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

Summary

The Afghanistan Compact and the Afghanistan National Development Strategy provide a positive framework for development and improvements in the enjoyment of human rights. There are serious efforts towards reform in key sectors and a number of achievements, including in the security and justice sectors. However, Afghanistan's transition is overshadowed by the armed conflict which intensified in 2006 and which poses challenges to political, social and economic achievements. Violence has taken hundreds of civilian lives, hindered much-needed delivery of development aid, created new groups of displaced and, coupled with grinding poverty and the illegitimate narcotics industry, remains the greatest challenge for Afghans. Despite some significant gains, justice reform continues to face daunting obstacles; improvements achieved by women over the last four years are overshadowed by ongoing discriminatory practices; and factional fighting between commanders continues to pose threats in some areas. Arbitrary detention is commonplace and torture continues to be reported. Impunity continues largely unabated both for past and present crimes. Many commanders against whom there are credible allegations of abuse and who control armed militia continue to hold official positions. The present report, submitted pursuant to Human Rights Council decision 2/113, contains recommendations to address the situation described.

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

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I. INTRODUCTION

1. This report is submitted pursuant to Human Rights Council decision 2/113 and has been prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA). The report is not an exhaustive account of the human rights situation in Afghanistan, but reflects the key challenges that must be addressed most urgently by the Government of Afghanistan with the support of the international community.

2. The Afghanistan Compact, which includes specific human rights benchmarks, is an important achievement following the successful completion of the Bonn Process. However, political, institutional and economic gains are under threat as growing insecurity and violence increasingly permeate the lives of many Afghans. Lack of security remains the greatest obstacle to the enjoyment of fundamental rights and freedoms. More civilian lives were lost in 2006 than during the ousting of the Taliban regime in 2001, among them government figures and humanitarian workers. The death in September 2006 of Safia Ama Jan, Head of the Kandahar Department of Women's Affairs (DoWA), was the first-ever known targeted assassination of a female government official and sets back further the cause of women in Afghanistan.

3. As affirmed in the Afghanistan Compact, insecurity cannot be overcome by military means alone. It is essential that tangible progress in social and economic development reach the people, especially vulnerable populations. Poverty is both a cause and a consequence of insecurity; it feeds recruitment for the insurgency from among many Afghans who experience few peace dividends and are disillusioned by the Government's performance. The delivery of basic humanitarian aid has been prevented in parts of the country and new emergencies have been created, including the displacement of some 15,000 families in southern Afghanistan following fighting in the second half of 2006.

4. In a welcome move, President Karzai launched the Action Plan on Peace, Reconciliation and Justice, which is a step towards effectively addressing the legacy of past armed conflict. Continuing political support by the President and the Government is required if the Action Plan is to be implemented.

5. I commend the Government for its efforts to tackle justice and security sector reform, but more progress is needed to ensure that international human rights standards are upheld. Long-term international commitment to Afghanistan must continue if respect for human rights is to become institutionalized.

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

6. Afghanistan is currently at a crossroads, with frustration at the lack of real improvements in human security manifesting itself among the population. Grinding poverty is one of the greatest challenges currently facing Afghans. It is more widespread in some provinces than others, and the groups most affected are women, children, the disabled, the elderly and the landless. Disparities are considerable between men and women as well as between urban and remote rural areas. Social indicators are very weak with life expectancy under 47 years, a 72 per cent illiteracy rate and infant mortality at 140 per 1,000 live births. One in five Afghan children dies before their fifth birthday.

7. Millions of Afghans are chronically or seasonally food insecure. Afghanistan's first Millennium Development Goal report states that 40 per cent of the rural population is unable to count on sufficient food to satisfy their most basic needs. United Nations agencies reported a harvest shortfall of up to 1.2 million tonnes in 2006 and a drought affecting up to 2.5 million people, half of whom are children. As few as 23 per cent of Afghans have access to clean drinking water and in rural Afghanistan only 1 in 10 Afghans have access to sanitation.

8. The basic needs of women and girls are still unmet. Afghanistan has the lowest female literacy rate in the world (estimated to be 10-18 per cent) and an estimated 57 per cent of females are married before their sixteenth birthday. Progress in education means that 37 per cent of girls between the ages of 7 and 12 now attend school. However, of an estimated 2 million children currently not attending school, 1.3 million are girls. This is due to an insufficient number of formal schools and qualified teachers, physical inaccessibility of schools due to security concerns and negative parental attitudes regarding girl's education. The Afghanistan Independent Human Rights Commission (AIHRC) also cites early marriage as a significant factor in the high dropout rate of girls.

9. Violence in the majority of districts in the south has had an impact on the delivery of aid and services due to restrictions placed on the movement of personnel of the United Nations, non-governmental organizations (NGOs) and the Government. Failure to deliver basic services contributes to a feeling of disillusionment with the Government. A report published by AIHRC in May 2006 concluded that the Government is failing to meet its minimum core obligations under the International Covenant on Economic, Social and Cultural Rights, to which Afghanistan is a party.

10. Despite the above, there has been important progress in a number of areas. The Government has established a development framework; it has set monitoring mechanisms in place; and it has established a crisis management group, which is addressing security concerns in the four southern provinces. Policies on irrigation, rural and urban water supply and sanitation have been drafted and there has been an expansion of the Government's Basic Package of Health Services. However, the AIHRC report shows that almost 55 per cent of the population are not using available health facilities due to difficulties of access or perceptions of poor quality care. The Ministry of Public Health concluded in 2006 that there had been a modest improvement in maternal health as a result of investment in reproductive health services, but the disparity between rural and urban areas is still enormous.

