afghanistan remains of serious concern. Particularly worrisome is the detention of women for offences against social mores, women and couples under threat of being killed by their families for "honour crimes" and death threats that often follow a woman's escape from a forced or arranged marriage. Complaints and reports of forced marriages, including of girl children, have not decreased. Additionally, the absence of a legal and social support system has left many women trapped in abusive situations and has possibly led to an increased incidence of suicides, in particular through self-immolation." [39q] (para. 56)

**6.244** The AI report of 28 October 2004 advised that

"A large number of women in Afghanistan continue to be imprisoned for committing so-called "zina" crimes. A female can be detained and prosecuted for adultery, running away from home or having consensual sex outside marriage, which are all referred to as zina crimes. The major factor preventing victims of rape complaining to the authorities is the fear that instead of being treated as a victim, they themselves will be prosecuted for unlawful sexual activity.

During its recent visit, AI found that a large number of female inmates in prisons across Afghanistan are incarcerated for the crime of "running away" and for adultery, as well as for engaging in unlawful sexual activity. Amongst many judges and judicial officials, there was a prevailing lack of knowledge about the application of zina law. In many instances, there was a lack of basic legal skills among legal professionals interviewed. In addition, in relation to many offences, sentencing is left to judges' unfettered discretion and they often had [hand] down arbitrary sentences to women. A majority of imprisoned women have been charged or are imprisoned for transgressing social norms and mores.

There is no effective mechanism for investigation of crimes against women and no confidence-building measures have been implemented to encourage women to come forward and report abuse. As a result, women do not report crimes committed against them because they fear imprisonment (especially in rape cases), harassment and discrimination from the police; violent reaction from the family; lack of support from the community and the lack of services for victims. [7k]

(p1-2)

**6.245** The US State Department Report 2004 (USSD) published on 28 February 2005, recorded that

> "In detention facilities, there were 136 women, many of whom were imprisoned at the request of a family member. Many of the incarcerated opposed the wishes of the family in the choice of a marriage partner, were accused of adultery, or faced bigamy charges from husbands who granted a divorce, only to change their minds when the divorced wife remarried. Other women faced similar charges from husbands who had deserted them and reappeared after the wife had remarried. Some women resided in detention facilities because they had run away from home due to domestic violence or the prospect of forced marriage, and there were no shelters for women in this situation. There were approximately eight detention centers for women in the country." [2d] (p10)

**6.246** On 31 January 2005, the Institute of War and Peace Reporting (IWPR) reported Dr Sima Samar, the head of the AIHRC as saying "We are doing research on women who are arrested for leaving their husbands and fathers' houses because of abuse and inhuman treatment," she said. "In this country any woman who leaves home is imprisoned and so we try to get them released, but we don't want them to go back to their homes, because they may leave again. "So we are trying to make the government build shelters for them and provide them with work opportunities."" [73o]

(See also Section 6B Women paragraphs 6.182, 6.186 and 6.193 for more information on shelters for women)

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## Children

### Overview

**6.247** The Foreign and Commonwealth Office (FCO) 2004 Annual Report on Human Rights noted that "Afghanistan is a signatory to the Convention on the Rights of the Child. In practice, however, social attitudes and the lack of functioning judicial institutions mean that child rights are poorly protected in many parts of Afghanistan." [15a] (chapter 1.3)

**6.248** The US State Department Report 2004 (USSD), published on 28 February 2005, recorded that

> "Local administrative bodies and international assistance organizations took action to ensure children's welfare to the extent possible; however, the situation of children was very poor. A back-to-school campaign launched by the Ministry of Education and coalition supporters increased school enrollment from 4.2 million children in 2003 to over 4.8 million during the year...Child abuse was endemic throughout the country. Abuses ranged from general neglect, physical abuses, abandonment, and confinement to work in order to pay off families' debts. There were no child labor laws or other legislation to protect child abuse victims...Child trafficking was widespread and continued to be a problem during the year. Police were

investigating 85 cases of children reportedly kidnapped and killed for their organs." [2d] (section 5)

**6.249** The USSD 2004 further noted that "Children under 12 years were incarcerated with their mothers [in detention]. Juveniles (under 18 years) were detained in juvenile correctional facilities; however, juveniles charged with murder were detained in adult facilities but were assigned to a separate area within the facilities." [2d] (section 1c) The September 2004 report of the UN appointed Independent Expert of the Commission on Human Rights in Afghanistan advised that children and juveniles are commonly held in the same cells as violent adult criminals. [39q] (para.60)

**6.250** The USSD 2004 recorded that "While most girls throughout the country were able to attend school, a climate of insecurity persisted in some areas. On April 28 [2004], suspected Taliban burned and destroyed two primary schools in Kandahar Province. Girls' schools also continued to be the target of attacks by Taliban and other extremists. The Government and international donors built more than 2,000 schools during the year." [2d] (section 5)

(See also Section 5 Educational System)

**6.251** In January 2004, the United Nations estimated that "97 percent of children under 16 have witnessed violence and 65 per cent have experienced the death of a close relative." [39n]

**6.252** On 23 July 2004, the Institute for War and Peace Reporting (IWPR) reported that

"Corporal punishment is routinely used by teachers in schools all across the country, frequently leaving students badly beaten – some so severely that they require hospital treatment. The ministry of education says it is trying to stamp out the practice, but IWPR reporters have found cases of brutal physical punishment of pupils in Kabul and in the provinces. Examples include one teacher who beat a schoolboy with a cane, inflicting head wounds and dislocating a wrist and two fingers. There are also reports of students being punched and kicked." [73h]

**6.253** A UNICEF donor update report dated 30 September 2004 noted that

"This month, new data has been released on the condition of women and children in Afghanistan in the form of the 2003 Multiple Indicator Cluster Survey (MICS) findings. Key indicators highlighted in the report include:

- 1 in 9 children born in Afghanistan will probably die before the first birthday.
- 1 in 6 children will probably not survive until the age of five.
- The national illiteracy rate amongst Afghans over the age of 15 is 71 per cent.
- Nearly 60 per cent of primary school age girls are not attending classes.
- Nearly 90 per cent of births take place at home, and a similar percentage are attended by unskilled birth attendants rather than properly trained health practitioners.
- Diarrhoeal disease affects nearly 30% of children under the age of five, but treatment of the condition is limited, with nearly half of children suffering from diarrhea [sic] not being given adequate fluids during their illness.

- 1 in 5 children under five years old suffers from acute respiratory infections, but nearly three-quarters of these children are not taken to hospital or other health centres for treatment.
- Nearly 60 per cent of Afghan households do not have a safe water point, while one-third of households do not have a sanitary latrine.
- Nearly 7 per cent of primary school age children age [sic] work for an income
- Nearly 6 per cent of children do not live with both parents" [44b] (p1-2)

**6.254** The UNICEF update also noted that "The draft Juvenile Code was agreed upon by all relevant judiciary officials (legislative department, Supreme Court, Attorney General's office) in May [2004] and is soon to be presented to the Council of Ministers for approval." [44b] (p4)

**6.255** A UNHCR paper of December 2004 advised that

> "Afghanistan acceded to the Convention on the Rights of the Child in 2002 and has strengthened legal provisions to protect children. However, in the current situation, characterized by weak rule of law and governance structures, the presence of local commanders, high levels of criminality with reports of incidences of child trafficking, as well as child labor and forced recruitment, children continue to be exposed to exploitation. Many children are working on the streets of Kabul, Jalalabad, and Mazar-I-Sharif with numbers increasing. The child labor force in Afghanistan is predominately boys aged 8-14 with a smaller numbers [sic] of girls 8-10 years old. The main reasons that children work are poverty-related." [11d]

**6.256** On 18 February 2005, BBC News reported that, according to Afghan officials, more than 260 people, many of them children under five years of age had perished in severe winter weather. The report also noted that "The number of Afghans, particularly children, killed in severe winter weather could be much higher than official estimates, an aid agency says. The Catholic Relief Services says up to 1,000 children may have died because of the intense cold and lack of food... Afghan Public Health Minister Mohammad Amin Fatimie says most of the children who died were suffering from respiratory infections, pneumonia and whooping cough caused by the intense cold." [25o]

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### Child Labour

**6.257** The USSD 2004 noted that "The Constitution prohibits children under the age of 15 from working more than 30 hours per week; however, there was no evidence that authorities in any part of the country enforced labor laws relating to the employment of children. Children from the age of 6 often worked to help support their families by herding animals, collecting paper, scrape metal and firewood, shining shoes, and begging. Some of these practices exposed children to the danger of landmines." [2d] (section 6d)

**6.258** On 28 June 2004, IRIN reported that

> "While millions of Afghan children have returned to school following the collapse of the Taliban regime in late 2001, tens of thousands of school-age youngsters,

restricted by economic hardship, must still work on the streets of the Afghan capital, Kabul, to sustain their families...The children, both male and female, often assume the duty or responsibility of earning income for their families after the main breadwinners are killed or disabled. For many children in Kabul, the families are unable to provide even the basics. To support the family, the children have to work to earn something for food, often under particularly dire conditions." [40i]

**6.259** The IRIN report also noted that, according to a UNICEF spokesman, an estimated 40,000 children were now working on the city's streets. Aschiana, a NGO, is working to cut the number of children working on the streets and they have trained 2,600 children in a variety of vocational fields since 1995. The report noted that "According to UNICEF, in order to better assist children who do work, or who live in vulnerable families, Afghanistan needed a strong social care system. "The fact that so many children have to work in the first place is an indication of the economic hardship and stress faced by many Afghan families," the UNICEF official said. [40i]

**Child kidnappings**

**6.260** In October 2003, a report by the International Organisation for Migration (IOM) noted

"Women and children, including girls and boys, have been abducted in provinces across Afghanistan. People are taken by armed men, as well as by lone individuals. The individuals abducted, aged 4 years to adulthood, (and) are held captive between 1-2 days to many months. They have been held in locations in the city where the abduction occurs, as well as taken to other provinces. During captivity, they are subjected to perpetual rape, as well as forced to perform domestic labour (the latter pertains primarily to women and girls). Threats of abductions are also occurring. The captives' actions, movements, and freedom are completely controlled by the abductors. Sexual services demanded of the victims vary in terms of whether he or she is kept for the exclusive use of one individual, or shared with others.

Substantial anecdotal reports indicate that boys, as young as 4 and 5 years of age, are frequently abducted by armed men in the South. They are held overnight, and occasionally for up to 2-3 days. When the boys are released, there is evidence of rape, i.e. rectal bleeding. There is a trend of sexual abuse of boys in Afghanistan, particularly by those who bear arms. Although homosexuality and paedophilia is against Afghan law, such sexual interaction does not constitute adultery or premarital sexual relations. Men, "particularly military commanders...take boys as young as 14 to wedding parties and other celebrations, to get them to dance and, in some cases, have sex with them." "They use these boys as their slaves." "[38a] (p36-37)

**6.261** On 8 June 2004, IRIN reported that, according to Afghan officials in Kabul, child kidnapping was on the rise. IRIN noted that "According to Interior Ministry officials, at least 200 children have been kidnapped or abducted over the past 12 months." A spokesman for the Ministry was reported as saying that 100 kidnappers had been arrested in two years, showing the efforts the ministry was making to address this serious issue. The report also noted "Afghan authorities say kidnappers are the first link in an international chain of organised criminality that sees the kidnapped children

sold as servants and sexual playthings, primarily in Arab countries. Many are killed and their body parts sold." [40ac]

**6.262** Radio Free Europe/Radio Liberty (RFE/RL) reported on 26 November 2004 that

> "In an effort to crackdown on child kidnapping, President Hamid Karzai issued a decree in June [2004] imposing the death sentence on those found guilty of killing a kidnap victim. He also increased the jail term for those guilty of injuring an abducted child. At the same time, the decree called upon the attorney-general in Kabul and related offices to investigate child-kidnapping cases speedily and forward them to the appropriate court. Afghanistan saw its first prosecution for child kidnapping in June, when three men were tried in a Kabul court. The court sentenced two of the defendants to five years in jail and the third man to four years." [29e]

**6.263** On 1 August 2004, Reuters reported that "Two child kidnappers suspected of removing captives' body parts for sale had been arrested in southern Afghanistan and could face the death penalty, a local official said yesterday... Afghan authorities have highlighted the problem of child kidnapping in the country, which they say is alarmingly common. At least 47 cases are being investigated in Kabul alone." [24d]

**6.264** A September 2004 UNICEF update advised that

> "By August 2004, 270 Afghan children (suspected of having been trafficked) were deported from Saudi Arabia. The children received interim care support in the transit centre in Kabul, run by the Ministry of Labour and Social Affairs (MoLSA) with UNICEF support. Reintegration assistance has recently started for these children in northeast provinces. A pilot project to raise awareness among children on Commercial Sexual Exploitation of Children through children's groups is reaching 500 children in Badakhshan Province. A committee was established for Combating Child Trafficking and the Nation Plan of Action to counter child trafficking was finalized in July [2004], soon to be presented by the MoLSA to the Cabinet for its approval." [44b] (p3)

**6.265** The RFE/RL report of 26 November 2004 noted that "Each year several hundred children -- both boys and girls -- are kidnapped in Afghanistan. The children are often sold as brides into forced marriages or as slaves to be worked hard and, sometimes, sexually exploited. Ill treatment does not always end with the children's release from their abductors." RFE/RL reported the case of a 12-year old girl who was kidnapped on her way home from school in the city of Kunduz in northern Afghanistan. She was detained for 18 days during which time she was raped before being released by law-enforcement agencies. According to the report the girl now lived in the home of a private Kunduz resident, chosen by a Council of Elders to protect her from possible honour killing by her relatives for her perceived immoral behaviour. [29e]

**6.266** On 7 January 2005, the Institute of War and Peace Reporting (IWPR) reported that "The troubling practice of powerful commanders kidnapping and sexual abusing young boys appears to be continuing in Afghanistan, despite efforts to build a civil society... Abdul Ghafoor Baseem, chief of Baghlan's human rights department, fears the problem may be getting worse. He said that in November [2004] he received 12 reports of child rape in the province, a number he described as "unprecedented"." [73f]

**6.267** On 31 January 2005 the Institute of War and Peace Reporting (IWPR) reported an interview with Dr Sima Samar, the head of the AIHRC. IWPR noted that

> "One of the most active campaigns the commission [AIHRC] has done, together with non-governmental organisations and the United Nation's Children's Fund, is to try to tackle the growing problem of kidnapped children, Samar said. Several hundred boys and girls have disappeared over the last year-and-a-half, abducted for sexual abuse, slavery, child marriage and prostitution. Some are taken abroad while others are moved to another part of Afghanistan. To combat this, Samar said, the commission has worked on a National Action Plan against child kidnapping. In 2004, the government responded to the problem by issuing tougher sentences for those convicted." [73o]

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**Child soldiers**

**6.268** The USSD 2004 noted that "In May 2003, President Karzai issued a decree that prohibited the recruitment of children and young persons under the age of 22 to the Afghan National Army. UNICEF initiated a program that demobilized and reintegrated approximately 5,000 of an estimated 8,000 former child soldiers. Afghan militias, including the Taliban and Northern Alliance, used child soldiers in past years." [2d] (section 5)

**6.269** The Danish fact finding mission of March/April 2004 reported that, "The UNHCR explained that an increasing number of young boys are being compulsory recruited to the armies of local commanders in northwestern part of Afghanistan. Young men are chosen at random by the commanders. Their families have to pay money if they do not want to let go of their sons. The people concerned are mainly young boys from the age of fourteen and up. The UNHCR did not know about the magnitude of compulsory recruitment." [8] (section 7.1)

**6.270** On 16 August 2004, UNICEF reported that

> "According to a survey undertaken by UNICEF and partners in 2003, there are an estimated 8,000 former child soldiers in Afghanistan. Many of them have already left the fighting forces voluntarily, but still need support and assistance to reintegrate into civilian life.... They were sometimes subjected to violence, or witnessed traumatic scenes.... In Jalalabad and Nangarhar province, the NGO "Solidarité Afghanistan Belgium" (SAB), in cooperation with UNICEF, has been running a successful programme for 500 street children, both girls and boys, aged between 14 -18. A child can choose a vocational training course to become a carpenter, an electrical technician, a welder, a tailor or a carpet weaver. Children also attend a variety of classes including basic literacy, mathematics, nutrition and health, sports, art, drama and singing.
>
> In 2003, a total of 6,000 children at risk, including former child soldiers, participated in similar reintegration programmes in Afghanistan. In 2004, another 5,000 former child soldiers and other vulnerable children become involved with these reintegration programmes." [44a]

