



AFGHANISTAN COUNTRY REPORT

October 2004

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 September 2004.

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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2 Geography

General

2.1 The Central Intelligence Agency (CIA) World Factbook, updated in May 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).” [111] (p4) In April 2004, Afghanistan Online showed the number of provinces as 34. [46]

2.2 Europa Regional Surveys of the World: South Asia 2004 records that the five largest towns are Kabul (the capital), Kandahar, Herat, Mazar-i-Sharif and Jalalabad and gives a 2002 population figure of 22,930. [1a] (p73) The CIA World Factbook records 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% of 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. [111] (p5) Europa 2004 records that Dari and Pashtu have been the official languages of the country since 1936, using an augmented Arabic script. Pashtu, one of the eastern group of Iranian languages, is also spoken across the border in Pakistan. [1a] (p46) 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 Uzbek, Turkmen, Baluchi, Pashai, Nuristani and Pamiri. [15]

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.” [11i] (p5-6)

For further information on geography, refer to Europa 2004, source [1a]

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3 Economy

3.1 The Europa World Yearbook 2003 records that

“It is difficult to provide an accurate economic profile of Afghanistan, owing to the civil war that afflicted the country for more than 20 years and the US-led military campaign against the Taliban and the al-Qa’ida (Base) organization. Population movements, communication problems and lack of reliable official statistics also make the task more problematic. The Transitional Authority is faced with the immense task of reviving the traditional economy, which, over the past 20 years or so, has been largely replaced by a criminal economy based on drugs and smuggling.

In 2002 the Interim, and later Transitional, Administration began to address such problems as the severe food and fuel shortages, the lack of infrastructure and the difficulties of millions of refugees returning to their ravaged farms and fields studded with mines or devastated by air strikes. In January [2002] the international donor community agreed to provide Afghanistan with financial assistance and strategic guidance and pledged US \$4,500m over 2.5 years towards the reconstruction of Afghanistan. The actual commitment and disbursement of assistance was slow to begin with, but by the end of 2002 some \$2,000m had been donated. The Afghan Government devised a National Development Framework [NDF] for the reconstruction programme, which focused on security and human development, rebuilding the country’s infrastructure and facilitating private economic activity. By the end of 2002 a number of infrastructure projects were under way or had reached completion.” [1b] (p411)

3.2 Europa 2003 also records that

“A currency reform programme devised to curb the problems of hyperinflation and to stop military regional commanders from printing their own banknotes (in early 2002 at least three local currencies circulated in Afghanistan) was announced in September [2002]. A new currency was introduced in October [2002]; by January 2003 old afghani notes had been replaced by new afghani notes at a rate of 1,000 old afghanis to one new afghani....

The prevalent drugs trade remained a significant problem. Despite the introduction of a ban in January 2002 on poppy cultivation and the processing, trafficking and abuse of opiates, the large-scale planting of poppies during the collapse of law order in late 2001 had allowed Afghanistan to resume its place as the largest supplier of opium in the world. The Interim Administration introduced a programme in early April [2002] to eradicate the crop. Farmers were to receive compensation for destroying their opium crops; those who refused would have their land seized by the Government and could be prosecuted. Farmers, however, refusing to give up the lucrative drugs trade,

reacted violently against the initiative. In the meantime, the return of refugees continued.” [1b] (p411)

3.3 According to the United Nations in February 2003, the average wage in Afghanistan did not exceed \$2 per day. [68] (p1)

3.4 On 22 December 2003, the International Monetary Fund (IMF) reported that following more than 20 years of conflict, interspersed with earthquakes and drought, social indicators in Afghanistan were among the worst in the world. IMF noted that

“The economy shows strong signs of recovery, albeit from very low levels of activity, reflecting not only the end of major hostilities, but also the end of a prolonged drought and the impact of sizable donor assistance and sound economic policies. Real GDP, excluding opium production, is estimated to have grown by almost 30 percent in 2002/03, driven by donor assistance and the end to a prolonged drought. The impact of international assistance (and also of opium revenues, see below) is most visible in services and construction, which are expanding rapidly in urban centers. Agricultural production rose sharply in 2002/03, benefiting from increased rainfall and expanded acreage under cultivation. Agricultural production continued to increase this year, and combined with further strong growth in services and construction, GDP is expected to grow by 20 percent in 2003/04.

But while the formal economy is recovering, so is the production of opium. In 2002, opium production was estimated by the United Nations Office on Drugs and Crime (UNODC) to have reached 3,400 tons, a level similar to that of the late 1990s. Production in 2003 increased further to 3,600 tons. The opium sector has a profound impact on the economy and may account for about half of overall GDP.” [74] (p1)

3.5 The US State Department Report 2003 (USSD), published on 25 February 2004, recorded that,

“The country remained engaged in agriculture and animal husbandry and remained extremely poor; per capita earnings for the population of 26 million was below subsistence level. The World Bank unofficially estimated the growth rate at 30 percent for the year. Illegal opium poppy was the mainstay of the economy and largely financed the military operations of various provincial authorities. According to the U.N., the poppy harvest grew by an estimated additional 6 percent during the year [2003]. There was little manufacturing, and there were few exports; a projected 36 percent of the Government's operating budget came from domestic revenues; the rest, as well as the development budget, was donor-financed. In December [2003], the country celebrated the reconstruction of Kabul-Kandahar road. Reconstruction of the devastated infrastructure proceeded in differing degrees throughout the country. Twenty-three years of fighting and decades of corruption and mismanagement resulted in a devastated infrastructure.” [2e] (p1-2)

3.6 At the Berlin Conference on Afghanistan, which concluded on 1 April 2004 and resulted in the Berlin Declaration, the participants welcomed the multiyear commitments made by international donors for the reconstruction and development of Afghanistan totalling \$8.2 billion for the fiscal years 1383-1385 (March 2004 –

March 2007). This figure included a pledge of US\$ 4.4bn for 1383 (March 2004-March 2005). [40t] (p3)

3.7 On 29 July 2004, the World Bank reported that a US\$145 million package of assistance to the country had been approved. According to the World Bank “The package includes US\$35 million in grant funding for education, a US\$25 million credit for urban reconstruction, a US\$80 million credit to support the Government’s medium-term development strategy, and US\$5 million in seed money for a private investment guarantee initiative.” [69b]

3.8 October 2004 exchange rates indicated that one pound sterling was equal to 79.15 Afghan Afghanis. [58]

See also Section 6C on Humanitarian Situation paragraphs 6.293 to 6.315

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4 History

Overview to December 2001

4.1 Political Parties of the World 2002 records that

“The Islamic State of Afghanistan was proclaimed in April 1992 as successor to the Soviet-backed regime of President Mohammed Najibullah, which had been overthrown by opposition mujaheddin (“holy warriors”) following the end of the 1979-89 Soviet military intervention. Following further conflict, the Taleban [Taliban] militia took power in Kabul in September 1996, and in October 1997 proclaimed the Islamic Emirate of Afghanistan. Forces of the deposed government of President Burhanuddin Rabbani had meanwhile established the United National Islamic Front for the Salvation of Afghanistan (UNIFSA). The Islamic State of Afghanistan (with UNIFSA “Northern Alliance” forces holding some northern areas) retained the recognition of the UN and much of the international community, while the Taleban consolidated de facto control of most of the country, including the capital. Continuing sporadic conflict was given impetus by the ethnic hostility of minority northern Uzbeks and Tajiks to the (majority) Pushtun-dominated Taleban.

Following terrorist attacks on New York and Washington on Sept. 11, 2001, the USA charged the Taleban regime with providing shelter to Osama bin Laden, regarded as the instigator of the attacks. After a period of unsuccessful pressure on the Taleban to surrender Bin Laden, the USA commenced overt military operations in support of the Northern Alliance on Oct. 7 [2001]. Parallel efforts (involving the UN and also Pakistan, previously the Taleban’s principal sponsor) were also underway to prepare for the creation of a government of national unity, representative of the various ethnic groups. The fall of Kabul to the Northern Alliance was reported on Nov. 13 [2001].