11. In terms of protection of vulnerable groups, the Government is addressing its admitted failure to mainstream social disability and social protection issues into development programmes, through an analysis of the situation of the chronically poor and a gender assessment of the design and implementation of the National Solidarity Programmes. To address one of the obstacles to girls' school attendance, the Ministry of Education is training a pool of female teachers and offering land and housing incentives to them.

12. Illegal seizure of land and insecurity of land ownership is an ongoing and widely reported problem. Multiple land claims and resulting feuds continue to generate fresh conflicts. The judicial system is accused of delays and frequent corruption when arbitrating disputes and validating documents and ownership deeds. In the majority of cases, traditional community dispute resolution mechanisms are preferred; disputes are settled swiftly, but not always fairly.

A policy has been drafted as one of the benchmarks of the Afghanistan National Development Strategy (ANDS) to inform the revision of the legal framework for land, taking into account aspects such as title deeds, legal definitions of property and customary modes of settling disputes. The document has been approved by the Ministries of Justice, Agriculture and Urban Development and will be presented to Parliament for adoption in the near future.

III. DISCRIMINATION

13. As reported previously, women in Afghanistan have made remarkable progress under the current Government. This includes female participation in Parliament and the public sector and the growth of women's organizations. Many development projects include a requirement of gender inclusiveness; however, progress in the realization of gender equality continues to be held back owing to discrimination, insecurity and the persistence of customary practices. Basic services such as access to education, health care and sources of income are still inaccessible while insecurity continues to dominate the lives of most women. The targeted assassination of the Head of DoWA in Kandahar on 25 September 2006 has created a sense of fear among many female government employees, particularly in southern and eastern Afghanistan. The treatment of women by the male-dominated justice sector, ongoing obstacles to the realization of civil, political, social and economic rights, and pervasive violence from segments of society are further daunting challenges.

A. Gender and criminal justice

14. Across the country, the judicial system is failing to protect and provide justice to women, who continue to face discrimination from a predominantly male judicial sector. Women and girls are incarcerated for committing moral and uncodified crimes: cases have been documented of females being imprisoned for "running away from home", arbitrarily detained and/or convicted of adultery when reporting crimes of a sexual nature; denied a fair trial and accompanying judicial guarantees; and returned to male offenders when reporting violence. Sentencing by judges of females convicted of sexual offences such as adultery is often harsh and disproportionate while male co-accused are often released or given a much lighter sentence.

15. Preliminary findings from the ongoing UNAMA and AIHRC campaign against arbitrary detention indicate a high proportion of women in prison for transgressing social and moral codes, with some facing double victimization following sexual violence. In Afghanistan's largest prison, in Kabul, almost half of the female inmates were registered as detained for "running away from home", while a significant proportion were imprisoned for "adultery". In almost all cases due process principles had been violated, including the rights to equal treatment before the law and to be prosecuted only for acts that are defined as a crime by law. Often, the women had not been sentenced or even appeared in court.

16. Customary law prevails in Afghanistan, where traditional dispute resolution mechanisms are frequently used in place of formal court systems in criminal and non-criminal cases, including disputes over marriage and land. While enjoying community support and delivering swift decisions, these mechanisms often fail to respect even the most basic human rights standards, especially as regards women and girls. A particular issue of concern is the practice of *baad*, by which girls as young as 7 years of age are given away to settle feuds and murder cases.

17. Initiatives undertaken to address the needs of women in the justice sector have moved forward slowly. A law on family violence has been drafted and submitted to the Ministry of Justice for review, and is expected to be presented to Parliament for approval in 2007. Internationally supported legal aid programmes have been extended to different parts of the country, and a small number of NGOs are providing a legal defence for female defendants. While these programmes are having a positive impact and are welcome, legal representation for the majority of women outside Kabul and a select number of provinces remains out of reach.

B. Violence against women

18. Awareness campaigns and the registration of cases of violence against women are being undertaken by a variety of United Nations agencies, international and local NGOs, and government bodies. A number of commissions have also been set up to eliminate tolerance of violence against women, but the crime remains pervasive. Underreporting is common as most women do not report violence, particularly domestic violence, for a variety of reasons: fear of reprisals, lack of support and services for victims of violence; failure to prosecute perpetrators; and intolerance on the part of the community. Moreover, reporting family violence can further jeopardize the safety of females as police officers often return the victim to the offender. As more women are becoming aware of their rights and with the presence of human rights and women's NGOs, more cases are being reported. However, poverty, tradition and insecurity are compounding the difficulties.

19. AIHRC registered 1,545 cases of violence against women from January to November 2006, including self-immolation, exchange of girls in the context of dispute settlement, forced marriages and sexual violence. Forced marriage, with 200 complaints, was the largest category. The Ministry of Women's Affairs (MoWA) recorded more than 500 cases of violence against women, including 197 cases of self-immolation in Herat Province alone. In almost all cases, the perpetrators of violence were male family members. Shelters and services to support victims are located mainly in Kabul, but most provincial authorities have been reluctant to support the removal of victims to safe locations outside the province, resulting in a continuing lack of protection.