**6.271** On 9 February 2005, the UN Secretary-General reported that the recruitment and use of child soldiers had declined significantly. The report noted that

> "In the reporting period [November 2003 to December 2004], the United Nations country team could not obtain specific and reliable information on which factional armed groups may have continued to use children. No commitments have been made by these groups to end this practice...Through a parallel child-specific demobilization and reintegration programme led by the United Nations Children's Fund (UNICEF), over 3,820 children were demobilized by September 2004 in the north-eastern, eastern, central highland and central regions." [39e] (para.8)

See also Section 5 Educational System paragraphs 5.270 – 5.282 and Medical Services paragraphs 5.230 – 5.243

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**Child Care Arrangements**

**6.272** On 28 July 2004, IRIN noted that a report by the Afghan Ministry of Labour and Social Affairs and UNICEF issued that month emphasised the need for more dramatic measures to be taken for children deprived of parental care. The source noted that there was a range of institutions, from orphanages to hostels and daycare centres which children of beleaguered families were encouraged to attend. They provided food, education or vocational training. [40ab]

**6.273** The same report also noted that "Following decades of neglect of support structures, coupled with a general decline in social services as a result of Afghanistan's isolation from the international community during the Taliban era, many communities have grown reliant upon orphanages to care for such children, depriving them of individual parental care and attention." IRIN noted that "The report also underlined how children who had lost one or both parents face discrimination in wider society, from other youngsters, relatives and people in the community." According to the UNICEF officer, if family and community-based care alternatives were to be supported, awareness-raising measures would be needed to tackle discrimination against children who did not have the support of parents." [40ab]

**6.274** A UNICEF donor update dated 30 September 2004 noted that

> "An assessment on the situation of children in institutions, jointly carried out by MoLSA and UNICEF in 2003, revealed that over 80% of the children in the institutions have a living parent and that placement of children in orphanages is being used as coping mechanism by vulnerable families. As a result, the government has made a commitment to adopt a non-institutional approach and support family-based alternatives for these children. UNICEF has been providing technical support to MoLSA, to develop a Plan of Action for the reform of social protection systems and services and enhance technical capacity of the Ministry." [44b] (p4-5)

**6.275** On 29 November 2004, the Institute of War and Peace Reported (IWPR) noted that

"Following the release of a report called "Children Deprived of Parental Care in Afghanistan—Whose Responsibility" this summer calling for a national plan of action for children, the Afghan government, UNICEF, and the British non-government group Children in Crisis launched a programme designed to reunite children now housed in orphanages with their parents... There are 35 public and private orphanages in Afghanistan, according to Mohammad Ihsan Asadi, head of the department of planning in the ministry of labour and social affairs. They care for over 8,300 children from 25 provinces, about 1,400 of them girls. Nine of those orphanages are run by non-government organisations, NGOs, and 26 are state-run." [73s]

**6.276** The UNHCR paper dated December 2004 advised that

"The few existing orphanages in Kabul and marastoons [see below] in other main cities, mostly run by the government and the Afghan Red Crescent Society, are no durable solution for unaccompanied and separated children. They have very strict criteria for temporary admission. Boys 15 or over are not admitted. Children and adolescents under 18 years of age who do not have families, close relatives or extended family support in Afghanistan are therefore at risk of becoming homeless and risk further exploitation. Where family tracing and reunification efforts have not been successful and special and coordinated arrangements can not be put in place to facilitate safe and orderly return, return for unaccompanied children to Afghanistan therefore exposes them to exploitation and risk." [11d]

[Note: "Marastoon is a Pashtun term meaning, "help the poor people". The ARCS Marastoon homes seek to assist the very poor, homeless and vulnerable to live a relatively normal life, and to benefit from skills training toward improving their chances of economic self reliance, and for reintegration into their original communities." Source: IFRC [42b] (p7)]

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## Homosexuals

**6.277** In April 2002, a news report from Kandahar by a journalist from the Los Angeles Times, published on the Sodomy Laws website, indicated that sexual activity between Pushtun men in that area was far from uncommon. According to a local mullah, between 18% and 45% of men in Kandahar engaged in homosexual acts. A professor at Kandahar Medical College estimated that about 50% of the city's male residents had sex with men or boys at some point in their lives. A psychiatry professor compared Afghan men to prison inmates saying that they had sexual relations with men because men were more available than women. [31] (p2-4)

**6.278** A Danish fact finding report of June 2004 reported that, according to UNHCR and the CCA (Co-operation Centre for Afghanistan) homosexuality is forbidden in Afghanistan. UNHCR noted that it is difficult to say anything definite about conditions for homosexuals because there is no one who is prepared to declare that he is a homosexual or whose homosexuality is publicly known. The CCA knew of the existence of homosexuals but had never heard about homosexuals being punished. UNHCR were unaware of any cases under the new government in which homosexuals

had been punished. UNHCR also noted, however, that behaviour between men which would arouse curiosity in many western countries such as holding hands, kissing or embracing is not considered explicitly sexual behaviour in Afghanistan. UNHCR were of the view that homosexuality was common in Afghanistan due to the strong degree of separation between the sexes. Moreover, according to the source, homosexuals do not have problems provided they keep their sexual orientation secret and do not overstep other social norms within their family. For example, men of homosexual orientation can be forced into marriage and a possible conflict would only arise if the man refused to marry. [8] (section 6.3)

**6.279** The US State Department Report 2004 (USSD), published on 28 February 2005 recorded that "The law criminalizes homosexual activity, and this was enforced in practice. In August [2004], a foreign national was arrested in Kabul, initially on the charge of homosexual rape; however, the charges were later dropped." [2d] (section 5c)

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## Persons with links to the former Communist Regime

### KhAD (KHAD) (former State Security Services)

**6.280** In April 2001 a situation report by a Netherlands delegation to the European Union on the security services in Afghanistan between 1978 and 1992 was published. The report noted that the Khadimat-e Atal'at-e Dowlati (meaning "State Intelligence Service" in Dari) was set up in 1980 and transformed into a ministry in 1986. [34] (p4) The secret service became notorious and feared under its acronym "KhAD" and soon came to embody the highly repressive communist regime. [34] (p9) The first head of the KhAD was Dr Najibullah, one of the former leaders of the Parcham faction of the Communist People's Democratic Party of Afghanistan (PDPA). As a result of his post as head of KhAD he rose rapidly in the hierarchy of PDPA. In November 1987, he became President of the country, a post he retained until 1992. On 9 January 1986 the KhAD was transformed into a separate ministry under the name of Wazarat-e Amaniat-e Dowlati or "Ministry of State Security". The report also advised that "Although the official abbreviation was henceforth to be WAD, the secret service continued to be popularly referred to as the KhAD." [34] (p10-11)

**6.281** The Netherlands delegation reported that

> "It was the task of the KhAD and of the WAD to ensure the continued short and long-term existence of the Communist regime, which had already been exposed to strong pressure shortly after the Great Saur Revolution. In practice, this meant that the KhAD and the WAD had a licence to track down and fight the regime's external and internal enemies as they saw fit... In practice, the slightest sign of disloyalty or opposition provided a pretext for being branded an enemy... Persons branded enemies of the PDPA could be eliminated in many ways. Thus, KhAD leaders could instruct their subordinates to carry out arrest, detention, judicial sentencing, exile, torture, attempted murder and extra-judicial execution of real or alleged opponents of the Communist regime. If required, KhAD and WAD agents also attempted to murder persons outside Afghanistan, especially in Pakistan. Through their ruthless

and mostly arbitrary behaviour the KhAD and WAD deliberately created a climate of terror aimed at nipping any opposition among the civil population to the Communist regime in the bud." [34] (p12-13) The report noted that "There was precious little support for the Communist Party among the population." [34] (p31)

**6.282** The Netherlands' report stated that all KhAD and WAD NCO's and officers were guilty of human rights violations. [34] (p33) However, NCOs and officers could not operate within KhAD and WAD unless they had proved their unconditional loyalty to the Communist regime. During their trial period (Azmajchi) officers had to pass a severe loyalty test. On first assignment NCO's and officers were transferred to KhAD and WAD sections actively engaged in tracking down "subversive elements." Only those who proved their worth were promoted or transferred to sections with more administrative or technical activities. In practice this meant that all KhAD and WAD NCO's and officers took part in the arrest, interrogation, torture and even execution of real and alleged opponents of the Communist regime. [34] (p28-29) The report considered that it was inconceivable that anyone working for the Afghan security services, regardless of the level at which they were working, was unaware of the serious human rights violations that were taking place, which were well known both within and outside Afghanistan. [34] (p31)

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**Treatment of former KhAD members**

**6.283** The Netherlands' report of April 2001 stated that after the fall of the Communist regime in 1992 many KhAD and WAD agents went to work for the new rulers' intelligence services. The Taliban intelligence service [Estikhabarat] too was partly manned by former KhAD and WAD agents [but see paragraph 6.284 below]. Despite their reputation, former members of the Communist security services and their relatives were not automatically at risk of Taliban persecution. Their attitude towards the Taliban combined with what was known about them and the extent to which they made enemies was considered to be more important than the position they previously occupied. [34] ( p33)

**6.284** In comments prepared for the Advisory Panel on Country Information meeting on 8 March 2005, UNHCR stated that the Taliban intelligence service [Estikhabarat] was partly manned by Pakistani ISI (Inter-Services Intelligence), and not by former KhAD and WAD agents. [11h] (6.275)

**6.285** In a paper issued in July 2003, UNHCR stated that "Some of the former military officials, members of the police force and Khad (security service) of the communist regime also continue to be generally at risk, not only from the authorities but even more so from the population (families of victims), given their identification with human rights abuses during the communist regime." UNHCR advised that such people, if without any links with existing Islamic/political parties or tribal protection, would require a careful risk assessment. The applicability of exclusion clauses of Article 1F of the Geneva Convention must be considered. [11i] (p35)

**6.286** A Danish fact finding mission to Kabul in March/April 2004 reported the views of several sources on the position of former members of KHAD and the PDPA.

According to the report UNHCR said "Regarding the question as to whether a person from the former PDPA or KHAD [sic] runs the risk of any form of persecution depends on whether he, in the course of his activities for the PDPA or KHAD, has had concrete conflicts with or has come in opposition to people who are in power at the present time... The UNHCR did not know of any former members of the KHAD who have returned." [8] (section 6.5.1)

**6.287** The same Danish report also noted the views of UNAMA.

> "The source [UNAMA] had the impression that the political environment in Afghanistan currently is not open to all political viewpoints. The source stated that in this connection personal conflicts are more important than political conflicts. The source mentioned a case in which a former employee of the KHAD had returned to Afghanistan and was now working for the security forces. The person has complained that powerful individuals have threatened him, persons he in his previous position had been investigating. He had allegedly been stopped in the street and threatened into silence." [8] (section 6.5.1)

**6.288** The Danish report noted that the CCA (Co-operation Centre for Afghanistan) said that about half of the officers working in the present Afghanistan Intelligence Services are former officers of the KHAD. The report stated that "It has been necessary to introduce them into intelligence work, as there is a lack of qualified personnel in this field. The organization gave as an example that the director in the 7th department of the present intelligence service earlier served the same position in the KHAD." [8] (section 6.5.1)

(See also UNHCR and ECRE guidelines paragraphs 6.22 - 6.23)

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**Former Members of the PDPA (People's Democratic Party of Afghanistan)**

**6.289** In a paper dated July 2003, UNHCR stated that

> "Even though the Interim Administration issued a "Decree on the dignified return of Afghan refugees," valid as of 22 December 2001, the situation is yet unclear with regard to persons affiliated or associated with the former communist regime in Afghanistan, through membership of the People's Democratic Party of Afghanistan (PDPA) or as a result of their previous professional or other functions. Although not targeted by the central authorities, they may continue to face risks of human rights abuses if they do not benefit from the protection of influential factions or tribal protection. The degree of risk depends on a variety of factors, including the following: a) the degree of identification with the communist ideology, b) the rank or position previously held, c) family and extended family links." [11i] (p34)

**6.290** The UNHCR paper also noted that

> "Members of the following groups, if without any links with existing Islamic/political parties or tribal protection, would require a careful risk assessment.

- High ranking members of the People's Democratic Party of Afghanistan (PDPA), irrespective of whether they belonged to the Parcham or Khalq faction of the party. Most PDPA members lived in Kabul or other cities during the communist regimes. They will be at risk only if they are known by armed factions as such and this includes:

i) Members of Central, Provincial Cities and Districts Committees of the PDPA and their family members;

ii) Some of the heads and high-ranking members of social organisations such as the Democratic Youth Organisation and the Democratic Women Organisation at the level of country, province, city and districts." [11i] (p34)

**6.291** The Danish fact mission of March/April 2004 reported that

"The UNHCR explained that many former and highly placed members of the PDPA work for the present government without experiencing serious problems. The UNHCR was of the opinion that being an ex-PDPA member is not in itself regarded as a problem in Afghanistan today. Regarding the question as to whether a person from the former PDPA or KHAD runs the risk of any form of persecution depends on whether he, in the course of his activities for the PDPA or the KHAD, has had concrete conflicts with or has come in opposition to people who are in power at the present time.

The UNHCR explained that in the period from March to December in 2003, the organization had not received reports on harassment or persecution of former members of the PDPA who had repatriated after the fall of the Taliban. However, the UNHCR pointed out that members, known by the organization, who had returned were not highly placed members of the PDPA...

The UNAMA was of the opinion that former members of the PDPA who did not have a high profile could settle in Afghanistan. However, the source found that ex-members of the PDPA would find it difficult to reorganize politically in an organization with a communist ideology without experiencing some form of harassment. The degree of harassment according to the source depends on the history of the person." [8] (section 6.5.1)

**6.292** The Danish report further noted

"The ICG [International Crisis Group] was of the opinion that whether an ex-member of the PDPA was able to return to Afghanistan depends on whether the person tries to exercise any political influence as a communist. If this is not the case, such an individual will be able to live in the country.

The source mentioned the leader of the United National Party as an example of a former highly positioned PDPA member who lives in Afghanistan. The person is a former member of the central committee of the PDPA, and President Karzai is considering employing him in a high ranking position. The United National Party is a new party with a non-communist ideology...The source explained, however, that the above-mentioned former member of the central committee of the PDPA is forced to live under a considerable degree of protection.

The source was of the opinion that there exist former PDPA members who cannot return to Afghanistan. The source mentioned that a number of the former members have been selected by President Karzai to work for the government, and that many ministries could not exist if they had not been employed. The source pointed out that many of the former members of the PDPA are not war criminals, but have relevant training, which can be used to contribute to the reconstruction of the country. Many of these people are only trying to find a meaningful way of using their resources for the rest of their lives, and have no strong political interests." [8] (section 6.5.1)

**6.293** The same Danish report stated that "The CCA was of the opinion that former communists do not experience serious problems in Afghanistan today. A number of former members of the PDPA have organized themselves again, and there are many examples of former highly placed supporters of the PDPA working in the current government. The CCA was of the opinion that former high-ranking members of the PDPA can remain in Afghanistan if they do not get involved in conflicts with powerful individuals." [8] (section 6.5.1)

**6.294** The Danish report further noted that

"The AAWU [All Afghan Women's Union] explained that there are still prejudices in Afghan society against former members of the PDPA. The source explained that former members have problems when registering their political parties and they have difficulties in finding jobs in the administration within the government.

According to the Lawyers Union of Afghanistan there is no greater risk in Afghanistan today for former members of the PDPA than for Afghans in general. In this context it has no importance what position one occupies in the PDPA. The source stated however that very highly profiled former members of the PDPA have not returned to Afghanistan yet." [8] (section 6.5.1)

**6.295** Regarding individuals with connections to the former Soviet Union, the Danish report of June 2004 noted that "The UNHCR and the UNAMA both said that they did not have information supporting the fact, that people returning from longer-term stays in the former Soviet Union have problems in Afghanistan today, solely for the reason that they have been staying in the Soviet Union for a longer period. The CCA explained that people who return after a long stay in the former Soviet Union do not experience major problems in Afghanistan, except if they have had any specific conflicts with people who want to make revenge." [8] (section 6.5.2)

**6.296** A Radio Free Europe/Radio Liberty report on the presidential election of 9 October 2004, accessed on 22 February 2005 via azadiradio, noted that Abdul Latif Pedram was one of the candidates. The report stated

"Pedram is running as a candidate of the recently established National Congress Party of Afghanistan [Hezb-e-Congra-e-Mili Afghanistan], which he co-founded and for whom he currently serves as party leader. He is a former journalist, poet, and professor of Oriental studies who served as editor in chief of "Haqiqat-e Inqelab-e Sawr" -- the official mouthpiece of the communist People's Democratic Party of Afghanistan (PDPA) -- during the Soviet occupation of Afghanistan

(1979-89). After the downfall of the communists in 1992, Pedram spent years in Parisian exile. He is an ethnic Tajik." [29a]

**6.297** The Joint Electoral Management Body (JEMB) presidential election results of 3 November 2004 showed that Mr. Pedram came fifth in the election with 110,160 votes (1.4% of the vote).