No general elections have been held in Afghanistan since April 1988 and political parties do not function. Allegiances within the country are primarily on an ethnic or clan basis.” [54] (p1)

4.2 Europa Regional Surveys of the World: South Asia 2004 records that

“Following preliminary discussions in Rome, Italy, in September 2001, at the end of the year Germany hosted a conference. The Bonn Agreement of December [2001] was negotiated under a UN mandate, with Special Representative Lakhdar Brahimi presiding. The Conference drew up provisional arrangements, pending the re-establishment of permanent government institutions....

Under the terms of the Bonn Agreement, the Interim Authority was duly established following the official transfer of power on 22 December 2001. Under British army protection, Hamid Karzai was sworn in as Chairman of the Interim Authority, which was declared to be the repository of Afghan sovereignty, with immediate effect. As such, throughout the interim period, it was to represent Afghanistan in its external relations. The implementation period of the Bonn Agreement was envisaged as two to three years, and leading to the establishment of a full government, to be chosen freely by the entire electorate of Afghanistan in 2004.” [1a] (p61-62)

(See also Section 5 on The Bonn Agreement and Interim Administration paragraphs 5.16 – 5.17 and Elections paragraph 5.37)

4.3 The Bonn Agreement states that “An Emergency Loya Jirga shall be convened within six months of the establishment of the Interim Authority....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)

(See also section on the Emergency Loya Jirga and Transitional Administration paragraphs 5.19 and 5.20)

January 2002 – December 2002

4.4 In January 2002, Keesing’s Record of World Events recorded that

“Following the military defeat of the Taliban in December 2001, the interim government, led by Hamid Karzai, focused attention on reconstructing the country, which had effectively been destroyed by the US-led campaign against the Talibaan [Taliban] and years of civil war. US-led forces continued military operations against small pockets of Talibaan resistance and focused their efforts on locating former Talibaan commanders and Osama bin Laden, prime suspect in the Sept. 11 attacks on the USA.” [5f] (p44553)

4.5 Keesing’s also records that “Final agreement on the make-up and command structure of the troops assigned the task of providing security for the interim government was reached on Jan.10 [2002]. Under the command of UK Maj.-Gen. John McColl, the 5,500 strong force drawn from 18 countries and designated the International Security Assistance Force (ISAF), began deployment in mid-January [2002].” [5f] (p44554)

(See also Section 5 ISAE paragraphs 5.132 to 5.153)

4.6 In February 2002, Keesing's recorded that "As US air and ground operations continued throughout the country there was widespread concern over the number of civilian fatalities in the conflict. US Defence Secretary Donald Rumsfeld admitted on Feb.5 [2002] that in one incident up to 16 civilians had been mistakenly killed by US special forces." [5g] (p44616)

4.7 Europa 2004 records the following incidents, which took place in 2002

"The assassination of Abdul Rahman, the Minister of Civil Aviation and Tourism, in Kabul in February 2002, was followed by the attempted murder of Marshal Fahim [Defence Minister], in Jalalabad; the arrest of more than 500 supporters of Hekmatyar's Hizb-i Islami, who were alleged to have plotted against the Interim Authority; an attack on British peace-keepers in Kabul; and a bomb explosion in Khost. These incidents reflected the antagonism against the Interim Authority in several quarters and highlighted the major security concerns that existed for Karzai's administration." [1a] (p62)

4.8 The Berlin Declaration of April 2004 noted that

"The Emergency Loya Jirga was held from 11-19 June 2002. The delegates – including over 220 women – elected by secret ballot the Head of the Transitional Administration, and confirmed ministers and other key figures. After decades of war, this marked the nation's first tentative steps towards a system where political decisions are made by a representative assembly of the people of Afghanistan at large and not based on military force. The process for the selection of delegates involved mass popular participation in a political exercise unrivalled in Afghanistan's history.

On 19 June [2002] the power of the Interim Authority was transferred to the Transitional Administration that will govern Afghanistan until free and fair elections are held later this year." [40f] (p9)

(See also Elections paragraph 5.37)

4.9 Europa South Asia 2004 records that

"President Hamid Karzai was reappointed Chairman of the multi-ethnic administration, which comprised: 11 Pashtuns, eight Tajiks, five Hazaras, three Uzbeks and one Turkoman. Two women were appointed to the administration: Dr Suhaila Siddiqi and Dr Sima Samar. Tajik members of the Panjshiri faction of Masoud's Shura-I-Nazar (the first group to enter Kabul), namely Younis Qanooni, Gen. Muhammad Qassim Fahim (self-promoted to Marshal in April) and Dr Abdullah Abdullah, were given the three most important portfolios of interior, defence and foreign affairs, respectively. This created resentment among other commanders. Karzai therefore tried to make amends and appointed Gen. Dostam (Dostum) as Deputy Minister of Defence. Ismail Khan was given his former post as Governor of Herat." [1a] (p62)

4.10 Europa 2004 also records that

“The assassination in July 2002 of the moderate Pashtun Haji Abdul Qadir, an important supporter of Karzai who had been appointed Vice-President and Minister of Reconstruction, represented a damaging set-back for the new Government, particularly in its attempts to reconcile ethnic divisions. Karzai immediately ordered a five-member delegation to investigate the murder....It became apparent that a number of former mujahidin military commanders continued to exercise considerable influence over regions they had controlled in the past. They could not be disarmed, as that would have intensified opposition to the Government. Thus, in order to place more emphasis on disarmament and demobilization efforts, the Afghan administration and the USA established a three-year programme of disarmament, demobilization and reintegration [DDR], aimed at dismantling factional forces, which was to start on 1 July 2003. However, Afghan officials and foreign observers anticipated that it would be another three years before the army and new national police force would be able to assume full responsibility for security in the country.” [1a] (p63)

(See also Section 5 DDR paragraphs 5.154 to 5.168 and sections on the Army 5.175 to 5.182 and the Police paragraphs 5.183 to 5.196)

4.11 On 1 April 2004, Annex 2 of the Berlin Declaration noted that “The Civil Service Commission was formally established by Presidential decree on 21 May 2002.” [40t] (p10) The Berlin Declaration also noted that “The Afghan Independent Human Rights Commission (AIHRC) was established by decree on 6 June 2002 as the product of a national consultative process between Afghan human rights activists, the Interim Administration and the United Nations.” [40t] (p9)

(See also section 6A AIHRC paragraphs 6.33 to 6.42)

4.12 Europa World Year Book 2003 records that

“In early September [2002] Karzai escaped an assassination attempt in Qandahar [Kandahar]; hours later a bomb explosion in Kabul killed 30 people and injured at least 160 others. Afghan officials and Western diplomats believed that Hekmatyar had joined forces with remnants of the Taliban and al-Qa’ida in south and east Afghanistan and had perpetrated the attacks in an attempt to depose the Transitional Authority. Hekmatyar had allegedly also held negotiations with other discontented regional leaders in an effort to form a wider alliance against the Afghan Government and US military presence in Afghanistan. Following the bomb attack some 800 additional ISAF troops were deployed across Kabul to carry out random searches of vehicles and to construct security checkpoints; police officers arrested more than 100 people in connection with the attack.