20. Afghan laws put the legal age of marriage at 16 years of age. This is routinely violated, as girls as young as 10 are married. Two cases documented by UNAMA are emblematic of the situation: the case of a 10-year-old girl in Kunar Province whom the local authorities claimed is legally married to a 65-year-old man (following pressure from UNAMA, the Kunar provincial court detained the husband but refused to prosecute him); and in Kunduz Province, a 10-year-old girl was kidnapped, forcibly married to an adult male and taken to Pakistan (the district and provincial authorities have taken little action to locate the girl or investigate persons suspected of abducting her).

21. A number of women and girls continue to be murdered by family members through the practice of "honour killings". Reasons for the killings include the victim having been raped, or marrying a man of her own choice rather than someone chosen by her family. The State still rarely prosecutes perpetrators of such crimes. The belief is prevalent among communities that

honour killings are acceptable and that perpetrators should not be punished. In late 2006, a pregnant woman and a young man suspected of adultery were publicly executed during Eid following the issuance of a death fatwa by a local *jirga* (council) in Faryab Province. To date, the authorities have taken two individuals into custody but the perpetrators have not yet been brought to justice.

22. A Family Response Unit was established in Kabul in 2005 to allow women complaining of domestic violence and other criminal issues easy access to the police. A similar unit also exists in Herat and three were opened in Mazar-I-Sharif in 2006. The Kabul unit is staffed by female police officers who serve as the first contact for women facing violence and other crimes. Mediation between couples and families is offered and, in some instances, cases are referred for criminal investigation. The south, south-east and east remain in dire need of similar mechanisms.

23. The United Nations Development Fund for Women (UNIFEM) established a database of cases and information relating to violence against women gathered from provincial offices of MoWA, AIHRC, NGOs and United Nations agencies. The database will be transferred to MoWA in due course. UNIFEM issued a report in 2006 based on 1,327 collected and analysed cases of violence against women countrywide from 2003 to 2005 which had previously been collected by 17 organizations. AIHRC published a report in September 2006 on the situation of women and has conducted a number of seminars on violence against women for local communities, provincial and district authorities, women's organizations and clerics. MoWA has launched a long-term campaign on combating violence against women; the Inter-Ministerial Commission on the Elimination of Violence against Women is working on a protocol on the eradication of forced and child marriages; and a parliamentary commission was established on women, gender, civil society and human rights. A "National Action Plan for the Women of Afghanistan" is expected to be passed and released by Parliament in 2007. A number of United Nations organizations have been active in providing training and awareness-raising activities on violence against women, including UNAMA Human Rights Officers, UNIFEM and the United Nations Population Fund (UNFPA).

IV. ARMED CONFLICT AND VIOLENCE

24. Violence linked with armed conflict was the deadliest in 2006 since the fall of the Taliban regime in late 2001. Although centred in the four southern provinces, it occurs over large areas from Kunar in the east to Farah in the west. Parts of the southern central highlands, notably Dai Kundi and Ghor, are also becoming destabilized and prone to violence.

25. Insurgent-related attacks increased from fewer than 300 a month at the end of March 2006 to over 600 by end September 2006. (In 2005, the average number of such attacks was an estimated 130 per month.) Suicide attacks have risen dramatically - in 2005, there were 17 such attacks; in 2006, 123 incidents were recorded by the United Nations, killing 237 civilians and injuring 624. In addition, 16 international military personnel and 52 Afghan soldiers and police were killed by suicide bombing attacks. During 2006, an estimated 4,000 people were killed, of whom at least one third were civilians.

26. More than 15,000 families have been displaced from Uruzgan, Helmand and Kandahar provinces; numbers are likely to increase with the spread of fighting to other areas. Their return to their places of origin and residence is seriously hindered by ongoing fighting in the areas, intimidation and fear of being killed by Taliban insurgents, and destruction of homes and livelihoods. In addition, the void in the rule of law that accompanies conflict means that those responsible for human rights violations and abuses are not held accountable.

A. Attacks by anti-Government elements affecting civilians

27. Kandahar, Helmand and Uruzgan provinces are the epicentre of much of the violence. The Taliban claimed responsibility for the great majority of suicide attacks in Kandahar. They conducted deliberate and indiscriminate attacks against civilians, targeted high-profile government officials, humanitarian workers and private contractors, and assumed control of some districts in Helmand for a short period. Major offensives by North Atlantic Treaty Organization (NATO) forces were launched in districts of Kandahar, Kunar and Helmand and parts of the south-east. Development activities have been severely hindered in these areas, with agencies partially or completely withdrawing.

28. Fear and insecurity have been further entrenched with the distribution of letters purported to be written by the Taliban warning Afghans of deadly reprisals if they are found working for the international aid community or military forces. Seven civilians working for the United States Coalition Forces (US CF) were killed by an improvised explosive device on a minibus in June in Kandahar; 21 civilians were killed in two separate attacks in Helmand; 4 labourers working for US CF were abducted and found dead in Kunar Province; 5 family members, including 2 female teachers, were killed in their home in December in Narang District, Kunar. Unverified reports were also received of Taliban-enforced justice in a few districts in Uruzgan and Helmand. In December 2006, four Afghans were reported to have been beheaded in Panjwai District after being accused of working for international military forces.

29. I deplore all attacks targeting the civilian population or resulting in civilian deaths, injuries or disruption of civilian life, including the rights to education, to freedom of movement and residence, and to an adequate standard of living.