**6.298**The US State Department Report 2004 (USSD), published on 28 February 2005, recorded that the Supreme Court banned communists from forming a political party because it alleged that communists were atheists. "The Ministry of Justice courted claims of selective discrimination because it avoided registering the National Unity Party, whose leaders were former communists, although the party met all legal requirements for registration." [2d] (section 3) However, Europa: South Asia 2005 records that the political party Hizb-i Muttahid-i Melli (Party of National Unity), formed in 2003 by members of the former communist People's Democratic Party of Afghanistan (PDPA), was proscribed until 2004 but was registered with the Ministry of Justice by the end of July 2004. Its leader is Abdul Rashid Jalill. [1] (p80)

(See also Section 5 Lead up to Parliamentary Elections paragraph 5.44 for further information on the make up of the registered political parties; Annex B for a list of registered political parties and UNHCR and ECRE guidelines paragraphs 6.22 - 6.23)

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## 6 C Human Rights Other Issues

### Mines and Unexploded Ordnance

**6.299** The Afghanistan Landmine Monitor Report 2004 recorded that

"Afghanistan's landmine and unexploded ordnance (UXO) problem is the consequence of more than 23 years of war against Soviet invasion (1979-1989), civil fighting (1989-2001) and the military operations against Al-Qaida and Taliban (since October 2001).

Afghanistan reports that 2,500 communities are impacted by landmines and UXO in an area totaling 1.3 billion square meters of land, including over 800 million square meters of minefields and 500 million square metes of battlefield areas. There are mined areas in almost every province, with heavier concentration and greater impact in the western, eastern, and southern regions...Mine contamination continues to be a major hindrance to economic rehabilitation and development." [14] (p4)

**6.300** The same report also noted that

"Afghanistan acceded to the Mine Ban Treaty on 11 September 2002 and the treaty entered into force on 1 March 2003. Since the war and dramatic political and military changes in late 2001 and early 2002, mine action activities have expanded... The estimated number of new mine casualties has declined from 150 to 300 people a month in 2000 to 100 people a month in 2004. Since 1999,

mine/UXO casualties have been reported in 33 of the 34 provinces in Afghanistan. As of July 2004, UNMACA had collected data on 13,874 mine/UXO casualties since 1988, but stressed that this was not a comprehensive figure. The ICRC recorded 7,197 new mine/UXO casualties between 1999 and June 2004. In 2002, the Transitional Islamic Government of Afghanistan approved the establishment of a National Disability Commission. Since 1999, the ICRC opened two new orthopedic centers; and several local and international NGOs have opened or expanded programs that assist mine survivors and other persons with disabilities." [14] (p1)

**6.301** The US State Department Report 2004 (USSD), published on 28 February 2005, records that "With funding from international donors, the U.N. organized and trained mine detection and clearance teams, which operated throughout the country. More than 1.5 million refugees and internally displaces [sic] persons (IDPs) returned to areas cleared of mines and unexploded ordnance. U.N. agencies and NGOs conducted a number of educational programs and mine awareness campaigns for women and children in various parts of the country." [2d] (section 1g)

**6.302** On 5 January 2005, the UN News Service reported that programmes against landmines around the world were severely underfunded with Afghanistan likely to sustain the largest single shortfall of $49 million, according to the United Nations Mine Action Service. Afghanistan has the largest mine-action budget of $81 million and has received just $32 million. [40ag]

**6.303** On 28 January 2005, the Institute of War and Peace Reporting (IWPR) reported that

"According to recent figures released by the United Nations Mine Action Centre for Afghanistan, 626 people were killed or injured in 2004 by landmines and unexploded ordnance. Huge amounts of ordnance are thought to be hidden at old military bases, in the hands of former commanders and in private stockpiles. Now the government has set an ambitious goal of collecting more than 100,000 tonnes of unexploded munitions through the UN-backed Afghanistan New Beginning Programme, ANBP.

Defence ministry spokesman General Zahir Azimi said the first phase would entail locating stockpiles. Munitions that are still usable would be transferred to the new Afghan National Army, while ammunition that has been damaged or deteriorated would be destroyed. "The plan is an effective one, because the army will benefit and it will also save lives and limbs," he said. The project has been launched in Balkh and Herat provinces before extending to other regions... Azimi said the project won't be easy and may take some time to complete." [73a]

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## Humanitarian Situation

### Overview

**6.304** The World Bank's first economic report on Afghanistan for twenty-five years, published on 9 September 2004 recorded that

"The starting point – in late 2001 at the fall of the Taliban – for recent developments in Afghanistan was dire. The Afghan economy was reeling from protracted conflict and severe drought, with cereal grain production down by half, livestock herds decimated, orchards and vineyards destroyed by war and drought, more than five million people displaced as refugees in neighboring countries, and remaining economic activities steered in an informal or illicit direction by insecurity and lack of support services. The Afghan state had become virtually non-functional in terms of policymaking and service delivery, although the structures and many staff remained.

Numerous people were suffering (and still are) from low food consumption, loss of assets, lack of social services, disabilities (e.g. from land-mine accidents), and disempowerment and insecurity. The effective Taliban ban on opium poppy cultivation, imposed in 2000, did not much affect trade in opium (apparently based on accumulated inventories) but was devastating to the livelihoods of many poor farmers and rural wage laborers, including through opium-related indebtedness. The collapse of the state virtually excluded the poor from access to services, and moreover the poor tended to be disproportionately affected by insecurity, one of whose important impacts has been a very large number of female-headed households. Even though the fabric of families, kinship groups, and other traditional clusters has held together rather well (demonstrated concretely by the large volume of inward remittances), the penetration of the "warlord" and "commander" culture at the local level has had deleterious effects. In sum, Afghanistan was essentially left out of the last 25 years of global development, with virtually no increase in per-capita income during this period and average life expectancy of only 43 years." [69a] (Executive summary paras. 5 & 6)

(See also Section 3: Economy)

**6.305** The UNDP National Human Development Report 2004 on Afghanistan recorded that

"Years of conflict and neglect have taken a devastating toll on human, social and economic indicators in Afghanistan, resulting in some of the lowest human development indicators in the world. With an estimated HDI [Human Development Indicator] value of 0.346, Afghanistan falls at the bottom of the 177 countries ranked by the global Human Development Report of 2004, just above Burundi, Mali, Burkina Faso, Niger and Sierra Leone. The GDI [Gender Development Index], valued at 0.300 for Afghanistan, puts it above just two countries in the world, namely Burkina Faso and Niger. The HPI [Human Poverty Index] places Afghanistan just above Niger and Burkina Faso, and far below its two neighbouring countries, Iran and Pakistan." [47] (chapter 2)

**6.306** The UNDP report also stated that the majority of the Afghan population could be classified as poor. Furthermore, "Human poverty in Afghanistan is a multidimensional problem that includes inequalities in access to productive assets and social services; poor health, education and nutritional status; weak social protection systems; vulnerability to macro- and micro-level risks; human displacement; gender inequities and political marginalization. Some groups and/or households, such as women, the

disabled and Kuchi nomads, are more vulnerable to poverty." [47] (chapter 2)

**6.307** A booklet published by the Department for International Development (DFID) in April 2004 recorded that "Although the humanitarian situation in Afghanistan is no longer an emergency, millions of poor people are still vulnerable." The report stated that those still vulnerable included Afghan refugees returning home since 2002, mainly from Pakistan and Iran, refugees still living in neighbouring countries, internally displaced people in the South and those disabled, disinherited, widowed or orphaned by war or simply living in areas too remote or inhospitable to gain access to sufficient food and services. [51]

**6.308** DFID also noted that "With health and sanitation services almost non-existent in most parts of the country, the average Afghan can expect to live just 43 years. Only 23% of Afghans have access to safe water and just 6% to electricity." [51] The World Bank report of 9 September 2004 noted that "Forty percent of the population report having access to safe drinking water (but this is likely to be a substantial overestimate of actual access to safe drinking water)." [69a] (para. 2.06)

**6.309** In January 2005, the International Federation of Red Cross and Red Crescent Societies reported that "Humanitarian organisations, including the Afghan Red Crescent Society (ARCS) and the Federation, were hampered by deteriorating security in 2004. The difficult operating environment, access problems etc. limited the overall humanitarian effort. Several organisations pulled their operations back to Kabul, while others withdrew from Afghanistan altogether; thus significant needs still persist in all sectors." [42b] (p2)

**6.310** UNHCR reported on 25 February 2005 that "More than 40,000 families – about 200,000 people – have received additional UNHCR assistance to help them cope with the unusually harsh winter conditions in Afghanistan since December [2004]. Our winter aid effort has been focused on particularly vulnerable people among those Afghans who have recently returned to their country." [11e]

(See also Section 6C Returnees/IDPs paragraphs 6.321 - 6.328)

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**International Aid**

**6.311** The World Bank report of September 2004 advised that

> "US$1.1 billion of external assistance was disbursed in late 2001 and 2002, mainly for humanitarian purposes and not through Government channels. The Government presented its National Development Framework (NDF) in April 2002, which formed the basis of the National Development Budget. Subsequently the Securing Afghanistan's Future (SAF) report detailed medium-term investment and recurrent expenditure requirements and external financing needs and was presented at a major donor conference in Berlin in March 2004. The composition of external assistance, which increased to US$2.5 billion in the 2003/04 financial year, has shifted in favor of reconstruction, with increasing Government leadership." [69a] (para. 1.15)

**6.312** Europa Regional Surveys of the World: South Asia 2005 records that

"Owing partly to the lack of security, progress over reconstruction and development, crucial to the success of the political process, has been less than satisfactory. An international donors' conference was held in Tokyo, Japan, in January 2002, and US $4,500m. was pledged over a five year period, against an estimated requirement of $15,000m. over the next decade. Cash disbursements have been slow to arrive, however, and much funding has had to be applied to relief activity, owing to the return of some 2m. refugees from Pakistan and Iran. A further conference was subsequently held in Berlin, Germany, in March 2004, at which pledges of $4,400m. were made for that year and $8,200m. for the next three years." [1] (p62)

**6.313** On 1 April 2004, CARE International reported that the $8.2bn pledged by international donors in Berlin had brought a welcome increase in funding but fell short on long-term commitment. CARE noted that "According to a recent needs assessment prepared by the Afghan government, reconstruction will require $27.5 billion over the next seven years." [40a]

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**Humanitarian Situation Kabul**

**6.314** In January 2004, a report by Action Contre La Faim (ACF) noted that "The recent influx of population in Kabul city has put a significant additional stress on an already fragile water and sanitation situation... Indeed the soaring population in Kabul has turned the sanitation situation into a pressing issue, especially as it bears potential health risks in terms of water contamination and vector-borne diseases." The ACF report also noted that access to water remained insufficient in many neighbourhoods. Furthermore, "Daily life appears as extremely precarious for a large part of the families encountered, though many respondents held quite an optimistic vision of their changing situation as they declared that their situation had improved over the past year. Focus group discussions with both men and women confirmed their confidence in the future thanks to the reassuring feeling that so many newcomers had settled in." [33] (p3)

**6.315** In February 2004,Terre des hommes (Tdh), an organisation working for the rights of the child, commented on the conditions in Kabul in which the women and children they targeted lived. According to Tdh, "Many mothers and children of the target group are living in extreme states of impoverishment. Still, in many areas the homes of clients are, in fact, remnants of bombed buildings, without any access to potable water." [40h]

**6.316** A report by the International Peace Research Institute in Oslo in early 2004 noted that

"Kabul has the looks of a boom town with attendant large-scale poverty and squalor. There is rebuilding on a large scale and streets with shops selling building equipment are congested with traffic. The foreign presence has visibly increased in step with the inflow of aid money. The bustling activity has attracted numerous internal migrants and returning refugees, who have decided go to the capital rather than their home areas. Over one-third of Kabul's population is estimated to be returning refugees and IDPs... Real estate prices in the best areas of the city

approach those of downtown New York, but a few blocks away there is squalor. Trading and movement of people has visibly increased over the past year. Five airlines now serve Kabul International airport, while the national airline, Ariana, flies regularly to the provinces and is heavily booked." [19] (p24)

**6.317** On 9 July 2004, Refugees International (RI) reported that a large percentage of returnees from Iran and Pakistan, especially the urbanized returnees from Iran, were remaining in Kabul.

"The population of Kabul is already three to four million people, including a million or more returned refugees and displaced persons who swelled the city's population in the last two years. Water, sanitation, and housing are severely strained; families are paying $15 to $20 per month to rent a single bare room -- a huge expense in a city in which workers may make as little as $2 per day in wages. Despite a large number of shelter projects by foreign aid donors, the need for low-cost housing exceeds supply by a large margin. A survey by the NGO Action Against Hunger showed that "having a place of our own" was the top priority of many poor people in Kabul. As a continued inflow into Kabul by returning refugees seems probable for the next year or two urban services and shelter will be even more strained in the future." [3] (p2)

**6.318** BBC News reported on 18 February 2005 that Afghanistan was facing its worst winter in more than a decade. [250] Estimates of the number of people who have died due to the cold vary. However, an article in the New York Times dated 4 February 2005 reported that, at that time according to the minister of health, thirteen people had died in and around Kabul, including several babies. The article stated that

"While the cold will lose its grip eventually, the desperate poverty of many Afghans will not, a fact that has focused attention on the failure of the government and the aid agencies to find a long-term solution for the homeless. Refugees are still being encouraged to return to Afghanistan for political reasons even though the country cannot look after them, critics say.

An estimated 10,000 homeless people are in Kabul, about 4,000 of them in two squatter camps. In addition, groups of displaced people are living in public buildings and abandoned ruins in as many as 25 locations throughout the city. Most are refugees who have returned from camps in Pakistan in the three years since the fall of the Taliban. Some families have been living all that time in tents, with the men scraping up a little work as porters in nearby fruit markets. Meanwhile, scores of expensive private villas are going up around Kabul, some of them built by commanders and government officials on former government land, a sign of growing inequities." [4]

**6.319** The New York Times article further noted that

"The population of Kabul has swelled chaotically, to 3.4 million from 700,000 in just a few years, creating a dire need for housing, said Srinivasa B. Popuri, of the United Nations Habitat Human Settlements Program, which is advising the Ministry of Urban Development. The United States Agency for International Development is looking at a site south of the city where it plans to provide housing for 2,000

homeless families. But that project, like so many others, remains in the "concept design" stage, a spokeswoman, Joan Ablett, said. In any case, the plan is only for people from Kabul and not for those in the camps, many of whom are the landless poor from rural areas with no homes to go back to. The government fears that providing land or housing to squatters will only encourage more to come, officials said." [4]

**6.320** On 25 February 2005, UNHCR reported that its winter assistance in the face of the unusually harsh winter conditions was focused on particularly vulnerable Afghans who had recently returned to the country. "In Kabul, UNHCR is assisting the Ministry of Refugees' efforts to provide shelter to people living in open-air settlements in Chaman Hozori and Chaman Babrak. UNHCR has carried out repair and winterization work on one of the government buildings the families were moved into. We are also providing sanitation assistance as well as access to health care through our mobile health clinics, which are currently offering medical services to many of Kabul's street children and their families." [11e]

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**Returnees and Internally Displaced Persons (IDPs)**

**6.321** The report of the UN appointed Independent Expert of the Commission on Human Rights in Afghanistan dated 21 September 2004 stated that

"As a result of three decades of conflict, large portions of the Afghan population were forced to become refugees or IDPs. With the fall of the Taliban, large numbers of refugees have returned to Afghanistan...The Government estimates that at least 2.5-3 million Afghans are still living outside the country as refugees. Given current refugee return patterns, it is likely that many of these individuals will return to Afghanistan sometime in the near future. There are also hundreds of thousands of IDPs, most of whom live in the south and west of the country...