In the meantime, reported incidents of factional fighting increased significantly in late June and July [2002]. In some parts of Afghanistan the fighting hindered humanitarian relief efforts. In mid-July Karzai announced the establishment of a UN-supported security commission, which would begin the disarming of rebel troops and precipitate the creation of a national army. Despite commanding little control outside Kabul, Karzai warned military commanders that their powers would be removed unless they denounced factional fighting and joined the Government.” [1b] (p409)

4.13 Europa 2003 further records that “In early November [2002] the President dismissed more than 20 senior regional officials – including Gen. Abdul Hamid, the military commander of Mazar-I-Sharif – in an attempt to consolidate the Transitional Authority’s jurisdiction outside Kabul.” [1b] (p409)

4.14 On 13 January 2003 the UN Economic and Social Council reported that “A protest march of over 1,000 university students in Kabul against poor living conditions in the campus dormitory of Kabul University was fired on by police on 12 November 2002, reportedly resulting in the deaths of up to four students and the wounding of several dozen. This led to a further demonstration by the students and generated tension.... President Karzai met the students and ordered an investigation into the causes of both the protest and the killings.” [6a] (p8) On 18 March 2003, the UN Secretary General reported that “It [the investigation] concluded that the police had been responsible for the use of excessive force, and that the miserable living conditions at the students dormitory, which had apparently triggered the demonstrations, were partly the result of corruption. Several government officials, including some at senior levels, were consequently arrested.” [39h] (p9)

4.15 On 18 March 2003, the UN Secretary-General also reported that “On 22 December 2002, the Governments of Afghanistan and the six neighbouring States signed the Kabul Declaration on Good Neighbourly Relations. The signatories reaffirmed their commitment to constructive and supportive bilateral relationships based on the principles of territorial integrity, mutual respect, and non-interference in each others affairs. The seven States also expressed their determination to defeat terrorism, extremism and drug trafficking.” [39h] (p6)

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January 2003 to December 2003

4.16 On 28 January 2003 BBC News reported that

“The renewed fighting between the Taleban and the US and Afghan troops near the Pakistan border shows the continuing threat from Afghans opposed to the presence of foreign forces. There has been an increase in ambushes and missile attacks on US-led coalition forces in the Pashtun-population [sic] southern, eastern and western Afghanistan in recent months....Beside [sic] the Taleban, former Afghan prime minister Gulbuddin Hekmatyar is also opposed to President Karzai’s government and to the presence of foreign troops in Afghanistan.” [25aj]

(See also Section 6C [Hizb-i Islami](#) paragraphs 6.362 to 6.374)

4.17 In February 2003, Keesing’s noted that “US-led coalition forces came under fire from rebels in a mountainous region of southern Afghanistan on Jan. 27 [2003]; the resultant US-led air strikes on Talibaan [Taliban] targets in Helmand province allegedly caused up to 17 civilian deaths, according to villagers, while the US military denied knowledge of any fatalities.” [5d] (p45241)

4.18 On 10 February 2003, Human Rights Watch (HRW) reported that Afghanistan had deposited its accession to the International Criminal Court (ICC) Treaty at the United Nations. According to HRW,

“Under ICC provisions, the treaty will take force in Afghanistan on May 1, 2003. After that date, the ICC will have the authority to investigate and prosecute serious war crimes, genocide and crimes against humanity committed on Afghan soil....Human Rights Watch noted that the ICC has authority not only over troops committing atrocities, but also over commanders who order or incite them, or fail to stop atrocities from occurring. ICC jurisdiction will apply to Afghan government officials and local military and police commanders as well as armed insurgent groups, whether they are connected to the government or not....The ICC will not investigate or prosecute past crimes.” [17g] (p1-2)

4.19 In March 2003, Keesing's recorded that “On March 10 [2003] a number of new political parties were formally established and united as a single grouping: the National Democracy Movement of Afghanistan. The umbrella movement reportedly included 45 parties and claimed to support national unity and a democratic political system.” [5e] (p45289)

4.20 On 28 March 2003, IRIN News reported that an ICRC (International Committee of the Red Cross) field delegate had been shot and killed by a group of unidentified assailants in the southern province of Oruzgan. It was the first killing of an international ICRC field staff member in Afghanistan since 1990. [36c] UNHCR reported in April 2003 that following the murder more than ten international non-governmental organisations had pulled out of Kandahar, at least temporarily. [40ah]

4.21 On 28 March 2003 the UN Security Council reported that it had extended the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA) for a further 12 months until 28 March 2004. [40ad] On 6 April 2003 Reuters announced that the Afghan government and the United Nations had signed an agreement to launch the programme to disarm, demobilise and reintegrate factional armies. [40af]

4.22 On 1 April 2003 the US Department of State issued a statement expressing concern over recent attacks targeted at foreigners in Afghanistan, including US forces and workers with NGOs. According to the statement, “Operation Enduring Freedom in coordination with our coalition partners and with the Afghan government continues to search for and neutralize the remnants of al 'Qaida and the Taliban.” [40ae]

4.23 In a report to the UN General Assembly on 3 December 2003, the Secretary-General noted that “The creation, on 11 June 2003, of the Independent Reforms Commission of Administrative and Civil Services should facilitate merit-based appointments and promotions of government officials. The Commission has the authority to remove corrupt or unqualified government officials. The establishment, also in June 2003, of a Salary Payment Task Force by the Ministry of Finance is expected to streamline payment mechanisms, help combat corruption, improve the retention rate of civil servants and help instil loyalty to the central Government.” [39j] (p3-4)

4.24 The Berlin Declaration of April 2004 noted that the Civil Service Commission passed the ‘Priority Reform and Restructuring Decree’ in July 2003 which provided

the legal basis for the restructuring of ministries and departments within ministries. [40t] (p10)

4.25 On 3 December 2003, the UN Secretary-General reported 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)

4.26 In July 2003, UNHCR reported that

“There are, reportedly, still pockets of resistance of al-Qa’ida and Taliban forces and indications that some Taliban forces might be regrouping. Since August 2002 the extremist and Anti-Western mujahideen commander, Gulbuddin Hekmatyar, and his followers have become notably more active, being linked to sporadic bombings in Kabul city and insecurity in parts of the Eastern, Central and Northern regions. Coalition forces, occupied primarily by the “war on terrorism”, are active in the Southeast (Khost, Paktia, Paktika), the East (especially Kunar and Nangahar), the Southern and Central Region (notably Helmand, Kandahar, Farah, Bamyan and Uruzgan) and maintain a large military presence in Kandahar province. The latter have engaged in combat with the above-mentioned “extremist groups” in all of the above-mentioned areas.” [11i] (p16)

4.27 The UNHCR report also noted that

“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) On 6 July 2003, Agence France-Press (AFP) reported that a British PRT would start working that month in the northern city of Mazar-i-Sharif. According to AFP, “In May [2003], British Defence Secretary Geoff Hoon said the PRT would focus on improving dialogue between warlords and politicians and would remain for up to two years.” [40ba]

(See also Section 5 on ISAE and PRTs paragraphs 5.132 to 5.153)

4.28 On 17 July 2003, BBC News reported that an ongoing border dispute between Afghanistan and Pakistan resulted in the Pakistani Embassy in Kabul being attacked the previous week by protesters demonstrating against alleged Pakistani incursions into Afghanistan. The Afghan Interior Minister said that four people had been arrested in connection with the incident. [25a] The Dawn Group of Newspapers reported on 30 July 2003 that Pakistan and Afghanistan had agreed to use Ground Positioning System (GPS) under the US aegis to work out the coordinates with the help of satellites and match it with maps to sort out their border dispute along the tribal region dividing the two countries. [20c]

4.29 On 24 July 2003, IRIN news reported that “The United Nations in Kabul reported this week that more than 12,000 people living in 57 villages had been badly affected by serious sandstorms in the Lash Juwayan and Shib Koh districts of western Farah province....The UN spokesman said the storms had left hundreds of people homeless, destroyed crops and contaminated water supplies. According to the UN, the disaster was described as the worst sandstorms in living memory....In early July [2003] serious

flooding in southern and northeastern provinces of Afghanistan left more than 100 dead and many more missing.” [36b]

4.30 On 3 August 2003, Agence France-Press (AFP) reported that “At least 60 people have been killed over the past month in attacks by, and clashes with, suspected Taliban fighters and their al-Qaeda allies, mostly in their former heartland of southern Afghanistan. Attacks in the past week alone have left 21 people dead, including 12 suspected Taliban and al-Qaeda, eight Afghan soldiers and an anti-Taliban mullah.” [40a] (p1)

4.31 On 7 August 2003, BBC News reported that suspected Taliban fighters had killed five Afghan soldiers and an Afghan driver working for an American aid agency, Mercy Corps, in the southern province of Helmand. [25ae] On 10 August 2003, BBC News reported that the United Nations had suspended road travel in parts of southern Afghanistan following a spate of attacks on Afghan aid workers and policemen by unidentified assailants. UN missions were told to avoid travel in parts of Kandahar and Helmand provinces and in all of Uruzgan and Zabul. [25ag]

(See also Section 6C on the Taliban paragraphs 6.331 to 6.353 and Al Qaeda paragraphs 6.401 to 6.404)

4.32 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]