B. Attacks on Afghan government officials

30. Targeted assassinations of provincial and district government officials were a worrying trend in 2006. Judges, law enforcement officials, high-profile local officials and a female public figure were killed. In September, a provincial director of MoWA was assassinated in Kandahar; in October, a male member of the Provincial Council in Kandahar was killed and two attempts were made against the outgoing Governor of Helmand. In October, a suicide bomber killed the Governor of Paktia and in August, two female members of the Provincial Council in Laghman Province moved to the capital of the province following death threats from unknown sources. District administrators bore the brunt of Taliban attacks in the south-east and east and some were killed, including the district governors of Khogyiani and Gulran districts.

C. Attacks on schools

31. Schools were attacked regularly in the first half of 2006 and although the number of attacks decreased in the second half of the year, schools continued to be subjected to violence. In 2006, over 200 schools were burned, attacked or partially destroyed, at least 15 teachers were killed and some 200,000 students were affected by school closures. Local community consultations suggest that the number of closed schools is underreported. Schools all over the country have been affected. Although insurgent activity has intensified, not all violence can be attributed solely to anti-Government elements: intercommunal feuds and competition over local resource allocation are also sources of violent conflict.

32. There is no notable distinction between the targeting of girls' and boys' schools, but the impact of such attacks has nonetheless been felt more by females because there are fewer girls' schools and the greater tendency of parents to withdraw girls from education due to perceived security threats. Communities and local authorities condemned attacks and peaceful demonstrations were held in Maimana, Herat and Farah. President Karzai and the Special Rapporteur on the right to education issued condemnatory public statements after six children were killed in a school in Kunar. Communities have also established night patrols and guards.

D. Counter-insurgency operations

33. In October 2006, international forces mandated by the Security Council to support the Government came under the single command of the 38-nation International Security Assistance Force (ISAF). ISAF currently has approximately 36,000 soldiers under its command and, in addition, some 10,500 United States troops remain engaged in "Operation Enduring Freedom".

34. International military operations intensified in 2006 and a number of incidents were reported in which civilians were either mistaken for terrorists or caught in the crossfire during NATO/ISAF operations. The majority of fatalities were reported in the southern region. In May, 9 civilians were killed allegedly during a NATO/ISAF air strike in Kajaki District, Helmand; a government fact-finding mission found that 10 civilians had been killed and 27 injured in a NATO/ISAF raid on an alleged insurgent compound in Dehjwz village, near Tirin Kot, Uruzgan. Of particular concern was the protracted offensive in Zherai/Panjwai districts in which NATO/ISAF is alleged to have killed 23 civilians as part of "Operation Medusa".

35. President Karzai and the Special Representative of the Secretary-General for Afghanistan condemned civilian deaths caused by insurgents and NATO/ISAF in 2006. In December 2006, following incidents in Kandahar, UNAMA issued a public report urging NATO/ISAF and the Taliban to uphold international humanitarian and human rights law and to ensure that civilian life is protected at all times.

36. Community support for NATO/ISAF appears to have waned following forced searches of private homes, destruction of property and civilian deaths attributed to United States forces and NATO/ISAF. In December 2006 in Mandozai District, Khost Province, five members of a prominent family were killed, leading to community demonstrations against international forces.

Warning shots by NATO/ISAF forces have killed and injured civilians when their vehicles strayed too close to military convoys. In two separate incidents in December, a 7-year-old boy and a 70-year-old man were killed after the vehicles they were travelling in failed to heed NATO/ISAF warnings to stop.

37. A number of measures to limit civilian deaths have been implemented by the Government and NATO/ISAF. A radio announcement has been aired in Kandahar requesting civilians to stay away from NATO/ISAF patrols, the Government has produced and aired radio clips on the same subject, and warning signals have been prominently posted on the back of international military convoys. At the end of 2006, NATO issued a statement that civilian casualties were its single biggest failure in 2006 and that additional measures to reduce them would be taken. I welcome this commitment.

V. IMPUNITY

Transitional justice

38. The deterioration in the security situation during 2006 has limited the space for transitional justice activities. The failure to prevent known human rights abusers standing for and winning parliamentary seats, together with the continued practice of appointing individuals suspected of human rights violations to senior positions in Government, has reinforced the de facto state of impunity.

39. These problems, and delays in promulgating it make the full implementation of the Government's Action Plan on Reconciliation, Peace and Justice within the three-year time frame unlikely. Nevertheless, important steps have been taken. On 10 December, Human Rights Day, President Karzai publicly launched the Action Plan and declared that 10 December would be a National Day of Remembrance for victims and that a memorial to them would be built at Pul-I-Charkhi prison near Kabul.

40. As an illustration of the sensitive environment, a press release by Human Rights Watch in the wake of the President's launch of the Action Plan provoked a strong reaction from powerful figures, some of them members of the Government or the legislature, who were named as past human rights violators. The issue continued to simmer through January 2007, with Parliament discussing the issue and claiming that there was a conspiracy against jihadi leaders.

41. A "Core Group" on transitional justice, comprised of representatives of the President's Office, AIHRC, NGOs, various embassies and the Office of the High Commissioner for Human Rights (OHCHR)/UNAMA, is coordinating and monitoring the efforts of stakeholders in the implementation of the Action Plan. The Core Group is establishing implementation working groups for the five key action areas under the Action Plan and engaging seven responsible government ministries as leads or partners for implementation. The United Nations, in coordination with AIHRC, will provide technical advice and training to focal points within these ministries.