As these individuals return to the country, whether to their original homes or to new settlement areas, they face an array of problems and, as highly vulnerable populations, they are often the victims of serious human rights violations. Returning refugees and resettled IDPs are commonly subjected to acts of violence, including killing; arbitrary arrest and detention; illegal occupation and confiscation of their land by warlords, commanders and others; forced labour, extortion, illegal taxation and other abusive economic practices; discrimination and persecution based on ethnic identity; and sexual violence and gender-related discrimination. There are thousands of reported cases of returnees being subjected to these violations in many communities." [39q] (paras. 70-72)

**6.322** The UN Secretary-General reported on 26 November 2004 that

"A high percentage of returnees are landless (70 per cent), or claim not to have a house or shelter to return to (27 per cent). Returns from the Islamic Republic of Iran have increased significantly relative to last year, largely as a result of measures put in place by its Government to encourage returns to Afghanistan. In Pakistan, some 80,000 persons returned from the "new camps" that were established after 11 September 2001. Those refugees who remained in Pakistan

were relocated to other camps, and the new camps were closed by the end of September 2004.

Some 35,000 internally displaced persons were able to find a solution to their displacement either by returning to their places of origin or settling locally. However, security conditions in a number of provinces in the north and the central highlands still prevent the return of many internally displaced persons and refugees originating from these areas. The reintegration assistance programme continued to focus on the construction of rural houses — a high-priority request from returnees — for the most vulnerable groups. An average of 15 to 20 per cent of returnees have benefited from this activity. Between 2002 and the end of 2004, UNHCR will have built some 120,000 houses, mostly in areas receiving large numbers of returnees. Lack of employment and slow progress in reconstruction in rural areas pose a continuing challenge to the sustainable reintegration of returnees. The increased number of returns to urban areas is placing an additional burden on the already stretched infrastructure capacity of major cities and highlights the need for the development of a social housing scheme.

Reports indicate that returnees did not face marked discrimination in terms of access to basic social services, though they experienced occupation or confiscation of their land and related abuses such as extortion, illegal taxation or forced recruitment." [39p] (paras. 60 – 64)

**6.323** A report by the Institute of War and Peace Reporting dated 9 December 2004 stated that "Some [Afghans] who remained in the country through the years of turmoil are suspicious of those who have come back from the West to help their homeland develop." The report noted that since 2003, the International Organisation for Migration (IOM), a European-based intergovernmental organisation that works in cooperation with the UN, has been encouraging Afghan professionals in European Countries to return to help rebuild the country. The IWPR noted that

"IOM'S Return for Qualified Afghans programme, EU-RQA, which is co-funded by the European Commission, focuses on the development of critical sectors in Afghanistan, including private businesses providing goods and services for the domestic market, civil and social services, public infrastructure, and rural development as well as government agencies. Hamid Hamdard, deputy head of the IOM project in Kabul, said that in addition to matching returnees to positions in Afghanistan, his organisation provides 300 euros a month in assistance for successful applicants.

Since 2003, 652 Afghan professionals from European countries have come to work through the IOM programme. But only about half that number decide to remain in the country after their contract expires, Hamdard noted…Among the problems returning professionals face, especially those who maintain dual citizenship, is the frequently cool reception they receive from their countrymen who stayed behind throughout the years of turmoil. Many Afghans are sceptical about the loyalties of returnees, and some even consider them foreign spies." [73i]

**6.324** On 20 December 2004, IRIN reported that

"While unemployment is very high among both men and women, the return of hundreds of thousands of Afghan refugees from neighbouring Pakistan and Iran means that the problem is getting even worse. Bashiri [deputy ministry of labour and social affairs] said unemployment in Afghanistan was estimated to be around 30 percent, with another 30 percent working part-time or in jobs for which they are overqualified...The first employment centre was established in the capital earlier this year. Nearly 4,000 job seekers used the centre in its first three months. "So far we have been able to facilitate employment opportunities for thousands of job seekers through our Kabul centre," Masood Parwanfar, an officer of the German aid agency AGEF, which runs these centres, told IRIN. AGEF is an association of experts in the fields of migration and development cooperation that works in employment projects in Afghanistan." [36a]

**6.325** On 25 February 2005, UNHCR reported that

"More than three-quarters of a million Afghan refugees returned home last year [2004] from Pakistan and Iran with UNHCR's assistance. Almost a third of them (32 per cent) went back to the Kabul area. Repatriation from Pakistan was interrupted for the winter and will resume on 7 March. Repatriation from Iran is ongoing, although the number of refugees choosing to repatriate in winter is low. UNHCR's voluntary repatriation programme to Afghanistan is entering its fourth year. In all, more than 3.5 million Afghans have returned home – mainly from Pakistan and Iran – since repatriation started in April 2002." [11e]

**6.326** A UNOCHA/IRIN report of 25 February 2005 stated that

"Many of those refugees and Internally Displaced Persons (IDPs) who have returned home in the last two years complain of a lack of assistance. Unemployment and the lack of public services, including health clinics, schools and roads, are the chief concerns...For the millions of Afghans who have returned home since the end of the Taliban era in late 2001, life is hard and reintegration is slow. Although undeniable progress has been made in many sectors, returnees are often more destitute than the local population."

**6.327** The report also noted that some returnees have managed to earn a living and reintegrate, citing the case of a widow who opened a small health centre for women in the Dash Barchi district of Kabul with a US $200 loan from a local micro finance agency. [40e]

**6.328** The IRIN report further noted that

"After another year of drought and crop failure in 2004, more than a third of the Afghan population remains dependent on food aid. Among them are at least 167,000 IDPs, most of them living in camps in the south and the west of the country. Persistent drought, a lack of infrastructure and slow reconstruction have considerably slowed down the pace of return during 2004. Only 17,000 IDPs have made the journey home since the beginning of the year.

Unable or unwilling to return to their homes, the remaining IDPs, most of them drought-affected nomadic Kuchis, are now in need of long-term solutions that go

beyond humanitarian assistance... In addition to drought, one of the main challenges that IDPs face after return is land grabbing and continuous harassment by local militias. In Faryab, while many have been able to regain their land and houses and managed to secure some level of sustainable livelihood, others have found that their homes have either been destroyed or are now occupied by others.

In January 2005, hundreds of people, including women and children, had to flee to the mountains after their houses were entirely looted by armed local militia groups in Kohistan district of Faryab. "We were told that these commanders were no longer in power, but that was not true," Fazal Rabi, a returnee in the northern city of Baghlan, told IRIN. He said he had harvested a good crop of wheat, but had been forced to give a third of it to a local commander as compulsory taxation." [40e]

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**Land Disputes**

**6.329** In a report on land issues within the repatriation process of refugees published in September 2003, UNHCR advised that

"Throughout the returnee monitoring exercise conducted countrywide, land related issues were identified as one of the main problems that refugees and IDPs were facing upon return, and that hampered their sustainable reintegration into their societies. Land problems have affected both individuals and groups alike. Conflicts among individuals and groups can be found in almost every district, serving as a reminder of the seriousness of the problem, and involving a high level of violence and manipulation." [11g] (p1)

**6.330** The report of the UN appointed Independent Expert of the Commission on Human Rights in Afghanistan dated 21 September 2004 stated that

"Another significant human rights issue involves illegal forcible seizure of land, access to land and housing, and the violations associated with land disputes. The problems regarding land are linked to many years of conflict, lack of clarity regarding land ownership, irregularities in the exercise of local and regional power, and the large number of returning refugees and IDPs. The value of land has increased substantially, and the country's highly irregular titling system and general lawlessness have allowed those with political power and armed backing to grab large tracts of land throughout the country. The general corruption of the legal system makes it easy for those with power to obtain false title to land, and the inability of the State to provide basic legal protection for landowners makes it difficult for those without connections or power to defend their rights.

The land situation in Afghanistan involves an array of interconnected problems. For example, different people often hold legal title to the same land. At various times, more than one titling agency existed or subsequent administrations provided different titles, so it is possible for legitimate competing claims to the same piece of property to exist. Also, those with title to land (or someone who has lived somewhere for a long time and may not have legal title) are often forcibly

removed or denied access to their property by powerful individuals and groups. Sometimes this occurs at the order of an individual such as a warlord or local commander. Other times, a person may be forced off the land by a less dominant figure who possesses arms or has political connections." [39q] (paras. 73 & 74)

**6.331** The same report also noted that

"In November 2003, the Special Property Disputes Resolution Court was established by presidential decree. It replaced an earlier system involving a commission, widely viewed as corrupt, that passed cases on to the Supreme Court. The Court can accept claims dating back to 1978, and is divided into sections dealing with claims in Kabul and those in other provinces. The Court can order compensation for illegally occupied land, and also determine who the proper owner is. The Court is underfunded, fails to take into account the special needs of IDPs in this domain, does not cover disputes where one side is the Government, and provides limited coverage for cases from the provinces." [39q] (para. 76)

**6.332** In December 2004, the Afghanistan Research and Evaluation Unit reported

"Rural land policy is non-existent, although steps have been taken to generate this in the hands of a special commission...Land disputes are rife, with two-thirds of all cases brought to the normal court system relating to landed property and a recently established dedicated land court additionally swamped. This is so even though many poor (and those wary of ethnic bias) do not go to courts at all. Communal (ethnic) and communal property-related disputes dominate in practice and reflect a simmering "war" over pastures, in which a common trigger is expansion of cultivation into pastureland. Neither the terms of law nor the centralist and court-driven regime of rural land administration in place are competent to resolve these often ethnically heated, and sometimes warlord-abetted disputes." [40r] (p2)

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**UNHCR guidelines on return to Afghanistan**

**6.333** A UNHCR paper dated December 2004 advised that

"In addition to the categories of Afghans that are in need of international protection, there are certain individuals currently outside Afghanistan, for who return would not constitute a durable solution and would endanger the physical safety and well-being of the persons concerned, given their extreme vulnerability. In the context of return to Afghanistan, extremely vulnerable cases can be divided into two broad categories:

(1) Individuals whose vulnerability is the result of a lack of effectively functioning family- and/or community support mechanisms and who can not cope, in the absence of such structures.
(2) Individuals who can not cope, either because such support structures are not available or because Afghanistan lacks the necessary public support mechanisms and treatment opportunities.

Against this background, there are Afghans for which UNHCR Afghanistan

strongly advises that, at least temporarily, solutions be identified in countries of asylum and that exemptions to obligations to return are made on humanitarian grounds." [11d]

**6.334** UNHCR therefore advised that this may be the case for Afghans who fall into the following categories:

Unaccompanied females
Single parents with small children and without a bread-winner
Unaccompanied elderly
Unaccompanied children
Victims of serious trauma (including rape)
Physically disabled persons
Mentally disabled persons
Persons with medical illness (contagious, long term or short term) [11d]

(See sections on Medical Services, Women and Children for more detailed information on the situation for persons who fall into these categories)

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**Anti-Coalition Forces (ACF)**

**Overview**

**6.335** In June 2004 a report by the Afghanistan Research and Evaluation Unit (AREU) observed that small-scale attacks by Anti-Coalition Forces (ACF), generally considered to comprise the Taliban, Al Qaeda [Al Qa'ida] and Hezb-i-Islami Gulbuddin (HIG), have replaced large-scale combat in Afghanistan and these attacks are designed to subvert the Karzai government. [22a] (p7)

**6.336** On 29 July 2004, a House of Commons Foreign Affairs Committee reported on their visit to Afghanistan in May 2004. The report noted that

"Most of the terrorist incidents which continue to blight Afghanistan, and which target foreign aid workers and Afghans involved in political and other reconstruction, are now believed to be carried out by Taliban and al Qaeda fighters. It appears, then, that these groups are now more of a threat to Western interests in Afghanistan and to their efforts to rebuild the country than they are a direct threat to Afghans themselves. Unlike in Iraq, there have been few attacks aimed at police or national army targets, although the recent (30 June) attacks on police checkpoints in Jalalabad and the killing of a police chief in Kandahar Province on 12 July may herald a worrying change." [53] (p73)

**6.337** The September 2004 report of the UN appointed Independent Expert of the Commission on Human Rights noted that

"There currently exists a significant security threat on the part of a variety of forces referred to as "anti-Coalition forces" (when operating in areas of Coalition influence and control) or "anti-Government forces" (when staging operations against the

Government and international assistance programmes that support national reconstruction). These groups are composed of former Taliban, Al-Qaida, members of Hezb-i-Islami, and perhaps others. They have engaged in steady acts of relatively small-scale violence, targeted assassinations, bombings, rocket attacks and occasional armed assaults." [39q] (para.36)

**6.338** The Human Rights Watch (HRW) 2004 overview of human rights issues in Afghanistan, published on 13 January 2005, stated that

"In the south and southeast of the country, Taliban remnants and other anti-government forces outside Afghanistan's political framework have continued to attack humanitarian workers and coalition and Afghan government forces. As a result of attacks, international agencies suspended many of their operations in affected areas, and development and humanitarian work has suffered as a result. In some areas—like Zabul and Kunar province—whole districts are essentially war zones, where U.S. and Afghan government forces engage in military operations against Taliban and other insurgent groups. Hundreds of Afghan civilians were killed in 2004 during these operations—in some cases because of violations of the laws of war by insurgents or by coalition or Afghan forces." [17f] (p2)

**6.339** A HRW report of September 2004 reported on the situation in the run up to the October 2004 presidential election:

"Afghans in the south and southeast in particular are facing intimidation from Taliban and insurgent groups, who threaten residents not to take part in the elections, and continue to carry out attacks on the election process and engage militarily with the U.S. and Afghan government troops. While many observers inside and outside Afghanistan continue to focus on the Taliban as the main threat to human rights and political development, in most parts of the country Afghans told Human Rights Watch that they are primarily afraid of the local factional leaders and military commanders—not the Taliban insurgency." [17f] (p2)

**6.340** The ICG report of 23 November 2004 stated that in the run up to the presidential election of October 2004, "Taliban and insurgents with allegiance to Hikmatyar [Hekmatyar], crossed into Afghanistan along the porous border with Pakistan, with the avowed intention of disrupting the elections." [26d] (p6) The report also noted that "By most accounts, many of the Taliban and forces loyal to Hikmatyar operate from Pakistan's border provinces." [26d] (p26)

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### Taliban

**6.341** A Danish fact finding mission to Kabul in March/April 2004 reported that "In the opinion of the UNHCR, the Taliban infiltration in southern, south eastern and eastern districts consists of small groups, which cross the border on motorcycles from Pakistan and carry out attacks in Afghanistan. The UNHCR did not believe that [the] Taliban has a proper organizational headquarter in Afghanistan. They confirmed the rumours that the Talibans [sic] had taken over control of several districts, but pointed out that had it been the case, it had been short-term operations." [8] (section 3.3)

**6.342** The same Danish report also noted that

> "The Norwegian Chargé d'Affaires stated that it is uncertain whether attacks in southern Afghanistan against the government are carried out by an organized Taliban structure. A lot of what is happening can be attributed to activities carried out by bandits. The Taliban infiltration is being used as a collective description for the hostilities in southern Afghanistan. Some of the participants in the attacks in the south probably concur with the ideology of the Taliban, but are not connected with the Taliban organization. The source was of the opinion that the slowness of the reconstruction and unrealistic expectations regarding reconstruction are strengthening the forces related to the Taliban. The source found it unlikely, however, that the international community will allow the reestablishment of the Taliban as a central power in Afghanistan." [8] (section 3.3)

**6.343** The Danish report noted that

> "The ICG [International Crisis Group] was of the opinion that Taliban activities in southern Afghanistan are being controlled by a limited number of former Taliban commanders. The source was of the opinion that such activities cannot be carried out without the local authorities cooperation with the commanders. The source found that the activities were being coordinated both from the Pakistan and the Afghan side of the border. ICG mentioned that no Taliban groups have taken control of any district in the regions of Afghanistan, with the exception of short-term occupations of one or two districts in Paktika used by the Talibans for propaganda purposes. The ICG was of the opinion that no parallel Taliban administration exists in Afghanistan." [8] (section 3.3)

**6.344** During 2004 there were reported arrests of prominent Taliban members. On 25 January 2004, BBC News reported that "Police in Pakistan have arrested a former Afghan provincial chief and ally of Taleban leader Mullah Mohammad Omar. Maulvi Abdul Mannan Khawajazai, ex-governor of the western Badghis region, was captured near the Afghan border." [25e] On 20 July 2004, Reuters reported that Afghan security forces had captured Mullah Amanullah, a brother-in-law of the fugitive Taliban leader Mullah Mohammad Omar in Uruzgan after a shoot-out that killed one government soldier. [24c] On 21 July 2004, the Center for Defense Information (CDI) reported that US forces had arrested Mullah Mujahid, a top Taliban commander, on 5 July in Kandahar province. The report noted that "Mujahid was charged with distributing more than $1 million to supporters of the ousted militia. Two weeks later, on July 18, US forces detained Ghulum Mohammed Hotak, a former Taliban commander, in Wardak province, southwest of Kabul." [55] (p1)

**6.345** On 6 May 2004, the Independent newspaper reported that

> "Two Britons and their local translator were shot dead in Afghanistan yesterday. The Taliban claimed responsibility for the murders.... A Taliban commander, Mullah Sabir Momin, said that his men had carried out the killings in the province of Nuristan, 85 miles east of Kabul, the capital. In a telephone call to the Reuters news agency, Mullah Momin said: "The two British non-believers and their Afghan translator were killed by the Taliban because we are killing all locals and foreigners who are helping the Americans to consolidate their occupation of Afghanistan." [35]

**6.346** Commenting on the run up to the presidential election on 9 October 2004, an International Crisis Group (ICG) report dated 23 November 2004 recorded that a resurgent Taliban had threatened to deter candidates and intimidate voters. [26d] (p1) [17i] (p2)

**6.347** Following the presidential election, however, a number of observers reported that there was little disruption on polling day. The Guardian newspaper reported on 11 October 2004 that "The election marked a setback for the Taliban, which managed just a few skirmishes and landmine attacks on polling days. "The Taliban made very limited attacks," the US commander, Lt Gen David Barno, told Associated Press. "Yesterday was a huge defeat for the Taliban." [18b]

**6.348** An article dated 21 October 2004 by the Jamestown Foundation, an organisation which claims to report events without political bias, filter or agenda, reported that there were credible reports that the apparent success of the presidential elections had raised hopes that the Taliban were a spent force. The article noted that

> "Observers believe that the Taliban failed to disrupt the elections on October 9 because of deep divisions within its ranks. There are reports that fugitive Taliban leader Mullah Mohammad Omar has been facing "serious disagreements" with his commanders because of their failure to disrupt the elections. U.S. military spokesman Scott Nelson said the information was based on intelligence reports coming from Afghanistan and Pakistan that said "significant demoralization" among the Taliban and frustration over Omar's "lack of effectiveness" contributed to the lack of Taliban efforts to disrupt the presidential election. Major Nelson said that in the 48 hours before the October 9 poll, coalition and Afghan forces thwarted attacks on voting sites and arrested 22 suspects, including Taliban commanders and sub-commanders. At the same time, the forces also killed 22 militants.