4.33 On 19 August 2003, AFP reported that militants had ambushed and killed nine Afghan police investigating a rocket attack 100 kilometres southwest of Kabul that left two people dead. According to the report, “The incidents are the latest in a string of attacks on Afghan and Western government, military and humanitarian targets believed to have been launched by insurgents loyal to the Taliban, its al-Qaeda allies and Islamist rebel leader Gulbuddin Hekmatyar, and by warring factions.” [40av]

4.34 On 22 August 2003, the UN Information Service announced that an agreement had been signed between the United Nations Office on Drugs and Crime (UNODC) and the Minister of Interior to help establish a new drug interdiction department within the Ministry. Other progress made during 2003 to promote effective drug control included the creation of a Counter Narcotics Directorate (CND) and the adoption of a National Drug Control Strategy. The UN stated that “UNODC projects in Afghanistan cover four major areas of drug control: monitoring -- with annual opium poppy surveys that, on the international level, provide the most reliable estimates of the cultivation trends in order to develop knowledge-based policies; prevention -- helping to develop the judicial system and law enforcement; demand reduction -- providing assistance in addressing the increasing internal drug abuse problem; and alternative development -- involving direct assistance to the communities dependent on opium cultivation.” [66]

4.35 On 1 November 2003, Agence France-Presse (AFP) reported that “Some 40 people were killed when Afghan police and a former military commander and his fighters fought a fierce battle in southwestern Helmand province, the state-run Bakhtar

news agency reported Saturday... Helmand security commander Amanullah said the fighting was brought to an end when US forces intervened later Friday.” According to the AFP report, the commander and his deputy were killed together with three women and twelve other civilians caught in the crossfire. [25ac]

4.36 On 3 December 2003, the Secretary General to the UN 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.” [39j] (p10) In December 2003, Keesing’s Record of World Events recorded that “The mission in Kunduz was seen by some observers to be the start of a gradual widening of NATO’S role.” [5b] (p 45740)

(See also Section 5 on ISAF and PRTs paragraphs 5.132 to 5.153)

4.37 Keesing’s Record of World Events for November 2003 stated that

“ A draft constitution was formally unveiled in a ceremony on Nov. 3 [2003], after many months of delays. The document, an important milestone towards the rebuilding of the country as specified in the Bonn Agreement, was set to be published nationally and then discussed and ratified at a Loya Jirga (grand assembly of elders) in December [2003]...Reactions to the draft ranged from expressions of concern to public demonstrations of dissent. US analysts claimed that the draft did not go far enough to protect religious freedoms or the rights of women. Around 1,000 students marched through Mazar-i-Sharif on Nov.11 [2003] in protest against the draft, which they said discriminated against ethnic minorities. International observers were concerned that the definition of laws contrary to Islam was not clear.” [5c] (p 45694)

4.38 On 19 November 2003, UNHCR reported that

“The UN refugee agency has suspended its activities in an eastern Afghan province following the brutal murder of a staff member in Ghazni last weekend...Her attackers have been arrested and police are investigating the murder, which has been condemned by Afghan President Hamid Karzai and UN Secretary-General Kofi Annan. Following the shooting, High Commissioner Lubbers announced that UNHCR was suspending its activities in Ghazni province, 100 km south of the Afghan capital of Kabul...In neighbouring Pakistan, the UN refugee agency also decided to temporarily close its voluntary repatriation centres for Afghan refugees in Peshawar and Quetta until the security situation inside Afghanistan becomes clearer...Sunday’s shooting was the latest in a string of attacks on aid workers in Afghanistan. Other recent casualties include a Red Cross worker murdered in March and four people working for a Danish aid group who were killed in September [2003].” [11k]

4.39 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 can 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]

4.40 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 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)

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4.41 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. Troops had earlier combed the area looking for Talibaan [sic] fighters and launched an air assault after three US soldiers were wounded in a rocket-propelled grenade attack by 15 militants. The incident marked the third occasion in just over a month that US forces had been blamed for killing children. Uruzgan province, south-west of the capital Kabul, was a former Talibaan [sic] stronghold and had seen renewed activity as the former regime mounted a resurgence in the south and east of the country." [5a] (p45789)

4.42 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]. The document sets out the basic institutions for a constitutional democracy in which Islam is accorded a central role, and in theory should make it possible to hold elections this year, as envisaged in the original Bonn agreement of December 2001. The document proscribes a strong presidential system with a two-chamber national assembly." [73b] (p1)

(See also Section 5 on the Constitutional Loya Jirga paragraphs 5.21 - 5.23)

4.43 The Dawn Group of Newspapers reported on 27 January 2004 that “President Hamid Karzai signed into law Afghanistan’s new constitution on Monday, more than three weeks after the document was approved by a Loya Jirga, officially enshrining a presidential system of government for the country.” [20b]

4.44 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]

4.45 According to a BBC News report of 9 February 2004,

“Hamid Karzai has appealed for greater international support in tackling Afghanistan’s growing drugs problem. The Afghan president made the call as he officially opened an international summit in Kabul aimed at tackling Afghanistan’s illegal drugs trade. He said the drugs trade was damaging the country’s economy, reputation and national security, and profits from the trade were funding terrorism. Afghan poppies account for 90% of the heroin consumed in Europe. Mr Karzai has banned opium poppy cultivation and trafficking but the drug industry is reported to have blossomed since the overthrow of the country’s hardline former rulers, the Taleban. He said that the government had not been successful in dealing with the drugs problem, and sought help from other countries.... Nearly 7% of the Afghan population is said to now work in the opium trade, earning as much as Afghanistan receives in foreign aid. Mr Karzai said poverty forced many farmers to keep growing poppies - a claim some drugs control experts dispute. He also pointed to the growing use of heroin inside Afghanistan - a problem the country had not faced before.” [25f]

4.46 The BBC report also noted that “The executive director of the UN Office on Drugs and Crime (UNODC), Antonio Maria Costa, has warned that the opium trade is helping to fund terrorism. There was, he said, “mounting evidence of drug money being used to finance criminal activities, including terrorism. If we don’t start translating counter-narcotics commitment into lower levels of production, we run the risk of [an] opium economy undermining all that has been achieved in creating a democratic new Afghanistan,” he said.” [25f]

4.47 On 8 March 2004, the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) reported a fatal attack on a vehicle of the Afghan Red Crescent Society (ARCS) in the capital of Zabul province, Qalat. The attack left one local employee dead and another injured. According to the report “The ARCS attack is one of a series of attacks on aid agencies in the south and has added to growing concern among local and international aid workers, who have witnessed over a dozen workers killed in the last three weeks...Zabul province officials have blamed remnants of the Taliban or forces loyal to renegade warlord and former Afghan prime minister Golboddin [Gulbuddin] Hekmatyar.” [40am]

4.48 On 17 March 2004, the Guardian newspaper reported that according to an army spokesman, Pakistani troops had killed 24 suspects on 16 March 2004 during a fierce

crackdown on al-Qaida and Taliban fugitives in the tribal regions bordering Afghanistan. According to the report "The fighting came a day after [Pakistan] President Pervez Musharraf promised to rid the area of some 500-600 foreign terrorists he claims are hiding there. He appealed to tribal elders for their cooperation in the counterterrorism drive. It also followed an announcement over the weekend that US forces were stepping up action on the Afghan side of the border to capture al-Qaida and Taliban hideouts, including those of Osama bin Laden and the Taliban leader, Mullah Omar." [18a]

4.49 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]

4.50 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 on the Situation in Herat paragraphs 5.42 – 5.45)

4.51 On 26 March 2004, the UN Security Council announced that it had extended the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA) for an additional 12 months in recognition that the United Nations must continue to play its central role in efforts to assist the Afghan people in consolidating peace and rebuilding their country. The Council also called on all Afghan parties to cooperate with UNAMA in the implementation of its mandate and to ensure the security and freedom of movement of its staff throughout the country. [40f]

4.52 On 28 March 2004, BBC News reported that "Afghanistan's first post-Taleban elections have been postponed until September [2004]. President Hamid Karzai announced the delay, saying that parliamentary and presidential elections would now be held at the same time." [25g]