42. The quality of appointments in the Government and administration remains of serious concern, but there have been some positive developments. In November 2006, President Karzai issued Presidential Order No. 2421 establishing a Special Advisory Board on Senior

Appointments as part of a transparent mechanism for all senior-level appointments. OHCHR/UNAMA is assisting the President's Office with technical, financial and operational support and has provided Board members with a United Nations report on past human rights violations in Afghanistan previously shared with the President and AIHRC.

43. The active and meaningful role of civil society in shaping transitional justice is essential. In support of these activities, UNAMA and AIHRC conducted outreach activities in 2006 with civil society actors across the country. In August 2006, the United Nations supported the International Centre on Transitional Justice and the local Civil Society and Human Rights Network with a six-day training of trainers' workshop on the role of civil society and transitional justice.

44. Individuals allegedly responsible for committing grave violations of human rights, including war crimes, during the conflict have not been held to account, and some hold positions of authority. Trials of individuals accused of human rights violations are rare, and flawed when they take place. Asadullah Sarwary, a former intelligence chief, was tried and sentenced to death in February 2006. UNAMA monitored the trial, which was highly politicized, as well as procedurally and legally flawed. Despite efforts by UNAMA and the European Union, Sarwary was unable to find a lawyer willing to defend him.

45. Several identified mass grave sites are unprotected and no proper investigations have been carried out. Currently, there is seemingly little willingness on the part of the Government or the international forces to provide security for the forensic investigation, and the capacity is low and the equipment limited for such investigations. The concept of evidentiary requirements is not well developed among police and justice officials.

VI. DEFICITS IN DEMOCRACY

Freedom of expression and religion

46. There has been an increase in violence and threats to the media. Three journalists were killed in 2006. A certain amount of self-censorship is practised owing to threats, pressure from the authorities and increasing violence. The main unions of Afghan journalists have raised serious concerns about how the proposed new Media Law could restrict freedom of expression.

47. Two media laws have been in force in Afghanistan since 2002. The first was promulgated in 2002 and the second, promulgated in 2003, remains in force today. Work began on drafting a third, new media law in 2005, and it was a significant advance on the previous two. Improvements include a High Media Council to develop policy and three commissions tasked with regulating specific media sectors, including a Commission on Media Complaints and Violations. Adopted by presidential decree in December 2005, it has yet to be endorsed by Parliament. However, amendments proposed by the parliamentary Religious and Cultural Affairs Commission represent a significant potential setback for media development and freedom of expression by opening the way for direct political interference and placing restrictions on private media. These include the removal of all but one of the initially proposed commissions, a new stipulation that freedom of expression must be in accordance with Islamic principles, and a series of new provisions which include banning published material that is deemed immoral.

48. A number of violent incidents involving the media have taken place. In May 2006, Ariana TV was attacked by violent demonstrators during riots in Kabul. On 14 February 2006, Abdul Qudoos, a reporter for Sulha Radio, was detained on charges of attempted murder of a well known Member of Parliament. The legal process was marred by political interference and undue pressure on the prosecutors, but appointment of a defence lawyer and United Nations monitoring of the trial process eventually led to the release of the detainee on 24 December 2006. In October 2006, Karen Fischer and Christian Struwe, two German journalists, were shot dead in Baghlan Province.

49. Although private media have been more adventurous in addressing current issues, there are also criticisms of lack of balance and professionalism. Programmes dealing with criminal cases sometimes lack understanding of legal processes and people arrested on suspicion of crimes are often portrayed as criminals before they are proven guilty in a court of law. AIHRC has taken up this matter with media organizations. UNAMA has also received many complaints from detainees regarding misuse of media by the police and prosecutors.

50. In June 2006, Afghanistan's intelligence agency, the National Directorate of Security (NDS), distributed a directive restricting the publication of material on morality grounds and banning material which may be construed as being against national security interests and/or the presence of international military forces. Following protests, this directive was withdrawn.

51. Also in June 2006, serious consideration was given by the Cabinet, under pressure from the Ulema Council, to reactivate the Department for (the Prevention of) Vice and (the Promotion of) Virtue, infamous under the Taliban, as part of the Ministry of Religious Affairs. The Department, among other duties, would have been mandated a clampdown on expression deemed non-Islamic. Progressive individuals in the Government and civil society have been instrumental in blocking its establishment thus far.

52. Afghanistan's obligation under international human rights law to respect freedom of religion was severely tested when Abdul Rahman was imprisoned in March 2006 for converting from Islam to Christianity and threatened with a death sentence. Article 7 of the Constitution commits Afghanistan to observe the international treaties that Afghanistan has ratified and which clearly uphold freedom of religion. There is no law on apostasy in Afghanistan. Although released following procedural irregularities and flown out of the country at the end of March 2006, Abdul Rahman's case attracted considerable attention. The case raised long-standing concerns about the capacity of the judiciary, the interference of clerics, application of the death penalty and the struggle between sharia law and statutory law. Several similar cases have come to the attention of UNAMA following the publicity surrounding the Rahman case.

VII. INSTITUTIONAL CAPACITY

53. AIHRC continued to do tremendous work to protect human rights in Afghanistan despite setbacks in terms of accessibility to those in need due to the security situation, as well as having been forced to distance itself from certain issues to avoid becoming a target itself. The recent and long-overdue confirmation of its membership by the President is a welcome development and should serve to strengthen its standing. OHCHR remains committed to providing technical advice and support to AIHRC, including contributing funds towards its project activities.

In addition to daily coordination between UNAMA Human Rights Officers and AIHRC regional staff, OHCHR/UNAMA is also part of the AIHRC Project Committee which meets regularly to discuss activities as well as make strategic recommendations for the fulfilment of the mandate of AIHRC to promote and protect human rights.