**6.349** On October 19 [2004], U.S. Ambassador to Afghanistan Zalmai Khalilzad told a news briefing in Washington that the United States wants to coax lower-level Taliban members away from their organization. He explained that although Taliban leaders should still be brought to justice and that the military should press its fight to "finish off" the hardliners, the door should be open to lure lower-ranking Taliban members who are willing to renounce past violence and enter civilian life." [59]

**6.350** A Washington Post article dated 19 November 2004 stated that

> "The Taliban movement suffered a serious psychological and military setback after failing to disrupt Afghanistan's presidential election last month, but the radical Islamic militia still poses a formidable military threat, and one faction has begun carrying out daring, al Qaeda-style urban terrorist attacks, according to Afghan and foreign analysts. Experts said the movement was beset by leadership rivalries and internal divisions after a year of revived strength and cohesion. They also said the Taliban was increasingly being squeezed by a new Pakistani military offensive along the border, where many Taliban renegades were believed to be hiding...

Most officials and experts concede that much of what is known about the Taliban's current military and political state is guesswork. Estimates of its size range from less than 2,000 armed fighters to more than 10,000. The militia mostly bases itself on the Pakistani side of the border, where Afghan forces have little on-the-ground intelligence. One Afghan intelligence officer, speaking on condition of anonymity, said the Afghan government should have more intelligence agents in Pakistan.

It is also unclear why the Taliban did not attempt any large-scale election day attacks. In the days leading up to the vote, there were scattered attacks on voter registration sites and workers, but the election was largely peaceful, which surprised Afghan security officials." [32b]

**6.351** The October 2004 monthly review of the British Agencies Afghanistan Group (BAAG) stated that

"Fears that the Taliban would orchestrate a terrorist campaign to disrupt the elections proved to be unjustified. However, it is unclear whether this reflected a lack of organisational capacity on their part or, as has been suggested by a number of observers, it was because those providing support to the Taliban, both in Afghanistan and Pakistan, did not want to see the potential Pushtun vote undermined by terrorist activity. The decision of tribal groups in the south to provide their own security for the elections is also likely to have been a key factor. It is difficult to assess the extent to which the combined efforts of the US-led coalition forces, the International Security Assistance Force and the Afghan National Army pre-empted potential terrorist activity. The ISAF contingent was increased by 2,000, to 9,000 on 1st October [2004] to provide additional security in Kabul and the northern areas. However, voter turnout in Zabul and Uruzgan Provinces, where the Taliban have been particularly active, proved to be as low as 40%, as compared with the national average of 70% of those registered." [71b]

**6.352** The Washington Post article of 19 November 2004 noted that

"A third contributing factor [to the Taliban's failure to disrupt the election] might be far more germane to the Taliban's future; there are growing signs of a serious, three-way split within a once hierarchical movement dominated by a single religious leader. The first indications of a split came soon after the Taliban was ousted from power in late 2001. Wahid Mojdah, an Afghan court official who worked in the Taliban foreign ministry, said some fighters became active in the armed resistance to the new government headed by President Hamid Karzai. Others began cooperating with authorities and some fled to Pakistan, hoping to eventually return under an amnesty. The last group is the largest, he said, and includes some ex-ministers... Recently, Mojdah and others said, there had been a further split among the fighters. Last year, a Taliban commander named Akbar Agha announced he was forming Jaish-e-Muslimeen in a challenge to the rule of Mohammad Omar, the longtime Taliban commander who is being hunted by U.S. troops... The mainline Taliban accused Agha of indiscipline and corruption. Agha's group has asserted responsibility for kidnapping the three U.N. workers [on] Oct. 28 [2004], a daring, first-ever assault against Westerners in the heavily

guarded capital. But Yusufzai, the journalist, said Jaish-e-Muslimeen had used the tactic before, kidnapping several Turkish and Indian highway workers during the last two years. Most were released after a ransom was paid.

Analysts said the new kidnappings, as well as the suicide bombing on a street of tourist handicraft shops, were troubling signs that Jaish-e-Muslimeen and the mainstream Taliban movement might be moving toward tactics inspired by al Qaeda and used against U.S. forces in Iraq... Still, Yusufzai and others said they believed the suicide attack and kidnappings indicated a borrowing of al Qaeda tactics by one group rather than a major new influence on the Afghan conflict. They said mainstream Taliban forces were probably maintaining a low profile, waiting to strike if the new government faltered or foreign troops began to withdraw." [32b]

**6.353** The ICG report of 23 November 2004 commented on possible Taliban activity during the forthcoming parliamentary elections and stated that

"It is difficult to ascertain the extent to which the Taliban could disrupt the parliamentary polls. Clearly they were either unable to unwilling to carry through their avowed intention to disrupt the presidential election. President Karzai is downplaying the threat even as he pursues a policy of dialogue with moderate Taliban factions, a carrots and sticks strategy in which the Coalition plays an important part. While the Coalition continues to carry out military operations against Taliban insurgents, Karzai has, as in the past few months, again offered an amnesty to Taliban fighters and supporters, calling upon them to play an active role in rebuilding Afghanistan... "We would like all Afghans to come and participate in the rebuilding this country – all Afghans, the Taliban as well", Karzai emphasised in his first public pronouncements after winning the October election. He added that only a few, "maybe 50 to 100" would be excluded "that have an association with al-Qaeda or terrorism, or have committed crimes against the people"." [26d] (p26)

**6.354** The ICG report further noted that

"There are early indications that the Taliban's influence will remain extensive in the wake of the presidential elections. On 21 October [2004], Taliban insurgents killed Mullah Abdul Jalil, a cleric who had been a member both of the Zabul Solidarity Shura, a council promoting voter registration and participation in the elections, and Karzai's provincial election campaign committee. Three days later the Taliban claimed responsibility for an attack in central Kabul, which killed a U.S woman, and a ten-year old Afghan child." [26d] (p26)

**6.355** On 16 November 2004, BBC News reported that "Taleban guerrillas say they carried out an attack in central Afghanistan that left four policemen dead. It is the most serious attack on the security forces in Afghanistan since last month's presidential election. [25h]

**6.356** On 25 February 2005, BBC News reported that "Taleban rebels have shot dead nine Afghan soldiers in an ambush in southern Helmand province. The attack took place in the Chakul area close to the Pakistan border late on Thursday [24

February], an official said. Taleban spokesman Mullar Latif Hakimi confirmed its fighters had carried out the raid, one of the bloodiest attacks on government troops in months. In another incident on Thursday in eastern Khost province, the US military said it killed 10 Taleban rebels." [25n]

**6.357** The Washington Post reported on 15 February 2005 that

> "Four senior Taliban leaders have accepted a reconciliation offer from the Afghan government, a Western official with direct knowledge of the deal said Tuesday. Under the agreement, which the official said would likely be announced within days, the men recognized the legitimacy of President Hamid Karzai's government in exchange for assurances that they would not face arrest by Afghan or foreign security forces.
>
> The official identified the four as Abdul Hakim Mujahid, formerly the Taliban's envoy to the United Nations; Arsullah Rahmani, the former deputy minister of higher education and a former commander in southeastern Paktika province; Rahmatullah Wahidyar, the former deputy minister of refugees and returnees; and Fawzi, the former charge d'affaires at the Afghan Embassy in Saudi Arabia and then first secretary at the Afghan Embassy in Pakistan. Like many Afghans, Fawzi uses only one name. All four had fled to neighboring Pakistan after U.S. forces and Afghan militias drove the Taliban from power in late 2001, the official said." [32a]

**6.358** The Washington Post article continued "Karzai's spokesman, Jawed Ludin, refused to name the former Taliban officials involved but confirmed that they recently accepted the president's offer and are in Kabul. Twenty-two low-level Taliban members in several provinces have agreed to lay down their arms as part of a similar reconciliation arrangement, said the Western official, who spoke on condition of anonymity because the Afghan government has the lead role in the process. [32a]

**6.359** The Washington Post article also reported a second Western official as saying that the four senior Taliban leaders who agreed to the deal with the government were moderates who after the Taliban's defeat formed a new political party called Servants of God. They had been petitioning the government for recognition ever since. "These are civilian politicians who, for the last three years, have been hoping someone would agree that it would be useful for people who have been trusted by the Taliban to woo other Taliban to support the peace process. The four, all ethnic Pashtuns from Paktika province, could prove useful in that regard, the official added. Despite the Taliban's failure to make good on threats to disrupt the October [2004] election, members have launched periodic attacks on foreign and Afghan forces across the country, including along Paktika's border with Pakistan." [32a]

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**Former Taliban Members**

**6.360** In a paper dated July 2003, UNHCR Geneva reported that

> "It is generally presumed that most of the "rank and file" Taliban have already returned to their communities of origin, either in Afghanistan or in Pakistan. Some

hundreds of Taliban fighters have been released from detention by the Interim Administration on grounds that they were conscripts and therefore "innocent". Nevertheless, there are reports of accusations, discrimination and threats against civilians who have worked in the administration during the Taliban regime. The likelihood that they could rise to the level of persecution is greater where rank and influence within the movement was more significant. At the same time, the possibility that exclusion clauses will apply is also greater." [11i] (p37)

**6.361** UNHCR also stated that the risk to individual members and military commanders of the Taliban movement required careful assessment, given the amply documented records of deliberate attacks on civilians, summary executions, massacres and deliberate and systematic destruction of livelihoods by Taliban forces. [11i] (p40)

**6.362** The Danish fact finding mission to Kabul in March/April 2004 reported that, according to UNHCR, former members of the Taliban who were guilty of human rights abuses were likely to get into troubles with the local community. However,

"The source mentioned that low profiled, or ordinary Taliban members generally do not face problems when integrating in the local community...The Norwegian Chargé d'Affaires pointed out that not all Taliban supporters committed crimes. The source was of the opinion that many ordinary people choose [sic] to join the Taliban just in order to get a job and are therefore not necessarily guilty of human rights abuses. The source found that at the present time there is very little persecution going on of the Taliban supporters. They have adapted to the society and have no problems solely because they are former members of the Taliban." [8] (section 6.7)

**6.363** The Danish report further noted

"The UNHCR explained that it is most likely that some of the people who earlier supported the Taliban are now living in Kabul and other areas without having difficulties with the existing people in power. However the UNHCR pointed out that people who are known for having supported the Taliban run the risk of receiving serious threats if they return to the areas of Faryab, Badghis, Bamian and Ghazni in northern, north western and central Afghanistan. The source explained that a number of the acts of revenge related to the conflicts that aroused [sic] during the Taliban period is [sic] being carried out. The source [k]new of episodes where the local population had imposed certain conditions towards a refugee wishing to return, whom they believed had committed human rights violations. The source said in this context that the battle of the coalition forces in southern and southeastern Afghanistan is directed against high profile Taliban members and Al-Qaeda members. In relation to this, the source did not know of highly profiled Taliban members who had returned to Afghanistan." [8] (section 6.7)

**6.364** The Danish report stated that "The UNAMA found that the situation for former members of the Taliban is complex. The questions as to whether a former member will have problems in Afghanistan today depends on whether the person concerned has a solid network, and is in a position to persuade that he has changed side to the

people in power. An international NGO mentioned that people who formerly worked for the Taliban can have problems in Afghanistan today, but that the extent of the problems depends on how highly placed the person was." [8] (section 6.7)

**6.365** The Pakistan Times reported on 9 September 2004 that President Karzai had ordered the release of more than 350 Taliban prisoners. A high court spokesman was reported as saying that all the prisoners were Taliban members and would be released very soon. The article noted that President Karzai had already freed hundreds of prisoners including dozens of Pakistani nationals who allegedly came to Afghanistan to help the Taliban against the US military. However, according to the high court spokesman, this group of prisoners due to be released are all Afghans. The article noted that "The release comes weeks after a United Nations human rights expert called for more than 700 Taliban ex-fighters detained in Afghan and US holding facilities to be freed." [20]

**6.366** On 17 January 2005, Radio Free Europe/Radio Liberty (RFE/RL) reported that

> "More than 80 suspected Taliban supporters were released from U.S. military detention centers across Afghanistan yesterday ahead of the three-day Muslim festival Eid Al-Adha. U.S. military officials say none was considered a high-level security threat. Some observers say the Afghan government appears to have asked for releases in cases where there was no evidence against the detainees. Others say it could encourage moderate Taliban supporters to accept a government amnesty offer." [29f]

**6.367** The RFE/RL report also noted that "Afghan President Hamid Karzai and the U.S. ambassador to Kabul Zalmay Khalilzad have both indicated recently that rank-and-file Taliban would be welcome to return home to reintegrate into society -- provided they are not linked to Al-Qaeda or wanted for crimes against humanity." [29f]

(See also UNHCR and ECRE guidelines paragraphs 6.22 - 6.23 and paragraphs 6.357 – 6.359 above on the government amnesty offer)

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**Hizb-e-Islami (Hisb-e-Islami/Hizb-i-Islami)**

**6.368** Peter Marsden of the British Agencies Afghanistan Group (BAAG) noted in the 2002 edition of his book "The Taliban - war and religion in Afghanistan" that

> "Hisb-e-Islami (Hekmatyar) arose out of a split, in 1979, within Hisb-e-Islami, which had come into being because of the split within Jamiat-I-Islami. Its leader, Gulbuddin Hekmatyar, an engineering student at Kabul University during the formative years of the Islamist movement, is from Kunduz in northern Afghanistan. He is an ethnic Pushtun, possibly descended from the Pushtuns relocated to northern Afghanistan at the end of the last century by Abdur-Rahman. In Hisb-e-Islami he adopted the Soviet organisational model, creating a movement based on a cell structure with a pyramidal chain of authority. Potential members were carefully vetted and had to undergo a probationary period... Hekmatyar never had much of a geographical base within Afghanistan and relied heavily on the refugee camps, on Nangarhar Province in eastern Afghanistan, and on Kunduz as recruiting grounds. Hisb-e-Islami (Hekmatyar) tended to appeal

to relatively well-educated young radicals, many of whom have benefited from a technical education. It regarded education as an important means of transmitting its ideology and operated a number of schools in Pakistan, including schools for girls." [52] (p30)