(See also Section 5 on Elections paragraphs 5.32 – 5.39)

4.53 The BBC News report also noted that “The US is sending up to 2,000 more marines to step up the hunt for Osama Bin Laden and other al-Qaeda and Taleban leaders. The troops will join about 12,000 US troops already in the country.” [25g]

4.54 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. [25i] On 2 April 2004, the World Bank Group reported that “The half-billion dollar multi-donor trust fund for Afghanistan that has helped to keep the wheels of the civil service turning in the country, attracted a further US\$300 million from donors for the year ahead at a meeting in Berlin. Further pledges are expected before the end of April.” [69d]

4.55 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]

4.56 CARE also reported that “The importance of addressing the current security problems within Afghanistan was also given significant attention at the Berlin conference...NATO's expressed intention to expand ISAF's (International Security Assistance Force) presence outside Kabul is also to be welcomed. However, very few concrete new commitments in this regard were announced at the conference. Regarding the drugs trade, President Karzai noted that, if left unchecked, it could threaten the very existence of the Afghan state. Here in Berlin, Afghanistan signed an agreement with neighbouring countries recognising the importance of tackling the growing drugs trade.” [40aj]

4.57 On 4 April 2004, a UNAMA 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. It welcomes the commitments made by donors at the Conference for the reconstruction and development of Afghanistan totaling \$8.2 billion over three years, and also welcomes the commitment by NATO to expand ISAF's mission with the establishment of additional Provincial Reconstruction Teams (PRTs) by the summer. 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)

4.58 The Berlin Declaration of 1 April 2004 stated that the participants in the Berlin Conference “Determined to continue, in the spirit of the Bonn Agreement, as a common endeavor of the Afghan people and the international community, the tasks

of rebuilding and reforming the political, social and economic structures of Afghanistan, with the aim of creating lasting peace, stability and economic development, and with a view to offering all Afghans in an equitable manner tangible prospects for a brighter future.” [40t] (p1)

4.59 On 14 April 2004, the Institute for War and Peace Reporting (IWPR) reported that Haji Mohammad Mohaqeq, the former planning minister had announced he is running for president in the forthcoming elections. As well as being a prominent politician, Mohaqeq is a well-known Hazara commander and a key leader of Hizb-e Wahdat, the main faction of the Hazara ethnic minority who unlike most Afghans are Shia Muslims. [73d] (p1)

4.60 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. Similarly, in Samangan and Sar-i-Pul factional elements continue to prevent the governors designate from taking up their posts.” [39d] (p8)

4.61 On 16 May 2004, a UNAMA spokesman reported on the Afghanistan Stabilization Programm (ASP), a two year government initiative designed to make urgent changes in the way provinces and districts are governed. It 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. According to the spokesman,

“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....Initially the ASP intends to cover 158 districts by the end of the current Afghan year (21 March 2005). The second phase, in the course of 2005, aims to address the rest of the country's districts. Close to \$300 million is being sought from donors. To date \$100 million has been pledged by the United States, United Kingdom, Japan and the Netherlands.” [40j] (p2-3)

4.62 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)

4.63 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 Taliban 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 on the Death Penalty paragraphs 5.80 to 5.81)

4.64 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 Kondozi 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)

4.65 On 23 July 2004 Guardian Unlimited reported that Abdul Rashid Dostum [leader

of Jonbesh-e Melli-Islami] had decided to run for President in the forthcoming October 2004 elections after securing support across the country's deep ethnic divides. According to the report, "Dostum supported Karzai as interim leader, cultivated contacts with U.S. and other foreign officials, and currently holds the post of presidential security adviser for the north. But he led opposition to the centralized state enshrined in a new constitution pushed through in January [2004]. Jumbesh [Jonbesh] militias have also feuded relentlessly with those of Dostum's archrival, Tajik general Atta Mohammed, around the key northern city of Mazar-e-Sharif. Karzai named Mohammed governor of surrounding Balkh province on Tuesday." [18c]

4.66 On 26 July 2004, BBC News reported that President Karzai had announced he is standing as a candidate in the presidential elections due to take place on 9 October 2004. His running mates will be interim Vice President Abdul Karim Khalili and Ahmad Zia Masoud, the brother of assassinated mujahideen leader Ahmed Shah Masoud. [25i]

4.67 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. The surprise move followed political wrangling so intense that NATO peacekeepers stepped up their presence in the streets of Kabul....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]

4.68 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]

4.69 On 28 July 2004, Medecins Sans Frontieres (MSF) announced the closure of all medical programmes in Afghanistan following the aftermath of the killing of five MSF aid workers in a deliberate attack on 2 June 2004 in the north-western province of Badghis. According to the MSF Press Release "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." [72]

4.70 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]

4.71 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]

4.72 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 6.43 – 6.46)

4.73 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]

4.74 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]

For history prior to September 2001 refer to Europa Yearbook, source [1b]

(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 2004 records that

“According to the Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions (also known as the Bonn Agreement) signed in December 2001, following the overthrow of the Taliban regime, Afghanistan reverted to the Constitution of 1964. (As long as the provisions were not inconsistent with those included in the Bonn Agreement; provisions relating to the monarchy, the executive body and legislature were excluded. In addition, existing laws could remain as long as they were consistent with the Bonn Agreement and the 1964 Constitution.) The Transitional Authority, with the assistance of the UN, established a Constitutional Drafting Commission in November 2002 to draw up a new constitution.” [1a] (p79)

5.2 According to Keesing's Record of World Events News Digest for November 2003

“A draft constitution was formally unveiled in a ceremony on Nov. 3 [2003], after many months of delays. The document, an important milestone towards the rebuilding of the country as specified in the Bonn Agreement was set to be published nationally and then discussed and ratified at a Loya Jirga (grand assembly of elders) in December [2003].... In an effort to reconcile the country's Islamic tradition with democratic progress, the draft called for national unity, religious tolerance, an end to violence, equal rights in education, and a state health service. No legislation that ran contrary to Islam, however, would be permitted. A crucial issue not resolved by the draft was the relationship between the central administration and the provinces, which were largely outside Karzai's effective control.” [5c] (p45694)

5.3 On 26 January 2004, the Institute for War and Peace Reporting (IWPR) issued a report of the Loya Jirga proceedings, which stated that,

“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]. The document sets out the basic institutions for a constitutional democracy in which Islam is accorded a central role, and in theory should make it possible to hold elections this year, as envisaged in the original Bonn agreement of December 2001...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)

5.4 On 5 January 2004, according to a statement issued by NATO Secretary General Jaap de Hoop Scheffer

“Afghanistan has ratified a new constitution that will lay the ground for the creation of democratic institutions and opens the way for free and fair national elections this year. I congratulate the Afghan people on the adoption of this constitution that will serve as the basis for reconstruction and national reconciliation. This new

constitution marks significant progress towards a free and prosperous future and it is an achievement of all Afghans.” [63c]

5.5 The preamble of the adopted constitution states as one of its aims “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.” [15]

5.6 On 15 January 2004, the UN Secretary-General stated that

“The Constitution, which has now entered into force, provides a permanent foundation for re-establishing the rule of law in Afghanistan. It defines a political order through a strong Presidential system of government with a bicameral legislature. It establishes a judicial system in compliance with Islam. And it includes provisions aimed at ensuring full respect for fundamental human rights, including equal rights for women...Of course, the Constitution will not, by itself, guarantee peace and stability. Afghans - with the necessary support from the international community – must now go on to address the impediments to the peace process that existed before the Loya Jirga. That means tackling the deeply troubling security situation, ensuring an inclusive and broadly representative Government, and quickening the pace of reconstruction. Indeed, if the next step in the Bonn process – elections – is to be credibly achieved, these key challenges demand immediate action.” [40b]

5.7 The Dawn Group of Newspapers reported on 27 January 2004 that “President Hamid Karzai signed into law Afghanistan’s new constitution on Monday, more than three weeks after the document was approved by a Loya Jirga, officially enshrining a presidential system of government for the country.” [20b]

5.8 According to the Freedom House Afghanistan Country Report 2004 published in April 2004, “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.” [41] (p3)

5.9 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 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)