A. Administration of justice

54. Despite progress, Afghanistan's formal justice system continues to face systemic problems. With the support of the international community and donor nations, training of judicial professionals is ongoing, physical infrastructure is being built and the capacity of the permanent justice institutions has increased, including through the enactment of key new legislation. However, in some provinces and districts effective State institutions are still largely absent or are subject to corruption, pressure from armed groups and, in some areas, insecurity and violence.

55. Institutionalized corruption, lengthy pretrial detention and due process violations are still prevalent in the justice sector. The absence of a State-funded legal aid system acts as a significant impediment to safeguarding the rights of accused persons and to providing the necessary legal representation for vulnerable groups. Although there are 223 lawyers registered and licensed with the Ministry of Justice, the number actually practising is considerably lower. UNAMA has found that in provinces where legal aid providers are active there has been an improvement in the application of constitutional and legal principles and a reduction in the incidence of arbitrary detention. NGOs have significantly expanded the provision of legal aid. There is some limited capacity (19 lawyers) within the Legal Aid Department of the Supreme Court. However, the constitutional right to legal representation of defendants is far from being met. The Legislative Department of the Ministry of Justice finalized its draft Advocates' Law in July 2006 following extensive consultations with national and international actors. The Advocates' Law, establishing the Independent Bar Association for Afghanistan, is now with Parliament.

56. According to the Ministry of Justice, the number of detainees and prisoners in Afghanistan has more than doubled in the past two years to 9,357 persons, including 266 women. The ratio of detainees to convicted prisoners is also rising as the number of arrests increase while the capacity of the courts remains limited. The Attorney-General's Office estimated in November 2006 that there were 6,653 detainees awaiting trial across the country, approximately 71 per cent of all those currently incarcerated. UNAMA and AIHRC continue to receive and verify complaints of illegal and arbitrary detention. In response, a joint campaign by UNAMA and AIHRC began in October 2006 to analyse adherence to due process standards in detention facilities throughout Afghanistan with the cooperation of the Ministries of Justice and the Interior and the Attorney-General's Office, and to recommend reforms. Initial findings indicate a significant proportion of cases in which pretrial detention time limits are breached, suspects are not provided with defence counsel, and ill-treatment and torture are used to force confessions.

57. As noted above, judicial officials have been increasingly targeted by insurgents and some have been killed. In May 2006, the deputy civil court judge of Farah Province was shot dead. In June, suspected militants linked to the Taliban abducted and killed a local judge in Ghazni Province. In addition, the capacity of the legal system is undermined, especially in the districts,

by weak State institutions, low salaries for judges and prosecutors, widespread corruption, the presence of armed individuals and the failure to ensure a secure environment for courts, judicial personnel, victims and witnesses. Moreover, the justice system still lacks sufficiently qualified officials, adequate legal education, and the necessary administrative tools and physical infrastructure to administer justice fairly and effectively. The findings of the Supreme Court's report on judicial education issued in May 2006 highlighted the fact that only about a third of the 1,415 judges currently working in Afghanistan has a tertiary education.

58. There are prisons in all 34 provinces of Afghanistan, administered by the Ministry of Justice. Prison conditions in most facilities remain below minimum international standards, treatment of detainees and prisoners raise serious human rights concerns and judicial guarantees are largely absent. In late 2006, the Central Prison Department announced that it did not have accommodation for nearly 1,000 male prisoners in 11 provincial prisons and that prisoners had been sleeping in the prison yards. There has been some progress, as a number of major prison projects are currently being carried out including two new prison facilities in Gardez and Mazar-I-Sharif, a women and juvenile's wing in Kabul and a juvenile correctional centre in Herat.

59. Positive reforms are being implemented in the justice sector and in August 2006, a new Chief Justice was sworn in together with seven new Supreme Court judges. The new composition of the Supreme Court reflects a fairly even ethnic balance and is more reform minded and professional than the previous Court. Nevertheless, there are no women judges and the United Nations continues to encourage the Government to appoint a qualified woman to the single vacancy on the Supreme Court. In the latter part of 2006, Chief Justice Azimi dismissed several judges throughout the country on the grounds of lack of qualifications or alleged corruption. While such attempts to professionalize the judiciary are welcome, the dismissals raise concerns regarding due process and transparency. In October 2006, Chief Justice Azimi presented the Supreme Court's five-year reform strategy to achieve the rule of law benchmark of the Afghanistan Compact and the Afghanistan National Development Strategy. The strategy includes a plan to systematically review judicial remuneration, appointment, promotion and discipline.

60. The new Attorney-General, Abdul Sabit, was appointed in August 2006 and has undertaken a campaign to tackle corruption. He has removed several prosecutors and a number of provincial and district officials have been arrested and placed under investigation. He also appointed the first women chief prosecutor in the Province of Herat. However, there remains a pressing need to undertake more far-reaching institutional reforms of the Attorney-General's Office to ensure increased efficiency and effectiveness and to address corruption.

61. In the summer of 2006 the Juvenile Code was submitted to Parliament for its endorsement. The Wolesi Jirga (Lower House) rejected the age of 18 years as the age for criminal prosecution for both girls and boys and lowered the age for girls to 17. Persistent lobbying efforts by civil society and some parliamentarians - with technical expertise provided by UNIFEM and UNAMA - have been undertaken to challenge this differentiation in age. (The Meshrano Jirga (Upper House) had approved the legal age of 18 for both boys and girls.) A joint commission of representatives of the two houses will be convened to resolve this conflict.