**6.369** The book also stated that Hekmatyar sought to eradicate existing customs, practices and structures and to replace them with a new, highly organised structure geared specifically to the creation of an Islamic state. The book further noted

"Hisb-e-Islami (Khalis) emerged as a splinter movement from Hisb-e-Islami in 1979 after Younis Khalis, a tribal leader from Paktia Province with radical Islamic leanings opted to pursue his own directions. Khalis was trained in Islamic theology at the Deoband School in Delhi, which produced several generations of Afghan Ulema [senior religious scholars]...His style of leadership is that of the tribal patriarch and his following has been largely based on traditional religious leaders and local commanders in south-eastern Afghanistan." [52] (p30)

**6.370** A report by the Afghanistan Justice Project (AJP) published on 29 January 2005 gives detailed information on war crimes committed by various individuals and parties, including Hizb-e-Islami, during the years of conflict [1978-2001] in Afghanistan. It focuses particularly on the post 1992 period. The report should be referred to directly if further information on the activities of the organisation during those years is required. See Annex E source number [13]

**6.371** An International Crisis Group (ICG) Asia Briefing published on 30 March 2004 stated that, "In the weeks since the Constitutional Loya Jirga, the president has appointed a number of former Hizb-i Islami (Hikmatyar) [Hekmatyar] commanders and political figures to high-level posts, including Bashir Baghlani as governor of Farah, Khyal Mohammad as governor of Zabul, and Sabawoon as minister-adviser in the Ministry of Border and Tribal Affairs." ICG noted that "The incorporation of former Hizb-i Islami personalities into the government has accelerated since the Constitutional Loya Jirga, an indication that the support extended to Karzai by the party's erstwhile members may be more than a short-term alliance." [26a] (p8)

**6.372** A Danish fact finding mission to Kabul in March/April 2004 reported that, according to UNHCR, there are small groups of Hezb-e-Islami (Hekmatyar) in Kunar province. According to the source, "Nobody knows where Hekmatyar himself is living. Some of his men work with the Taliban. In the opinion of the source, Hekmatyar's position is weak. Khalis has joined Shura-e-Nazar and various Khalis supporters work for the government." [8] (section 6.8)

**6.373** The Danish fact finding report also noted that "The ICG [International Crisis Group] was of the opinion that Hezb-e-Islami does not exist today as a political party, but could be characterized better as a loose structure of individual warlords. The source found that the Hekmatyar's faction of the Hezb-e-Islami is not regarded as an important factor in the resistance against the government, but rather as a factor of annoyance." [8] (section 6.8)

**6.374** In May 2004, Radio Free Europe/Radio Liberty reported that

"This week, a breakaway faction of the radical Islamic group Hizb-e Islami, which

has been blamed for guerrilla attacks in Afghanistan's restive south and east, announced that it wants peace and a constructive role to play in the U.S.-backed government of Hamid Karzai...Khalid Farooqi, calling himself the head of Hizb-e Islami's "decision-making body," told a news conference in Kabul on 2 May [2004] that he and others in a breakaway faction of the radical Islamic group are tired of fighting and want to contribute to the country's rebirth... Farooqi said his faction had cut all ties with Hizb-e Islami founder Hekmatyar, a former prime minister identified as a "terrorist" by Washington. He said the faction has had no contact with Hekmatyar for the last three years." [29b] (p1-2)

**6.375** On 17 July 2004, a report by the AIHRC and UNAMA on the political rights situation noted that "In Nangarhar two members of a political party have been repeatedly threatened and warned to cease their political activities by Hezbi-Islami [sic] supporters. Following these threats, one of the member's party was the target of an arson attack." [48a] (p6)

**6.376** On 14 September 2004, the Institute for War and Peace Reporting reported that

"Some 150 commanders affiliated with Hizb-i-Islami, a mujahedin political faction whose leader the US has designated a terrorist, have declared their support for President Hamed Karzai in the upcoming October presidential elections. Gulbuddin Hekmatyar, the party's leader, could not be reached for comment. He was designated a terrorist by the US State Department in February 2003 for participation in and support for terrorist acts committed by al-Qaeda and the Taleban, and is currently in hiding. It is unclear whether the commanders still retain their allegiance to the party leader, or whether their move reflects a split in Hizb-i-Islami between a moderate group who want to deal with the government and hardliners around Hekmatyar with links to the Taleban....

The commanders affiliated with the party come from all the country's ethnic groups, and from more than 20 provinces. Engineer Mohammed Nasim Mehdi in Faryab, in the north of the country, Hamidullah Danishi from Badakhshan in the northwest, General Feruzoddin from Hazarajat in the center [sic] of the country, and Hamidullah Tukhi from Zabul in the south are included in this group." [73n]

**6.377** On 22 November 2004, an article on Eurasianet noted that

"In a newly released recording, renegade warlord and former Afghan Prime Minister Gulbuddin Hekmatyar stepped up calls for Afghans to engage in jihad, or holy war, against the United States, AFP [Agence France-Presse] repo.ted on 21 November [2004]...Hekmatyar, the leader of the militant group Hizb-e Islami, urged Afghans to employ suicide attacks, which so far have been rare in Afghanistan. "If [Afghans] cannot fight in an organized front, they can risk their lives and carry out suicide guerrilla attacks, which have given great defeats to the enemy," Hekmatyar said. "We have lots of young fighters who are ready to sacrifice their lives and wealth to save the religion." [45]

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**Former Hizb-e-Islami members**

**6.378** The Danish fact finding mission of March/April 2004 reported the views of various sources on the position for people with connections to Hisb-e-Islami. According to UNHCR, ex-Hezb-e-Islami including former commanders do not have any problems with the government in Afghanistan today, if they make it clear that they are no longer working with Hekmatyar. UNHCR were reported as saying that "A number of ex-Hezb-e-Islami members occupy high positions within the government. As an example the source mentioned that Hekmatyar's former right-hand [man] currently holds a high position in the government. The present situation taken into consideration, the source found that it depends on the history of a former member of the Hezb-e-Islami whether or not he/she she risks being persecuted in Afghanistan." [8] (section 6.8)

**6.379** The Danish report also noted that

> "Hezb-e-Islami earlier had a lot of civil servants attached to his group, and the source [UNHCR] found it likely that President Karzai has decided to include such former Hezb-e-Islami officials in the government. President Karzai has among other things appointed various former supporters of the Hekmatyar as governors. The question as to whether a former member of Hezb-e-Islami risks being persecuted today, depends on the person's connection with Hekmatyar, and to what extent the person still is in conflict with powerful people in Afghanistan."

An international NGO agreed that the scope of the problems that may be experienced by people who formerly worked for Hezb-e-Islami would depend on their connections to Hekmatyar and whether or not they were currently in conflict with people in power. [8] (section 6.8)

**6.380** The Danish fact finding mission also reported that "The UNAMA mentioned a case in which a person had been arrested by the ANA and was accused of being connected with Hezb-e-Islami. The person was released because his brother was able to prove to the ANA that the person in question no longer supported the Hezb-e-Islami. The source stated that if the security forces believe that one is connected to the Hezb-e-Islami's Hekmatyar faction, one risks being arrested. There is also a risk that people will accuse others of having connections to Hekmatyar for personal motives." [8] (section 6.8)

**6.381** The Danish report also noted that

> "The CCA [Co-operation Centre for Afghanistan] confirmed that there are people connected with the government who earlier belonged to Hezb-e-Islami. The source mentioned that one of President Karzai's advisors was formerly the deputy head of Hezb-e-Islami's security forces in Peshawar. The source was of the opinion that a former member of the Hezb-e-Islami who has changed side, and who is clearly expressing his support for the government can remain in Afghanistan without being involved in problems. However, it is a pre-condition that one is no longer connected with the party. People who are currently active for the Hezb-e-Islami are considered to be at war with the current government like the Taliban supporters. They will not be able to remain in the country without encountering problems."[8] (section 6.8)

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**Al Qa'ida (Al-Qaeda)**

**6.382** Europa Regional Surveys of the World: South Asia 2005 records that Following the devastating suicide attacks on the USA on 11 September 2001, the US Government decided that it was 'at war' and began to formulate a plan of action. It soon became clear that al-Qa'ida was involved: in a pre-recorded videotape, [Osama] bin Laden himself boasted of his foreknowledge and complicity. [1] (p61) The Al Qa'ida organisation is proscribed in the UK under the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2001. [21]

**6.383** On 29 July 2004, a House of Commons Foreign Affairs Committee reported that the primary objective of the ongoing US-led Operation Enduring Freedom (OEF) was to extinguish the remaining groups of al Qaeda and other foreign fighters, and the diehard remnants of the former Taliban regime. The report noted that "Coalition forces, principally the Americans, continue their search for Osama bin Laden in the border area between Afghanistan and Pakistan." [53] (p72)

**Persons in conflict with present power brokers**

**6.384** The Danish fact finding mission to Kabul in March/April 2004 reported in November 2004 that

> "The UNHCR found that Kabul is not a safe place if a person has been involved in a serious conflict with General Dostum or with any other powerful warlord. The source was of the opinion that individuals can do very little to hide from the warlords or from the local commanders. The source pointed out that President Karzai is close to General Dostum. The government is not in a position to offer any form of protection against warlords or local commanders. The source stated that a conflict in which a person was guilty of attacking the honour or reputation of a warlord should be regarded as serious. The UNHCR explained that the situation for people involved in past conflicts with persons from the Northern Alliance will depend upon the specific area the person concerned will return to, and what kind of conflict." [8] (section 6.6)

**6.385** The Danish report also noted that

> "The CCA found that it is not certain that people in Kabul will have problems with General Dostum if it concerns minor conflicts. As an example, they mentioned that the Kabul magazine "Rozana" had written about the situation of women in General Dostum's territory without getting problems. The source was of the opinion that a similar publication in the areas controlled by General Dostum himself could not have taken place." [8] (section 6.6.3)

**6.386** The Danish report also noted that, according to the CCA, people who have been involved in conflicts with Jamiat-e-Islami would have problems in Afghanistan today. The report noted that

> "The problems depend on the profile of the person and the character of the conflict. The organization further explained that the question as to whether a person who

has previously been in involved [sic] in conflicts with people from Shura-e-Nazar will continue to have problems if he returns to Afghanistan, will depend on the type of the conflict, the importance of the person concerned and the other person involved in the conflict. At the same time it depends upon where too [sic] one returns. As an example the source mentioned that if one is involved in a ten-year-old conflict with a single man from the countryside, and returns to Kabul, it is not likely that one will get any problems. If one has any problems with powerful individuals within Shura-e-Nazar one runs, according to the organization, the risk of being persecuted in Afghanistan as the situation is today." [8] (section 6.6.1)

**6.387** Regarding people in conflict with Hezb-e-Wahdat, the Danish report noted that

"The UNHCR was of the opinion that it can be difficult to return to Afghanistan for persons in conflicts with Hezb-e-Wahdat commanders. People can be persecuted if they return to areas where they are in conflict with the local commander. The UNAMA found that it is not possible finding an internal flight alternative, if a person has serious conflicts with one of the two Hezb-e-Wahdat factions.

The CCA mentioned that there are several powerful people in the government belonging to Hezb-e-Wahdat. The CCA was of the opinion that there has been a softening in the fights between the two Hezb-e-Wahdat factions, and that old conflicts no longer are of the same importance. The source found that the question as to whether a person still has something to fear in Afghanistan if he has been in conflict with one of the two Hezb-e-Wahdat factions depends on the person's position, the character of the problem and where to he wants to return. Such a person would have a better chance avoiding problems in Kabul than in the provinces." [8] (section 6.6.2)

(See also UNHCR and ECRE guidelines paragraphs 6.22 - 6.23)

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**Documents and registration of births and marriages**

**6.388** The USSD 2004 noted that "The passport law requires women to obtain permission from a male family member before having a passport application processed." [2d] (section 2d)

**6.389** The Danish fact finding mission of March/April 2004 noted that, according to the Ministry of Interior (MoI),

"The applicant has to submit his request for a passport in person. The applicant should at the same time prove his identity, for example by showing an identity card. If the applicant is not in possession of such documentation, his identity can be established by other means among other things by conducting a personal interview. In order to have an Afghan national passport extended it is necessary to appear in person. According to the source a male Afghan citizen can have his wife and children up to age of 14 registered in his passport without his wife having to appear at the passport office to sign the passport. However, pictures of wife and children have to be submitted." [8] (section 8.1)

**6.390** The same Danish report noted that

"According to the Ministry of the Interior, the provincial authorities have the authority to issue national passports. Police headquarters have passport departments. The validity for such passports is one or two years depending on the period requested.... When issuing a passport the applicant has to pay a fee of 1,160 Afghanis (approximately US $ 20-22) per year the passport is valid. According to the Ministry of the Interior all Afghan embassies and consulates have the authority to issue passports for Afghan citizens. One has to appear in person to be identified at the representative office abroad in order to have a passport issued. However the source informed that the Afghan authorities consider the identity determined if a government, e.g. the Danish government, forwards passports to the Afghan representative office abroad.

The Afghan authorities have begun to register all passports that are being issued. The serial number, photograph and fingerprint are noted in a book. In this way, it is possible to verify whether a passport has actually been issued to the person holding it. The Ministry of Interior was of the opinion that many citizens from Afghanistan's neighbouring countries have illegally been issued an Afghan national passport. This applies to people from Pakistan, Iran, Uzbekistan and Tadjikistan [Tajikistan]. This has happened because it has not been possible to check the identity of the applicants." [8] (section 8.1)

**6.391** The Danish report also noted that "The Ministry for the Interior informed that there are very few Afghans who have a marriage certificate and that in general such certificates are not issued at all outside large towns. The source pointed to the fact that there does not exist systematic registration of marriages making it impossible to check whether or not two Afghan citizens are in fact married to one another. The Vice Minister for Women's Affairs mentioned in this connection that in Afghanistan there is a lack of offices where marriages can be registered." An international NGO agreed that very few couples possess a marriage certificate. According to the source only about 25-30% of all couples in Kabul possess a marriage certificate and outside Kabul only 10% of married couples have one. [8] (section 8.2)

**6.392** The Danish report continued

"Both the Ministry of the Interior and the international NGO said that a marriage certificate can be issued after the marriage. In such cases one should approach the court where a form has to be filled in. It is necessary to go to the court accompanied by persons who can testify being witnesses to the marriage, e.g. the witnesses who took part in the marriage ceremony, or the families of the partners. The Ministry of the Interior explained furthermore that the Afghan representations abroad are not in principle authorized to issue proofs of marriage, because they cannot check whether or not the couple is married. If embassies issue such proofs, this is more an expression of goodwill than a proper confirmation in the legal sense." [8] (section 8.2)

**6.393** The Afghan Ministry of Interior has produced a Project Document for Birth Registration of All Children under 5. The undated document shows that the timescale for the registration of children under 5 is April 2004 to March 2005 and

states that

> "Afghanistan has a legal provision for birth registration, but 23 years of war and fractured social and public administration system has led the system to fall into disuse. No formal birth registration mechanism existed except for certification of birth by the person / institution who assisted in the delivery of the child. Previous data on the Multiple Indicator Cluster survey in 2000 showed that only 2 percent of children under five years of age in the south-eastern region and 18 percent of children in the Eastern region had birth certificates before the recent campaign conducted for under 1s during 2003." [10]

(See also Section 5 Citizenship and Nationality paragraph 5.16 for information on ID cards)

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# ANNEX A: CHRONOLOGY

**[25b]**

1919 - Afghanistan regains independence after third war against British forces trying to bring country under their sphere of influence.

1926 - Amanullah proclaims himself king and attempts to introduce social reforms leading to opposition from conservative forces. [NB. Europa records that Amanullah succeeded his father, Habibullah, after Habibullah's assassination in 1919.] [1] (p53))

1929 - Amanullah flees after civil unrest over his reforms.

1933 - Zahir Shah becomes king and Afghanistan remains a monarchy for next four decades.

1953 - General Mohammed Daud becomes prime minister. Turns to Soviet Union for economic and military assistance. Introduces a number of social reforms, such as abolition of purdah (practice of secluding women from public view).

1963 - Mohammed Daud forced to resign as prime minister.

1964 - Constitutional monarchy introduced - but leads to political polarisation and power struggles.

1973 - Mohammed Daud seizes power in a coup and declares a republic. Tries to play off USSR against Western powers. His style alienates left-wing factions who join forces against him.