(See also Section 5 on CLJ paras. 5.21 to 5.23 and Section 6A on Human Rights paragraphs 6.12 to 6.15)

Citizenship and Nationality

5.10 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 citizenship of Afghanistan. Affairs related to the citizenship and asylum are regulated by law." [15]

5.11 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 for [sic] a nationality card, including whether a person comes from Afghanistan or from one of the neighbouring counties [sic] due to problems with false passports." [8a] (section 8.1.1)

5.12 The Danish fact finding mission also reported that, according to UNHCR, the government has announced that all Afghan citizens can return to Afghanistan with a partner of non-Afghan origin and they will automatically give citizenship to the non-Afghan partner. [8a] (section 6.9)

5.13 A Project Document on the Afghan Ministry of Interior Affairs website in July 2004 gave details of a project to establish a new, secure computerised system for the purpose of issuing ID cards to all citizens of Afghanistan. The project would begin in Afghan year 1383 (March 2004-March 2005) and continue until cards are issued to all citizens. It is expected that distribution of the cards will take over three years. [10] (p1-2)

5.14 Commenting in April 2004 on the sort of documents required for an Afghan to register to vote in the forthcoming elections, UNAMA Senior Media Relations Officer David Singh advised that

"I think it is the same as you would do anywhere else: proof of identity. In the absence of proof of identity, I think what we have said in the past is if you can get a person or persons of reputable character to verify that you are who you say you are and that you are of the right age then it will go ahead. One has to bear in mind that this is a country that has come out of 25 years of war; people have lost birth

certificates, births have not been registered, and some people do not have passports. One has to be creative. For those who do not have proper identification, then we have to depend on other sources to validate that.” [40b] (p5)

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Political System

The Bonn Agreement and Interim Administration

5.15 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.” [23] (p1)

5.16 Europa Regional Surveys of the World: South Asia 2004 records that

“Following preliminary discussions in Rome, Italy, in September 2001, at the end of the year Germany hosted a conference. The Bonn Agreement of December [2001] was negotiated under a UN mandate, with Special Representative Lakhdar Brahimi presiding....The agreement was signed by 28 Afghan delegates stating a determination to end the conflict in Afghanistan and promote national reconciliation, lasting peace, stability and respect for human rights; it reaffirmed the independence, national sovereignty and territorial integrity of Afghanistan; it acknowledged the right of the people to determine freely their own political future in accordance with the principles of Islam, democracy, pluralism and social justice. Prof. Burhanuddin Rabbani agreed to transfer power to an interim authority, which would recognise the need to ensure broad representation, in these temporary arrangements, of all segments of the Afghan population, including groups that had not been adequately represented at the UN negotiations on Afghanistan. It was noted that these interim arrangements were regarded as a first step toward the establishment of a broadly-based, gender-sensitive, multi-ethnic and fully representative government, which was not intended to remain in place beyond the specified period of time.

Under the terms of the Bonn Agreement, the Interim Authority was duly established following the official transfer of power on 22 December 2001. Under British army protection, Hamid Karzai was sworn in as Chairman of the Interim Authority, which was declared to be the repository of Afghan sovereignty, with immediate effect....The implementation period of the Bonn Agreement was envisaged as two to three years, and leading to the establishment of a full government, to be chosen freely by the entire electorate of Afghanistan in 2004....With the assistance of the UN, the Interim Authority was to establish a Judicial commission to restore the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions, the proposed framework combining Shari’a [law] with Western concepts of justice.” [1a] (p61-62)

5.17 The final provisions of the Bonn agreement stated

“The Interim Authority and the Emergency Loya Jirga shall act in accordance with

basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party.

The Interim Authority and the Special Independent Commission for the Convening of the Emergency Loya Jirga will ensure the participation of women as well as the equitable representation of all ethnic and religious communities in the Interim Administration and the Emergency Loya Jirga.” [39b] (p 4)

5.18 On 15 January 2004, the UN Secretary-General reported that the newly adopted Constitution defines a political order through a strong Presidential system of government with a bicameral legislature. [40bfi]

(See also Section 5, Constitution paras 5.1 to 5.9)

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The Emergency Loya Jirga and Transitional Administration

5.19 Europa: South Asia 2004 records that

“An emergency loya jirga was convened in June 2002. Under UN auspices and the Loya Jirga Commission, district representatives elected a total of 1,051 delegates, who thus formed the majority of the estimated 1,650 participants. International aid groups, universities and other organizations designated by the Commission appointed an additional 600 members, in order to ensure that a balance in terms of gender, geography, ethnicity and political beliefs was achieved. Karzai won the presidential election....President Hamid Karzai was reappointed Chairman of the multi-ethnic administration, which comprised: 11 Pashtuns, eight Tajiks, five Hazaras, three Uzbeks and one Turkoman. Two women were appointed to the administration: Dr Suhaila Siddiqi and Dr Sima Samar.” [1a] (p62)

5.20 In a report dated 11 July 2002 the Secretary-General to the UN Security Council noted that “Despite some imperfections in the nomination and selection of delegates and incidents of intimidation during the Loya Jirga itself, it is noteworthy that such an enormous logistical undertaking was carried out within a very tight schedule and accomplished the tasks of electing the Head of State and approving the structures and appointment of the Transitional Authority.” [40s] (p1)

(See also Section 6A Human Rights paragraph 6.2)

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The Constitutional Loya Jirga

5.21 The Freedom House Afghanistan Country Report 2004 notes 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." [41] (p3)

5.22 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. U.N. officials told Human Rights Watch that many of the elected delegates to the convention were proxies or allies of local factional leaders." [17d] (p1)

5.23 On 26 January 2004, the Institute of War and Peace Reporting (IWPR) reported 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)

(See also Section 5, Constitution paragraphs 5.1 to 5.9 and Section 6A, Human Rights paragraphs 6.12 to 6.15.)

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Elections

5.24 The UN Secretary-General's report of 18 March 2003 noted that a key component of the Bonn Agreement is the holding of elections by June 2004. According to the report "This task is complicated by the absence in Afghanistan of electoral institutions; there is neither a national electoral body nor an electoral registration system, and there are no laws regulating the conduct of elections or the functioning of political parties." [39h] (p6)

5.25 In a report dated 23 July 2003, the UN Secretary-General said that "Conducting the national elections mandated by the Bonn Agreement will be the largest political undertaking ever in Afghanistan – preparations are being made to reach up to 10 million

voters.” [39i] (p6)

5.26 In a report to the UN Security Council on 30 December 2003, the Secretary-General said,

“During the reporting period [July to December 2003] the Transitional Government established the institutional, and in particular much of the legal institutional, framework necessary for the voter registration process. On 26 July 2003 the Joint Electoral Management Body was established to oversee the registration process... The Interim Afghan Electoral Commission, comprising six members, was established the same day and has been working, with the support of UNAMA and UNDP, on the registration exercise. This has included the development of a public information/civic education strategy, as well as the process of hiring and training some 5,000 Afghan registrars.” [39k] (p10)

5.27 According to the same Secretary-General’s report,

“Completing the electoral process will require overcoming major challenges in terms of geography and climate, culture, securing donor resources and security. The challenges of timely funding and security will be the most difficult to overcome... In the first phase of registration, 28 electoral sites have been established in eight regional centres. Between 1 and 23 December, 125,240 voters were registered, 18 per cent of whom were women. This was accomplished with a limited number of registration centres because of security concerns. The current rate of registration, however, is far below the rate necessary to complete registration for elections next year. The second and third phases of the exercise provide for the deployment of registration teams to the provincial capitals and remote rural areas, respectively. Current security arrangements are not sufficient to allow full access to all rural areas for the third phase. Hopefully, ongoing efforts to deploy more provincial reconstruction teams and enhance Government security capabilities will address the problem, but time is of the essence. Clearly, the safety of staff and participants is of paramount concern, and the implementation of the process will have to remain under constant review.” [39k] (p10-11)

5.28 According to a UNAMA spokesman on 14 March 2004, “Currently, there are five political parties that have been officially registered by the Ministry of Justice. Each of these parties is now able to submit their application to the JEMB [Joint Electoral Management Body] for participation in the voter registration process.” [40c] (p1)