62. Systematic monitoring of the legal system to track the progress of justice sector reforms and to monitor compliance with international fair trial standards remains a critical need. In February 2007 UNAMA begins a pilot Legal System Monitoring Programme in five provinces, with an initial emphasis on criminal justice.

B. Security sector reform

63. Drug-related criminal gangs, entrenched warlords, anti-Government elements and the narcotics trade continue to threaten stability, good governance and the enjoyment of human rights. A disbandment of illegal armed groups programme was launched in May/June 2006 but has been held back by a disappointing response from concerned government ministries. Conversely, mounting insurgency led to the accreditation of pro-Government militia such as the Afghan National Auxiliary Police in the south and the “*Arbaki*” in the south-east and east.

64. The reform of the Afghan National Police (ANP) began with the selection of senior officers and provincial chiefs of police. While the overall exercise was successful, 14 individuals, some with links to criminal and illegal armed groups and records of human rights violations, were appointed despite having failed the selection process. Following concerns expressed by members of the international community, they were put on probation. In January 2007, all but three were recommended for removal. With assistance from UNAMA and the international community, police reform has progressed and UNAMA is now confident that at the time of writing there are no known human rights violators down to the rank of colonel in ANP. Challenges to creating a more professional police force remain as low pay, political interference, lack of discipline among officers and rampant corruption, among other concerns, continue to play a large role in the public’s negative image of ANP.

65. The Afghan National Army currently has a total of 34,700 personnel and is intended to reach its full strength of 70,000 by 2010. Efforts to ensure a more ethnically balanced and effective force have been successful and the Army has been playing an increasingly responsible role in security operations. The key challenge is to build on current efforts in the areas of recruitment and retention of staff, provision of better quality equipment and weapons, and timely and secure payment of salaries.

66. Reports of the use of torture and other forms of ill-treatment by the NDS are frequent. Arbitrary arrests are regularly reported and NDS prosecutors regularly fail to conduct investigations within legal time frames, thus violating judicial guarantees concerning detainees. Individuals are documented as having “disappeared” when they are arrested by NDS officials and access to the facilities where they are held has been problematic for AIHRC and the United Nations. In the current climate of instability and conflict, the lack of oversight mechanisms, the absence of scrutiny of the intelligence service mandate and the lack of access to their facilities are of serious concern. A promising step was taken in January 2007 with the first human rights training programme for NDS officers organized by the United Nations, AIHRC and partners.

VIII. TECHNICAL COOPERATION

67. In addition to monitoring the human rights situation, often jointly with AIHRC as in the campaign to reduce arbitrary detention, UNAMA Human Rights Officers, representing OHCHR, provide technical assistance to the Government and organizations such as AIHRC and NGOs. They also undertake awareness-raising about human rights with the population as a whole by means of meetings and seminars throughout accessible parts of the country, as well as in the media. On 10 December 2006, OHCHR and UNAMA published an illustrated version of the Universal Declaration of Human Rights in Dari and Pashto in both poster and booklet form. These are being distributed nationwide, including to all schoolteachers. During the reporting period, UNAMA Human Rights Officers have undertaken training programmes with AIHRC, NGOs and ANP, as well as with the intelligence service. Support has been provided to training other key officials, including the judiciary and prison guards. AIHRC has been given technical assistance to develop a database and case management system.

68. In line with the Afghanistan Compact, a project to assist Afghanistan resume its human rights treaty reporting obligations is supported by UNDP, OHCHR and UNAMA. Coordinated by the Ministry of Foreign Affairs, the project involves 16 ministries and has twin aims: to build sustainable reporting capacity and to assist Afghanistan prepare up to six overdue reports. The first of these, on the International Covenant on Economic, Social and Cultural Rights, is due to be completed by April 2007, in order to bring a human rights perspective to the ANDS process. Assistance is also provided to AIHRC and civil society so that they may play useful roles in the treaty reporting and implementation process.

69. Support to transitional justice activities is described above. In addition, OHCHR and UNAMA supported Physicians for Human Rights to undertake a mission in June 2006 to assess priorities for forensic investigation, including of mass grave sites, and build national capacity to undertake forensic analysis. A three-day training course was held with AIHRC staff. The mission will be followed up in 2007 with further training and support for a project coordinated by AIHRC to map mass graves. Forensic investigation of selected sites will be conducted in 2007, security permitting.

70. OHCHR is implementing two projects jointly with other members of the United Nations Country Team. A project with UNIFEM will provide a referral service for women victims of violence in Parwan and Jalalabad, so that they may obtain protection and support. It is hoped this service may be expanded to other areas in the future. Together with UNDP, OHCHR is supporting a series of regular radio broadcasts on disability, aimed at informing the population with disabilities, as well as the general population, about the rights of persons with disabilities and the issues they face. It is planned that this service may be expanded to television broadcasting in the near future. Another initiative in 2007 under the United Nations Action 2 programme will see several United Nations agencies combining to raise awareness of economic and social rights among the rural population in two regions.

71. Following agreement with the Ministry of the Interior, an adviser from OHCHR has been selected to help strengthen the Ministry's Human Rights Unit, which oversees the conduct of the police.