1978 - General Daud is overthrown and killed in a coup by leftist People's Democratic Party. But party's Khalq and Parcham factions fall out, leading to purging or exile of most Parcham leaders. At the same time, conservative Islamic and ethnic leaders who objected to social changes begin armed revolt in countryside.

1979 - Power struggle between leftist leaders Hafizullah Amin and Nur Mohammed

Taraki in Kabul won by Amin. Revolts in countryside continue and Afghan army faces collapse. Soviet Union finally sends in troops to help remove Amin, who is executed.

1980 - Babrak Karmal, leader of the People's Democratic Party Parcham faction, is installed as ruler, backed by Soviet troops. But anti-regime resistance intensifies with various mujahedin groups fighting Soviet forces. US, Pakistan, China, Iran and Saudi Arabia supply money and arms.

1985 - Mujahedin come together in Pakistan to form alliance against Soviet forces. Half of Afghan population now estimated to be displaced by war, with many fleeing to neighbouring Iran or Pakistan. New Soviet leader Mikhail Gorbachev says he will withdraw troops from Afghanistan.

1986 - US begins supplying mujahedin with Stinger missiles, enabling them to shoot down Soviet helicopter gunships. Babrak Karmal replaced by Najibullah as head of Soviet-backed regime.

1988 - Afghanistan, USSR, the US and Pakistan sign peace accords and Soviet Union begins pulling out troops.

1989 - Last Soviet troops leave, but civil war continues as mujahedin push to overthrow Najibullah.

1991 - US and USSR agree to end military aid to both sides.

1992 - Resistance closes in on Kabul and Najibullah falls from power. Rival militias vie for influence.

1993 - Mujahideen factions agree on formation of a government with ethnic Tajik, Burhanuddin Rabbani, proclaimed president.

1994 - Factional contests continue and the Pashtun-dominated Taleban emerge as major challenge to the Rabbani government.

1996 - Taleban seize control of Kabul and introduce hardline version of Islam, banning women from work, and introducing Islamic punishments, which include stoning to death and amputations. Rabbani flees to join anti-Taleban northern alliance.

1997 - Taleban recognised as legitimate rulers by Pakistan and Saudi Arabia. Most other countries continue to regard Rabbani as head of state. Taleban now control about two-thirds of country.

1998 - Earthquakes kill thousands of people. US launches missile strikes at suspected bases of militant Osama bin Laden, accused of bombing US embassies in Africa.

1999 - UN imposes an air embargo and financial sanctions to force Afghanistan to hand over Osama bin Laden for trial.

2001 January - UN imposes further sanctions on Taleban to force them to hand over Osama bin Laden.

2001 March - Taleban blow up giant Buddha statues in defiance of international efforts to save them.

2001 April - Mullah Mohammad Rabbani, the second most powerful Taleban leader after the supreme commander, Mullah Mohammad Omar, dies of liver cancer.

2001 May - Taleban order religious minorities to wear tags identifying themselves as non-Muslims, and Hindu women to veil themselves like other Afghan women.

2001 September - Eight foreign aid workers on trial in the Supreme Court for promoting Christianity. This follows months of tension between Taleban and aid agencies.

2001 - Ahmad Shah Masood, legendary guerrilla and leader of the main opposition to the Taleban, is killed, apparently by assassins posing as journalists.

2001 October - USA, Britain launch air strikes against Afghanistan after Taleban refuse to hand over Osama bin Laden, held responsible for the September 11 attacks on America.

2001 November - Opposition forces seize Mazar-e Sharif and within days march into Kabul and other key cities.

Taleban falls

2001 5 December - Afghan groups agree deal in Bonn for interim government.

2001 7 December - Taleban finally give up last stronghold of Kandahar, but Mullah Omar remains at large.

2001 22 December - Pashtun royalist Hamid Karzai is sworn in as head of a 30-member interim power-sharing government.

2002 January - First contingent of foreign peacekeepers in place.

2002 April - Former king Zahir Shah returns, but says he makes no claim to the throne.

2002 May - UN Security Council extends mandate of International Security Assistance Force (Isaf) until December 2002.

Allied forces continue their military campaign to find remnants of al-Qaeda and Taleban forces in the south-east.

2002 June - Loya Jirga, or grand council, elects Hamid Karzai as interim head of state. Karzai picks members of his administration which is to serve until 2004.

2002 July - Vice-President Haji Abdul Qadir is assassinated by gunmen in Kabul.

US air raid in Uruzgan province kills 48 civilians, many of them members of a wedding party.

2002 September - Karzai narrowly escapes an assassination attempt in Kandahar, his home town.

2002 December - President Karzai and Pakistani, Turkmen leaders sign agreement paving way for construction of gas pipeline through Afghanistan, carrying Turkmen gas to Pakistan.

Asian Development Bank resumes lending to Afghanistan after 23-year gap.

2003 June - Clashes between Taleban fighters and government forces in Kandahar province leave 49 people dead.

2003 August - Nato takes control of security in Kabul. It is the organisation's first operational commitment outside Europe in its history.

2004 January - Grand assembly - or Loya Jirga - adopts new constitution which provides for strong presidency.

2004 March - Afghanistan secures $8.2bn (£4.5bn) in aid over three years.

2004 April - Fighting in northwest between regional commander and provincial governor allied to government.

Twenty people, including two aid workers and a police chief, are killed in incidents in the south. Taleban militants are suspected.

First execution since the fall of the Taleban is carried out.

2004 June - Eleven Chinese construction workers killed by gunmen in Kunduz.

2004 September - Rocket fired at helicopter carrying President Karzai misses its target; it is the most serious attempt on his life since September 2002.

2004 October/November - Presidential elections: Hamid Karzai is declared the winner, with 55% of the vote. He is sworn in, amid tight security, in December.

## ANNEX B: POLITICAL ORGANISATIONS AND OTHER GROUPS

In September 2003 a new law allowing the formation of political parties was passed. Source Europa: South Asia 2005 [1] (p80)

**Registered Political Parties (at July 2004)** Source [1] (p80) unless otherwise stated.

**Afghan Mellat Party (Afghan Social Democratic Party).** President: Dr Anwar-ul-Haq Ahady.

**Afghan National Solidarity Movement**. Kabul. Chair: Pir Sayed Ishaq Gailani.

**Harakat-i Islami i Afghanistan (Islamic Movement of Afghanistan**). Kabul. Leader: Mohammad Asif Mohseni.

**Hizb-i Adalat-i Islami Afghanistan (Islamic Justice Party of Afghanistan).** Kabul; Formed 2004; Leader: Mohammad Kabir Marzban.

**Hizb-i Afghanistan-i-Wahid (United Afghanistan Party).** Kabul; Leader: Mohammad Wasil Rahimi.

**Hizb-i Hambastagi-yi Melli-yi Jawanan-i Afghanistan (National Solidarity Youth Party of Afghanistan).** Kabul; Formed 2004; Leader: Mohammad Jamil Karzai.

**Hizb-i Harak-i-Islami Mardum-i Afghanistan (Islamic Movement Party of the People of Afghanistan)**: Kabul; Formed 2004; Leader: Syed Hussain Anwari.

**Hizb-I Harakat-I-Melli Wahdat-I-Afghanistan (National Movement for the Unity of Afghanistan):** Kabul; Formed 2004; Chair: Mohammad Nadir Atash.

**Hizb-i Isteqlal-i Islami-yi Afghanistan (Islamic Independence Party of Afghanistan):** Kabul; Formed 2004; Leader: Dr Ghulam Farooq Najrabi.

**Hizb-i Jomhorikhahan (Republican Party of Afghanistan):** Kabul; Formed 2003; supporter of presidential system of government; Leader: Sebghatullah Sangar; c. 35,000 members.

**Hizb-i Melli Afghanistan (National Party of Afghanistan);** Kabul; Leader: Abdul Rashid Aryan.

**Hizb-i Muttahid-i Melli (Party of National Unity)**: Kabul; Formed 2003 by members of the former communist People's Democratic Party of Afghanistan (PDPA); proscribed until 2004; Leader Abdul Rashid Jalill.

**Hizb-i Rifah-i Mardum-i Afghanistan (Party of Welfare of the People of Afghanistan):** Kabul; Formed 2004; Leader: Miagul Wasiq.

**Hizb-i Sahadat-i Mardum-i-Afghanistan (Welfare Popular Party of Afghanistan):** Kabul; Leader: Mohammad Zubair Feroze.

**Hizb-i Wahdat-i Islami Afghanistan (Islamic Unity Party of Afghanistan):** Kabul; Leader: Mohammad Karim Khalili [Hazara]. [1] Mr. Khalili is the second vice president in the present government inaugurated December 2004. [67]

**Hizb-i Wahdat-i Islami Mardum-i Afghanistan (People's Islamic Unity Party of Afghanistan):** Kabul; represents Hazaras; Leader: Ustad Haji Mohammad Mohaqiq.

[1] Mr. Mohaqeeq [Mohaqiq] was Minister of Planning and one of the five Vice-Chairmen in the Interim Administration of Afghanistan. [11j] Mr. Mohaqeeq [Mohaqiq] held the position of Minister of Planning in the ITAA until 7 March 2004. [26a] (p9) He came third in the presidential election in October 2004. [74]

**Junbesh-i Wahadat-i Melli (Afghan National Unity Movement):** Kabul; Formed 2003; royalist; Chair: Sultan Mahmoud Ghazi.

**Labour and Expansion Party of Afghanistan**: Kabul; previously known as the National Reconciliation Party; Leader Zulfiqar.

**Mahaz-i-Melli-i-Islami (National Islamic Front):** Pashtun; Leader Pir Sayed Ahmad Gailani; Deputy Leader: Hamed Gailani; c. 15,000 supporters.

**Majma'-i Milli Afghanistan (National Congress of Afghanistan)**: Kabul; Formed 2004; Leader Abdul Latif Padram.

**Movement for Democracy and Freedom in Afghanistan:** Kabul; Formed 2004; Leader Javed Kohistani.

**Nizat-I-Milli**: Kabul; Formed 2002; Leader Younis Qanooni.

**Party of National Unity of Muslim Tribes of Afghanistan**: Kabul; Leader Mohammad Shah Khogiani.

**Unregistered Political Parties (at July 2004)** [1] (p80)

Europa 2005 records that most of the following are unregistered political parties:

**Hizb-e Islami Gulbuddin [or Hizb-e Islami Hekmatyar] (NB. Spellings differ eg Hezb-e Islami/Hisb-i Islami/Hisb-e Islami)**
Pashtun/Turkmen/Tajik; Leader: Gulbuddin Hekmatyar. c. 50,000 supporters (estimate); based in Iran 1998-99 [1] Founded in the Seventies and reached the height of its power in 1992 when the Soviet-backed government of President Najibullah fell to a coalition of mujahedin factions, including Hizb-i-Islami. Hekmatyar served as prime minister in 1995. [73n] Hekmatyar was designated a terrorist by the US State Department in February 2003 for participation in and support for terrorist acts committed by al-Qaeda and the Taleban, and is currently in hiding. [73n] See also section on Hisb-e Islami for more information.

**Hizb-e Islami Khalis (Islamic Party Khalis):** Pashtun; Leader: Maulvi Muhammed Younis Khalis. c. 40,000 supporters [1]

(See also Hisb-e Islami paragraphs 6.368 – 6.377)

**Ittihad -i Islami Bara i Azadi Afghanistan (Islamic Union for the Liberation of Afghanistan):** Pashtun; Leader: Prof. Abdul Rasul Sayef [Sayyaf]; Deputy leader: Ahmad Shah Ahmadzay; c. 18,000 supporters. [1] The International Crisis Group (ICG) reported in February 2005 that the party believes it will be registered in time for the

parliamentary election in return for their recent progress towards DDR, even though they have yet to comply fully. [26b] (section IIIA)

**Jamiat-i Islami (Islamic Society):** Turkmen/Uzbek/Tajik; Leaders: Prof. Burhanuddin Rabbani, Marshal Muhammad Fahim; Sec.-Gen: Enayatollah Shadab; c. 60,000 supporters. [1] Predominantly Tajik and dominated by Dari (Persian) speakers; founded in 1973; significant player Ahmed Shah Massoud [Assassinated September 2001], who was heading a prominent group and party, the "Shura-e-Nazar"; another key player is Ismail Khan [former governor of Herat and current Minister for Energy]. [11i] The ICG reported in February 2005 that the party believes it will be registered in time for the parliamentary election in return for their recent progress towards DDR, even though they have yet to comply fully. [26b] (section IIIA)

**Jebha-i-Nejat-i-Melli (National Liberation Front):** Pashtun; Leader: Prof. Hazrat Sibghatullah Mojaddedi; Sec.-Gen. Zabihollah Mojaddedi; c.15,000 supporters.

**Junbesh-i Melli-i Islami [Jombesh-e Melli Islami] (National Islamic Movement):** Formed 1992 mainly from troops of former Northern Command of the Afghan army; predominantly Uzbek/Tajik/ Turkmen/Ismaili and Hazara Shi'a; Leader: General Abdul Rashid Dostam [Dostum]; 65,000-150,000 supporters. [1] The ICG reported in February 2005 that the party believes it will be registered in time for the parliamentary election in return for their recent progress towards DDR, even though they have yet to comply fully. [26b] (section IIIA)

**Renaissance Party of the People of Afghanistan:** Kabul; Formed 2003; Chair: Sayed Zaher Qaid Omulbeladi.

**Taliban:** Emerged in 1994; Islamist fundamentalist; mainly Sunni Pashtuns; in power 1996 – 2001; largely disbanded; Leader: Mullah Mohammad Omar. [1] The core of the Taliban were educated in Pakistan in madrassas (religious schools) that adhere to the Deobandi orthodox legal and state doctrine and promote 'taqlid', the obedience to the Koran in its original letter. [11i]

(See also Taliban paragraphs 6.341 – 6.359)

**Other Groups**

**Khudamul Furqan Jamiat (KFJ) - Servants Society of Furqan (Koran)**
Pashtun; Formed in December 2001 by several officials of the defeated Taliban, including their envoy to the United Nations. Headed by Ahmad Amin Mujaddidi, a spiritual figure widely respected in Afghanistan. [12]

**Northern Alliance**
Europa records that the Northern Alliance (NA) was an anti-Taliban coalition formed in 1996 by Ahmed Shah Masoud [Masood], General Dostam [Dostum] of Uzbek origin [Jonbesh-e-Melli-e-Islami], and the Hazara leader, Gen. Karim Khalili [Hizb-i-Wahdat] under the presidency of Burhanuddin Rabbani. The NA was expanded and strengthened in June 1997 and restyled as the United Islamic Front for the Salvation of Afghanistan (commonly known as the Northern Alliance or United Front. Following

the terrorist attacks on the US on 11 September 2001, US-led coalition forces strengthened and assisted the NA, resulting in the defeat of the Taliban. [1] (p60-61)

(See also UIFSA below.)

**People's Democratic Party of Afghanistan (PDPA)**
The PDPA was founded in 1965 and split in to two factions in 1967: Khalq (The People), led by Nur Mohammed Taraki and Hafizullah Amin and Parcham (The Banner), led by Babrak Kamal. Khalq was more rural-based, mostly comprising of members of the Pashtun tribes. Parcham was more urban oriented and was dominated by Dari speakers. In 1977, the two factions reunited under Soviet pressure. In 1988 the name of the party was changed to Watan (Homeland) Party. The PDPA based government collapsed in 1992 when, following the Peshawar Accords, Mujaheddin troops entered Kabul and the last President of a 'communist' government in Afghanistan, Mohammed Najibullah (previously head of the secret service Khad) had to seek refuge in a UN-building in Kabul where he stayed until he was killed by Taliban troops entering Kabul in September 1996. [11]

**Revolutionary Association of the Women of Afghanistan (RAWA):** The RAWA website, accessed in February and March 2005, advised that

> "RAWA, the Revolutionary Association of the Women of Afghanistan, was established in Kabul, Afghanistan, in 1977 as an independent political/social organization of Afghan women fighting for human rights and for social justice in Afghanistan. The founders were a number of Afghan woman intellectuals under the sagacious leadership of Meena who in 1987 was assassinated in Quetta, Pakistan, by Afghan agents of the then KGB in connivance with fundamentalist band of Gulbuddin Hekmatyar. RAWA's objective was to involve an increasing number of Afghan women in social and political activities aimed at acquiring women's human rights and contributing to the struggle for the establishment of a government based on democratic and secular values in Afghanistan." [49]

On 25 August 2004, Women's Web reported that membership of RAWA was 2,000 with at least as many male supporters including husbands, relatives and friends.