5.29 The UNAMA spokesman drew attention to the law on political parties, which says that the Ministry of Justice may refuse the registration of political parties which have fewer than 700 members at the time of registration. The spokesman further noted that “According to the law political parties shall not pursue objectives that are opposed to the principles of the holy religion Islam; use force, or threaten with, or propagate, the use of force; incite to ethnic, racial, religious or regional discrimination; create a real danger to the rights and freedom of individuals or intentionally disrupt public order and security; have military organizations or affiliations with armed forces and receive funds from foreign sources.” [40c] (p6)

5.30 On 21 March 2004, a UNAMA spokesman advised that

“During a visit to Kandahar, the Deputy Minister of Women's Affairs, Ms. Najiba Sharif, said illiteracy was one of the causes of low levels of women's registration in the Province. While there visiting the Joint Electoral Management Body (JEMB) she also acknowledged that other reasons also included lack of free time from house hold chores, little access to media and television, security problems, cultural restrictions, lack of women's organizations in the districts, and lack of support from male family members to take part in [the] registration process.” [40p] (p2-3)

5.31 According to the UN Secretary-General in a report to the Security Council on 19 March 2004, “Of the 1.46 million voters registered to date, 27 per cent are women. Since the end of January [2004], the rate at which women are registering has increased from 16 per cent to around 35 per cent. This rate is, however, uneven across the country, varying from 41 percent in Bamian to 13 per cent in Kandahar.” [39o] (p5)

5.32 Commenting on the timing of the elections, the UN Secretary-General advised

“Under the Bonn Agreement, elections were to be held two years after the convening of the Emergency Loya Jirga, namely on 11 June 2004. While the simpler process of presidential elections is deemed to be feasible in June or early July [2004], parliamentary elections cannot be held so soon. Two basic options are therefore open: a presidential election within the Bonn time frame and a parliamentary election later this year or next year; or simultaneous elections held outside the Bonn time frame. The advantages and disadvantages of these options are being debated and it is hoped that a consensus will be achieved before the Berlin conference to be held on 31 March and 1 April [2004]. In considering the options the foremost concern must be that the Afghan peace process is moved forward rather than put at risk of being destabilized. Therefore the necessary preconditions for elections must be in place.” [39o] (p6)

5.33 On 28 March 2004, BBC News reported that

“Afghanistan's first post-Taleban elections have been postponed until September [2004]. President Hamid Karzai announced the delay, saying that parliamentary and presidential elections would now be held at the same time. The elections had been due to be held in June [2004], according to the timetable established in late 2001. But security concerns and delays in voter registration had led to concerns about the original timetable. ... In January [2004], the UN teams responsible for drawing up voter lists had warned that parts of the country remained inaccessible, due to security problems. Only 1.5 million of an estimated 10.5 million eligible voters have so far been registered.” [25g]

5.34 On 28 March 2004 the UN News Service announced that

“Jean Arnault, head of the UN Assistance Mission in Afghanistan (UNAMA), told reporters in Kabul today that President Hamid Karzai's decision [to postpone elections] "is going to make everyone's life a lot easier" because preparations can now be better organized. "It is also very important in terms of public information and civic education," he added... "In order to have a proper election in September [2004], clearly many things that haven't happened in the past couple of years must now happen in a very, very short period of time." Disarmament efforts must go hand-in-

hand with the electoral process, Mr. Arnault added. "The next few months will have to focus in a very significant way on allowing these elections to take place in a country that will not be fully disarmed but should be well on its way towards disarmament." Attention must also be paid to political freedoms and freedom of the press in the time leading up to September, he said. Noting that there are places throughout Afghanistan where political parties have difficulty operating, he said 'this has to change before a free and fair election can take place.'" [40ak]

5.35 In April 2004, the participants at the International Berlin Conference on Afghanistan

"Determined to complete the Bonn Process by creating the conditions under which the people of Afghanistan can freely determine their own political future by establishing a fully representative government through free and fair elections in a secure and peaceful environment." In the Berlin Declaration, the Afghan government committed to establishing a secure environment before the holding of elections in which the full political rights of citizens, candidates and political parties could be exercised. The government also committed to passing the Civil Service Law before the elections in order to guarantee the independence of the Civil Service and the transparency of its work and senior level appointments. [40t] (p3-5)

5.36 On 29 May 2004, the Pakistan Tribune reported that President Karzai had promulgated Afghanistan's first electoral law. According to the report, the Chairman of the Joint Electoral Management Body, Zakim Shah, told journalists that "The overall goal of the law is to give the opportunity to all Afghan citizens to express their will through free, secret, universal and direct ballots, irrespective of their ethnicity, religion, race, language, gender or social status." [50]

5.37 On 9 July 2004, the UN News Service reported that

"Afghanistan will hold presidential elections on 9 October [2004] and delay national and local parliamentary elections until April 2005, its electoral authorities announced today in a decision welcomed by United Nations Secretary-General Kofi Annan. The UN chief said the extra time offers "a very valuable opportunity to create better conditions for the holding of a free and fair parliamentary election", adding it allows voters and candidates to participate more meaningfully in the polls....In a statement issued in Kabul, the Afghan capital, the JEMB [Joint Electoral Management Body] said the "minimum requirements for holding parliamentary elections had not been reached and it would be unfair to many political parties and independent candidates to rush the process....The JEMB said a further delay is necessary because of the Islamic holy month of Ramadan, which begins in November this year [2004], and the harsh winter in Afghanistan, when travel becomes difficult for many months." [39m]

5.38 On 1 August 2004, the UN Spokesman for the Special Representative of the Secretary-General announced that out of the 62 political parties seeking approval from the Ministry of Justice, 30 had now been registered. "The latest additions are the Liberal Assadi Party (The Liberal Freedom Seeking Party of Afghanistan) led by Mohammad Zarif; Wahdat-e-Islami-e-Mardum Afghanistan (The Party of Islamic Unity of the People of Afghanistan) led by Mohammad Mohaqiq; and The Nohuzat-e-Milli Party (The National Movement Party) led by Wali Masoud. In addition, 13 parties have also obtained accreditation with the Secretariat of the Joint Electoral Management Body (JEMB) for electoral observation." [39f] (p1)

5.39 In a briefing on 25 August 2004, Jean Arnault, the Special Representative of the UN Secretary-General for Afghanistan told the Security Council that throughout most of the country, voter registration closed on 15 August 2004. However,

“In some districts of the south and south-east, where registration started late due to insecurity, registration had been extended for another five days and had come to an end on 20 August [2004]. While final figures would take some time to compile, the broad picture was already available: 10.5 million people had registered; over 41 per cent of them women. About 230,000 nomads had been registered by dedicated registration teams. That was, overall, a good result.

The picture was not entirely satisfactory, though, he continued. While many of the cases of imbalance between provinces, which existed a month ago, had been corrected, it had proved very difficult to redress the situation in those areas of the south most affected by insecurity. In those areas, general insecurity, threats and attacks by extremist elements against electoral personnel and people themselves had caused registration sites to open late or for shorter periods of time. The province of Zabul had been most affected, in which registration was barely over 50 per cent of the target. In addition, while even in very conservative areas of the country the registration of women had reached the national average of about 40 per cent, he believed insecurity had contributed to the very low registration of women in the south – approximately 19 per cent.