IX. RECOMMENDATIONS

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

(a) The Government and international security forces should ensure that international humanitarian and human rights principles are upheld in relation to the protection of civilians in armed conflict. This should include taking all necessary measures to mitigate and limit the risk to civilians during military operations, to ensure prompt investigations into civilian casualties and to pay compensation to the families of civilians killed and injured in the conflict. NATO is urged to establish a discretionary fund and place it at the disposal of national contingents to provide immediate reparations to civilian casualties of NATO/ISAF military action and their families.

(b) Non-State entities involved in the armed conflict in Afghanistan are also called upon to abide by common article 3 of the Geneva Conventions of 1949.

(c) In view of the intensification of armed conflict in parts of Afghanistan, the adequacy of the mandate of UNAMA to protect civilians should be closely examined with a view to strengthening it where necessary.

(d) The Government should increase efforts to apply a rights-based approach to the Afghanistan Compact. This should include appropriate disaggregated indicators to measure progress in poverty reduction for vulnerable groups and ensure participation of all sectors of Afghan society in the monitoring of the Afghanistan Compact and ANDS, particularly of groups suffering discrimination such as women, people with disabilities, nomadic groups and the chronically poor. Policies should include a strategy on employment creation for the most vulnerable in rural areas.

(e) The Government is urged to address the failure of health-care services in rural areas to be accessible to many women: efforts to achieve a reduction of child and maternal mortality in accordance with the Millennium Development Goals should continue while urgent action should be taken to reduce customary and security obstacles preventing girls from enrolling in and completing primary education.

(f) The Government should incorporate a rights-based approach to ANDS by harmonizing international reporting requirements under treaties such as the International Covenant on Economic, Social and Cultural Rights with the monitoring of the Afghanistan Compact/ANDS. This involves integrating international legal obligations with the equivalent ANDS targets in order to further delineate a clear framework of accountability for the Government and incorporate internationally recognized standards for measurement of progress in human rights and development.

(g) The international community should continue to provide financial and technical support to the Government to conduct a full poverty and gender analysis of the impact of local-level development programmes; and, the Government needs to ensure that any conclusions are fully integrated into ANDS in order to achieve progressive realization of economic and social rights.

(h) The Government, with the support of the international community, is called upon to intensify its efforts to increase the participation and role of women in public decision-making in line with Security Council resolution 1325 (2000) on women, peace and security; it should provide security for female Members of Parliament, Provincial Council members and heads of DoWA who are currently facing intimidation and threats in southern and eastern Afghanistan.

(i) The Government is urged to take all necessary measures to investigate allegations of family and other forms of violence, including honour killings, and to prosecute perpetrators, including those committing or arranging underage and forced marriages; domestic violence and rape should be included as crimes in the Criminal Code; instructions should be provided to prosecutors and judicial officials on the application of Afghanistan's Criminal Law provisions in order to clarify breaches of custom or civil codes which are not criminal offences; and traditional dispute resolution mechanisms should be reviewed in order to better protect the rights of all individuals, particularly women and children, and enhance accountability to the State.

(j) The Government should ensure that a wide-ranging awareness campaign to eradicate violence against women and girls is undertaken in conjunction with community leaders, mullahs and civil society; that efforts to support MoWA in the establishment of safe houses across the country for victims of domestic violence are stepped up and include psychosocial support for victims and vocational training for released female prisoners.

(k) The Government is encouraged to ratify the Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention on the Elimination of All Forms of Discrimination against Women, enabling women and men who have been subjected to discriminatory or unfair judicial rulings to have recourse to an international mechanism.

(l) The Government is further encouraged to issue, in 2007, a standing invitation to the United Nations human rights special procedures mechanisms.

(m) The Government should enact legislation implementing the provisions of the Rome Statute of the International Criminal Court in domestic law, including the crimes set out under articles 6, 7 and 8, to ensure that Afghan courts have jurisdiction to prosecute.

(n) The implementation of and respect for constitutional and other legal safeguards for freedom of expression is strongly recommended, and the Government should ensure that the new proposed Media Law provides safeguards particularly against political interference and censorship, especially for private media.

(o) The Government, with the support of the international community, is urged to focus efforts on meeting the Afghanistan Compact rule of law benchmark, particularly the drafting, revision and implementation of further key legislation.

(p) The Government should continue its cooperation with UNAMA and AIHRC on the arbitrary detention campaign and related issues and grant these organizations access to all detention facilities and to relevant documentation.

(q) The Government, with the support of the international community, should expand legal aid services and develop a sustainable and efficient State-funded legal aid scheme.

(r) In line with the Afghanistan Compact benchmark to end the illegal expropriation of property, the Government should adopt housing and land restitution policies and programmes and enforce legislation in line with the Principles on Housing and Property Restitution for Refugees and Displaced Persons (E/CN.4/Sub.2/2005/17, annex). The role of the judiciary in arbitrating and mediating in cases is essential to resolving disputes in a fair manner.

(s) The Government should increase efforts towards the implementation of the five-year Supreme Court strategy and prioritize the development of an open and transparent accountability and disciplinary mechanism designed to enforce ethical standards. The Government should also provide members of the judiciary with the necessary protection for them to perform their tasks without undue interference.

(t) The Government is encouraged to appoint a female judge to fill the current vacancy on the Supreme Court.

(u) The Government with the support of NATO/ISAF and the international community should establish effective measures to protect mass grave sites; provide security for investigations and support training on forensic investigation and collection of evidence.

(v) The Government is urged to immediately establish the task force called for in key action 5 (a) of the National Action Plan on Peace, Reconciliation and Justice.