> "RAWA is strongly political but also active in assisting the most needy, especially women and children and runs many lifesaving programmes: health care, orphanages, small business programmes for widows and prostitutes and the like... They have conscientiously documented and photographed instances of abuse and put them into the public arena. They are well known, even though they are under cover. They put out many political publications. They have their 'Payam-e-Zan' or Women's Message' magazine which is a very strong political analysis of what is happening and a clear statement of the direction they want for the future of Afghanistan. They are very strongly outspoken against the Taliban and fundamentalist warlords who have been responsible for the enormous amount of violence against women and men. They regularly organise political demonstrations in Pakistan, despite the risk. In Afghanistan it would be much too dangerous: a women's only organisation, a publicly outspoken one at that, is completely outrageous in a conservative environment like Afghanistan. They don't use their own names - they don't even know the names of other members, for

security reasons. If anyone is caught they can't give information about anyone else. They have no headquarters and no landline phone." [56]

**Shura-e-Mashriqi (Council of the East)**: Regrouping of former pre-Taliban members of the Shura of Jalalabad under the leadership of the previous governor Haji Abdul Qadir, reported to be operating in Laghman and Kunar provinces with changing alliances of local commanders. Haji Abdul Qadeer was the governor of Nangarhar province during the Interim Administration and he was appointed Vice-President and Minister of Public Works in the ITAA. He was assassinated in Kabul on 6 July 2002. [11i]

**Shura-yi Nazar:** Originally a military coordination council established by Jamiat-e Islami commander Ahmad Shah Massoud, Shura-yi Nazar now refers to a more amorphous network of mainly Tajik military and political figures. [26b] (section IIA)

**United National Islamic Front for the Salvation of Afghanistan (UIFSA)** - commonly known as the **Northern Alliance** or **United Front**
An anti-Taliban coalition which superseded the Supreme Council for the Defence of Afghanistan in June 1997. [1] (p60) Reported to include the groups of the Northern Alliance (see above) plus the forces of Gulbuddin Hekmatyar (Hizb-e Islami – Gulbuddin) Harakat-e Islami (Islamic Movement of Mohammed Asif Mohseni), Ittihad-i-Islami Barai Azadi Afghanistan (Islamic Union for the Liberation of Afghanistan, of Abdul Rasul Sayaf). [85] (p82)

# ANNEX C: PROMINENT PEOPLE

**ALI Hazrat**
The British Agencies Afghanistan Group (BAAG) reported in July 2004 that Hazrat Ali (a close ally of Jamiat-i-Islami) had been appointed Security Commander for Nangarhar Province by President Karzai on 20 July 2004 and his position as a powerful regional power-holder had been strengthened and legitimised through the appointment. [71c] (p7) Human Rights Watch (HRW) noted in September 2004 that Hazrat Ali was one of the military commanders having de facto control of the eastern provinces of Nangahar and Laghman, including Nangahar's capital, Jalalabad (another commander in the same area is Haji Zahir). HRW noted that Hazrat Ali and Haji Zahir's commanders operate criminal enterprises and continue to engage in numerous human rights abuses, including the seizure of land and other property, kidnapping civilians for ransom and extorting money. Their forces have also been involved in political abuses, including past threats against Loya Jirga candidates and purchasing of votes. [17i] (p16)

**BALKHI Sediqa**
Appointed Minister of Martyrs and Disabled in the December 2004 cabinet. [67] A profile on the Embassy of Afghanistan web site in January 2005 noted that she is the daughter of Sayed Ismaeelm and was born in 1946 in a religious and educated family. She holds a bachelors degree in Islamic Studies. "She also followed religious studies in Iran. Besides teaching and working as a manager, she was involved in fighting the Soviet invasion through publishing articles and holding seminars. She has made endeavors for providing the young generation of Afghan refugees with education and

providing the vulnerable women and girls with business skills." [83]

**DOSTUM (General) Abdul Rashid**
BBC News recorded on 23 December 2004 that "The Uzbek general was one of the most high profile candidates to challenge President Karzai [in the October 2004 presidential election]. A former warlord based in northern Afghanistan, Dostum heads the Jombesh-e Melli Islami (National Islamic Movement), a predominantly Uzbek militia faction. The veteran of many wars, he has displayed an uncanny ability to switch sides and stay on the right side of those in power. Since the fall of the Taleban his forces have been involved in a bloody fight for territorial supremacy with another powerful northern commander, the Tajik general, Atta Mohammad." [25y] Reuters reported on 1 March 2005 that Dostum had come fourth in the presidential elections. He was appointed President Karzai's personal military chief of staff on 1 March 2005. [24b]

**HEKMATYAR (Engineer) Gulbuddin [also spelt 'Hikmatyar']**
On 23 December 2004, BBC News recorded that "Leader of the Hezb-e Islami, Hekmatyar is a warlord who is in hiding - evading American forces - and is believed to be somewhere along the Afghan-Pakistan border. He is opposed to President Karzai and the US forces in Afghanistan and is blamed for carrying out several major attacks in the country. Last year [2003] the US labelled him a terrorist. Hekmatyar's Hizb-e-Islami was the strongest force during the years of Soviet occupation. This was largely because his party was the main benefactor of the seven official Mujahideen groups recognised by Pakistan and US intelligence agencies for the channelling of money and arms. He later joined forces with General Dostum because he felt his power had been slighted by the Mujahideen administration which ran the country from 1992 to 1996. His bombardment of the capital in 1994 is said to have resulted in the deaths of more than 25,000 civilians." [25y] Hekmatyar renewed his call for jihad against the US in November 2004. [45]

(See also Hizb-e-Islami paragraphs 6.368 – 6.377)

**JALAL Masooda**
BBC News recorded on 23 December 2004 that "The only female candidate in the October presidential elections, Dr Jalal was the subject of much media attention. A qualified paediatrician from Kabul, she was treating children when the Taleban came to power in 1996 and forbade women from work. Ms Jalal made her presence felt when she challenged President Karzai in the first loya jirga (grand council) after the Taleban were ousted. She was appointed minister for women's affairs in December 2004." [25y]

**KHAN Mohammed Fahim (Marshal Mohammad Qasem Fahim)**
BBC News recorded on 23 December 2004 that "He was head of intelligence of the Northern Alliance and replacement to General Ahmad Shah Masood, who was assassinated shortly before the 11 September [2001] attacks on the US. Held the powerful post of defence minister in Mr Karzai's interim administration, but has now been removed from the cabinet." [25y] The Kabul newspaper, Erada, reported on 29 January 2005 that following his removal from the cabinet Fahim had been given the rank of marshal and a few token privileges. "Marshal is a senior government rank. A marshal, just like a president or a king, has the right to participate in all official

ceremonies. In the past the rank included the privileges of having a few hundred jeribs of land [one jerib is 1,936 sq.m.], a salary, a special vehicle and house security. The marshal enjoyed legal and judicial protection. Now the privilege of land has been removed, but all other privileges have been retained." Some believe that his present status is symbolic and he has completely lost his military power. "Division No 2 of Jabalosaraj [district of Parwan Province north of Kabul] and Division No 6 which were under his command have been disarmed." Others believe that, as a prominent member of Jamiat-i Islami and a fighter who struggled for his country and people, his moral influence and social status cannot be reduced or damaged. It was also reported that analysts said Fahim intended to stand in the parliamentary elections to enter the political stage once again. [79a]

**KARZAI Hamid**

On 23 December 2004, BBC News recorded that "Hamid Karzai, who was sworn in as Afghanistan's first elected president in December 2004, is a powerful Pashtun leader from Kandahar. A charismatic and stylish member of the influential Popolzai tribe, he has built up a considerable international profile, especially in the West and is backed by the United States. But some at home view his closeness to America with suspicion and distrust. He initially supported the Taleban but hardened against them after the assassination of his father, a former politician, for which the Taleban was widely blamed." [25y]

**KHALILI (General) Abdol Karim**

Hazara; Represented the Hizb-i-Wahdat (anti-Taliban faction) in the ITAA (one of the Vice Presidents) [11f] Mr. Khalili is the second vice president in the present government inaugurated December 2004. [67]

**KHAN Ismail**

Tajik [25y] On 9 December 2004, IWPR noted that Ismail Khan was a major figure in Jamiat-e-Islami and was ruler of the western city of Herat, which he ran as a private fiefdom for many years. He was dismissed from his position as formal governor in September 2004. "Once known by the less exalted title of Captain Ismail - he was a junior Afghan army officer when the jihad against Soviet occupation began - Ismail Khan took power in the western provinces of Herat, Ghor, Farah and Nimroz after the collapse of the Russian-backed government of Najibullah and awarded himself the title of Amir. Imprisoned by the Taleban for three years, he escaped and eventually regained control of his traditional stronghold. He maintained a distance from Karzai's interim administration, and particularly irked Kabul by holding on to the substantial customs revenues earned on the border with Iran." [73d] Appointed Minister of Energy in new cabinet of December 2004. [67]

**MASOUD [MASSOOD] (General) Ahmed Shah**

Tajik. Commander allied to Jamiat-i-Islami. [85] BBC News recorded on 8 September 2004 that "Commander Masood [Masoud] - known as the Lion of the Panjshir - was killed three years ago in a suicide bomb attack by two men posing as journalists. That attack - just before the 11 September [2001] bombings in the United States - was subsequently blamed on al-Qaeda and its Taleban allies. Masood remains a powerful symbol. He was famed as a military strategist during the war against the Soviet Union and gained his nom de guerre from his dogged resistance in the Panjshir valley." [25z]

**MASOUD [Massood] Ahmad Zia**
Tajik; formerly Afghanistan's ambassador to Russia and a brother of Ahmad Shah Massood [Masoud], who led the resistance to the Taliban regime until he was killed by al-Qaida terrorists on 9 September 2001 (see above). [18d] He is first vice president in the present government. [67]

**MOHAQEQ [MOHAQIQ] Haji Mohammad**
BBC News recorded on 23 December 2004 "A member of the minority ethnic Hazara community, he hails from Mazar-e-Sharif and teamed up with General Dostum and Atta Mohammad to liberate the city from the Taleban in 2001. He has considerable support among the Shia Hazaras, many of whom fought under his command." He was planning minister in the Interim administration and finished third behind Karzai and Qanuni in the presidential election but did not keep his post in the new cabinet. [25y]

**MOHAMMAD (General) Atta**
The British Agencies Afghanistan Group (BAAG) noted in July 2004 that "Atta Mohammed, the northern Jamiat-i-Islami commander who has been locked in intermittent conflict with the Uzbek leader, Rashid Dostam [Dostum] and with the Hazara party, Hisb-e-Wahdat over many years, has been made governor of Balkh Province, of which Mazar-i-Sharif is the capital." [71c] (p7) BBC News recorded on 23 December 2004 that Atta Mohammad is an arch rival of General Dostum. "Their bitter history goes back to the days of the Soviet occupation, when they fought on opposite sides. A former teacher, Atta briefly joined forces with Dostum to recapture Mazar-e-Sharif from the Taleban in 2001. For now, he remains a key regional player in Afghanistan with considerable influence."[25y]

**OMAR (Mullah) Mohammad**
Leader of the Taliban who lost his right eye fighting the occupying forces of the Soviet Union in the 1980s. Survived the US-led military action, which led to the fall of the Taliban in late 2001 and has evaded capture. [25s]

**QANOONI Yunus**
IWPR noted on 9 December 2004 that "Qanuni [Qanooni] is a prominent figure in the Tajik dominated Jamiat-e-Islami party and the Shura-e-Nezar, its Panjsher-based faction. [73d] BBC News recorded on 23 December 2004 that "A former education minister, Mr Qanuni is a leading figure in the Northern Alliance which helped the US overthrow the Taleban in 2001. In the [October 2004] election he secured the backing of the powerful defence minister, Mohammad Fahim, who was dropped by Mr Karzai as his running mate. He consequently secured a comfortable second place, but far behind Mr Karzai. Mr Qanuni will hope to use the result to bolster his ethnic Tajik constituency. However, Mr Karzai has dropped him from the cabinet in his December reshuffle." [25y]

**RABBANI Burhanuddin**
BBC News recorded on 23 December 2004 that "A former Afghan president, Mr Rabbani remains an influential Tajik figure although he is not a frontline political player. He heads the conservative Jamiat-e-Islami, which was the largest political party in the Northern Alliance that helped sweep the Taleban from power in 2001." [25y]

**SAMAR Sima**

A 2004 report by the Global Health Council noted that Sima Samar is Chair of the Afghanistan Independent Human Rights Commission. She was winner of the 2004 Jonathan Mann Award for Health and Human Rights. "Dr. Sima Samar founded and directs the Shuhada Organization, the oldest Afghan non-governmental organization (NGO) operating in the region and the largest woman-led NGO." She was the first Minister of Women's Affairs in the Transitional Administration. [6]

**SAYYAF** Abdul Rassoul
BBC News recorded on 23 December 2004 that "A former mujahideen leader, Sayyaf was a member of the constitutional loya jirga held in 2002. Leader of Islamic Union for the Liberation of Afghanistan, he was the only anti-Taleban Pashtun leader to be part of the Northern Alliance. A hardliner, he is believed to have formed his party with Saudi backing. A former professor of Islamic law Sayyaf was the neutral chairman of the first rebel alliance in 1980." [25y]

**SEDDIQI Suhaila**
A BBC News Profile recorded that Suhaila Seddiqi is a Tajik, a respected doctor and well-known former army general who lives in Kabul. She served as a surgeon in Kabul's military hospital for two decades. She never left Afghanistan and played a key role in keeping the hospital functioning through the 1990s when rocket attacks caused thousands of casualties. Even the Taleban were forced to give Seddiqi back her job after briefly removing her from the post. [25m]

**SHERZAI Gul Agha**
BBC News recorded on 23 December 2004 that "Urban minister in the interim government, this powerful Pashtun leader was governor of Kandahar from 2001 to 2003, when President Karzai moved him to the federal cabinet. Many believed the move was made to check Sherzai's growing prominence as a rival centre of power in Karzai's native Kandahar. He is still believed to command considerable loyalty among the Pashtuns in an area where the Taleban is still very popular. Within hours of the Northern Alliance taking Kabul in 2001, Sherzai led a force of men across the border from the Pakistani city of Quetta towards the city he ruled before the Taleban took power in 1994. He was dropped from the cabinet in the December 2004 reshuffle." [25y]
A Radio Free Europe/Radio Liberty report of 30 December 2004 stated that Sherzai had been appointed as a ministerial adviser and [reappointed] governor of Kandahar Province in December 2004. [29g]

## ANNEX D: List of Cabinet Ministers [57]

**President:** H.E. Hamid Karzai
**Vice Presidents:** Ahmad Zia Massoud (First)
Karim Khalili (Second)
**Commerce Minister and Senior Advisor to the President:** Hedayat Amin Arsala
**Foreign Minister:** Dr. A. Abdullah
**Defense Minister:** General Abdurrahim Wardak
**Interior Minister:** Ali Ahmad Jalali
**Finance Minister:** Anwar-ul Haq Ahadi
**Education Minister:** Noor Mohmamad Qarqin
**Borders & Tribal Affairs Minister:** Abdul Karim Brahui

**Economics Minister:** Dr. M. Amin Farhang
**Mines and Industries Minister:** Engineer Mir Mohmmad Sediq
**Women's Affairs Minister:** Dr. Masouda Jalal
**Public Health Minister:** Dr. Sayed Mohammad Amin Fatemi
**Agriculture Minister:** Obaidullah Ramin
**Justice Minister:** Sarwar Danish
**Communications Minister**: Engineer Amirzai Sangeen
**Information & Culture Minister:** Dr. Said Makhdoom Rahin
**Refugees Affairs Minister:** Dr. Azam Dadfar
**Haj and Religious Affairs Minister**: Professor Nematullah Shahrani
**Urban Affairs Minister:** Eng. Yusuf Pashtun
**Public Work Minister:** Dr. Suhrab Ali Safari
**Labor and Social Affairs Minister:** Sayed Ekramuddin Masoomi
**Energy Minister:** General Mohammad Ismael [Khan]
**Martyrs and Disabled Minister:** Sediqa Balkhi
**Higher Education Minister:** Sayed Amir Shah Hassanyar
**Transportation Minister:** Dr. Enayatullah Qasemi
**Rural Development and Rehabilitation Minister:** Hanif Atmar
**Counter-Narcotics Minister:** Habibullah Qadery
**National Security Advisor:** Dr. Zalmai Rassoul
**Supreme Court Chief Justice:** Sheikh Hadi Shinwari

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