Some concerns had been expressed about the fairness of the registration, he noted. Allegations included that political considerations had shaped the choice of registration sites or the date of closing. While there were obviously shortcomings to that process, he was satisfied that political bias was not one of them. Multiple registrations, on the other hand, had probably been a factor. But it was very difficult to measure its scale, and, in any case, it would have no impact on polling. The preparation for the election was now under way, he said. The Joint Electoral Management Body was finalizing regulations applicable to the electoral campaign, which would start on 7 September [2004].” [39e] (p3-4)

See also [Internal Security](#) paragraph 5.131 and [Human Rights](#) paragraph 6.128

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Situation in Herat

5.40 Human Rights Watch (HRW) issued a report on the situation in Herat in December 2002. According to the report,

“Ismail Khan [the governor of Herat] – who dubs himself the “Emir of Herat” – runs Herat with an iron fist; since taking power his forces have forcibly stopped political rallies and protests, arrested dissidents, intimidated and beaten opponents, and stifled independent media. Ismail Khan has demonstrated no real allegiance to the Kabul government and has repeatedly refused to allow officials appointed by President Karzai to take posts in Herat”. [17f] (p15) Sources consulted during a Swedish fact finding mission to Afghanistan in November 2002 reported that Ismail Khan allowed no opposition. [6f] (p13)

5.41 In August 2003, President Karzai announced that Ismail Khan could not continue in his post as military commander of western Afghanistan while governor of Herat Province. President Karzai had said earlier in the year that officials could not hold both military and civil posts. [25r]

5.42 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. A spokesman for Herat governor Ismail Khan blamed Mr Sadiq's death on forces loyal to Zahir Nayebzada. Mr Nayebzada, for his part, accused Ismail Khan's forces of provoking the fighting by trying to take command of his division.” [25d]

5.43 On 23 March 2004, IRIN News reported that the death toll was much lower than originally reported and fewer than 10 bodies had been recovered following the street fighting. This was confirmed by a spokesman for President Karzai who reportedly said that “Much less than a hundred people were killed.” [84b] On 24 March 2004, the UN Assistant Secretary-General for Peacekeeping Operations reported that the situation in Herat had calmed down following the deployment of Afghan Government troops. [39a] (p2)

5.44 On 11 May 2004, BBC News reported that

“Afghan President Hamid Karzai completed a visit to the city of Herat with a demand that the powerful regional governor disarm his forces. Mr Karzai made clear that the Governor, Ismail Khan, would not be allowed to keep a private army. He said that government troops should be deployed across the country....The president signalled that troops from Afghanistan's fledgling national army would remain in Herat despite opposition from Ismail Khan. Fifteen-hundred soldiers were sent there in March after factional fighting between Mr Khan's men and forces loyal to the central government.” [25w]

5.45 On 15 August 2004, BBC News reported that

“At least 50 people have died in fighting in western Afghanistan between forces loyal to Herat governor Ismail Khan and a rival militia. Factional fighting flared between rebel commander Amanullah Khan's forces and Governor Khan's men on Saturday. The heaviest clashes were centred on an air base north of Shindand. It remains unclear who has control of the base. President Hamid Karzai condemned the fighting as an attempt to disrupt presidential elections in October. He has vowed to take serious measures against the rebels.... Amanullah said his men, armed with machine guns and rockets, had killed 14 of Governor Khan's troops and captured 20.” [25x]

(See also Sections 6A, Human Rights paragraphs 6.3, 6.9 and 6B, Women paragraphs 6.185 and 6.240 to 6.244)

Judiciary

5.46 Europa Regional Surveys of the World: South Asia 2004 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.” [1a] (p80)

5.47 An International Crisis Group (ICG) report issued in January 2003 stated that “Afghanistan’s legal system has collapsed. Never strong to begin with, it has been nearly destroyed by 23 years of conflict and misrule. There are few trained lawyers, little physical infrastructure and no complete record of the country’s laws. Under successive regimes, laws have been administered for mostly political ends with few protections of the rights of individuals to a fair trial. Although the country has signed up to most international agreements on human rights, abuses have been widespread, and military commanders have enjoyed impunity.” [26b] (p1)

5.48 UNHCR reported in July 2003 that “The country’s legal institutions suffer from lack of resources while the record of laws and regulations has been destroyed and much has disappeared during the years of conflict, leaving practitioners unclear as to the substance of the country’s law. Although court systems exist from district to national levels, the influence of commanders and powerful figures often renders it impossible for fair and just decisions to be reached over land disputes.” [11i] (p25)

5.49 According to the International Development Law Organization (IDLO) website in 2004,

“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.” [81]

5.50 According to the January 2003 ICG report “The Bonn Agreement states that the ‘judicial power of Afghanistan shall be independent and vested in a Supreme Court of Afghanistan and such other courts as may be established by the Interim Administration.’” [26b] (p8)

5.51 The Freedom House Afghanistan Country Report 2004 states that, “The Bonn Agreement reestablished the 1964 constitution as Afghanistan’s key legal document and called for the creation of a judicial commission to rebuild the legal system in accordance with Islamic principles, international standards, and Afghan traditions.” [41] (p7-8)

5.52 In January 2003, the UN Secretary-General report to the Economic and Security Council noted that “The first Judicial Commission was dissolved by President Karzai

amid concerns that its membership was not sufficiently independent and, with a view to broadening its representation to include more women and representatives of minorities, a new Judicial Reform Commission was inaugurated on 28 November 2002. The Commission, which is to play a key role in the development of gender-sensitive judicial mechanisms, now comprises two women.” [6b] (p7)

5.53 In July 2003, the UN Secretary-General’s report to the UN Security Council said that

“In a country where the rule of the gun has been the dominant feature for well over two decades, the justice sector has suffered probably more damage than any other part of the State structure, and its rehabilitation will be unavoidably slow.... Nonetheless the Judicial Reform commission has made some progress in the areas of infrastructure rehabilitation and training.... Three training programmes for judges, prosecutors, lawyers and legal scholars are currently underway..... In Kabul, reconstruction of the State judicial infrastructure has commenced with support from Italy, the lead country for judicial reform, and the United States of America.” [39i] (p7-8)

5.54 Amnesty International reported in August 2003 that

“Currently, the Afghan courts lack legitimacy and there is a perception among the people that the judicial system is unable to properly serve the interests of justice. The lack of public confidence in the court system is compounded by a history of reliance on informal judicial mechanisms in Afghanistan. Despite the political and security problems undermining the rule of law, courts are operating in some urban centres in Afghanistan, albeit with limited capacity. However, in rural areas the judicial system is barely functioning. Where courts have been established, they are fragile and they lack the basic facilities necessary to ensure the administration of justice”. [7d] (p1)

5.55 According to the International Crisis Group in September 2003, “Many people believe that local conflicts should be resolved by the government through its formal systems, and speak of a time when this was so. Yet, much of Afghanistan’s government administration and its formal justice system broke down over the war years. The task of restoring it is immense and will not be accomplished quickly.” [26c] (p11)

5.56 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.... Even fewer returnees refer their cases to the recently established property court in Kabul. Though the property court is mandated to examine all property issues nation-wide, the president of the court indicated that the number of cases from the provinces was relatively low. Members of the justice department in the provinces confirmed this.” [11g] (p11)

5.57 According to the same UNHCR report,

“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)

5.58 According to a briefing published by Minority Group International (MRG) in November 2003

“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. As John Dempsey, a property lawyer based in Kabul, stated, 'Because so much of the conflict still pervasive in Afghanistan centres on disputes over land, fair resolution of these disputes, as well as sufficient mechanisms to enforce these resolutions, is needed to improve security throughout the country. But both the formal and customary justice systems lack the capacity to counter the influence of local commanders and other politically-connected persons.' Lawyers from the Norwegian Refugee Council have convened a number of Jirgas that have settled disputes, in a fair manner, but the legal standing of these informal settlements is uncertain and they are also vulnerable to political pressure.” [76] (p5)

5.59 On 30 December 2003, the UN Secretary-General reported to the Security Council that

“The limited pool of professionally trained and experienced jurists, as well as a lack of effective working coordination between the Judicial Reform Commission and other elements of the justice sector, such as the Minister of Justice and the head of the Supreme Court, have impeded progress in the sector. Efforts (led by Italy) are now focussed on improving the coordination between the permanent institutions, the Supreme Court, the Ministry of Justice and the Office of the Attorney-General...As part of the efforts to strengthen governance at the provincial level, the justice sector is developing an integrated model of intervention in Paktia province, which combines reconstruction, rehabilitation and refurbishing of judicial and corrections buildings, training for magistrates, administrative justice personnel, police, corrections staff and defence counsels, and public awareness.” [39k] (p6)

5.60 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. Structure of authorities of which are determined by law. The Supreme Court as the highest judicial organ, heads the judiciary organ of the Islamic Republic of Afghanistan....Judges are appointed with the recommendation of

the Supreme Court and approval of the President.” 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.” [15]

5.61 According to the UN Secretary-General in a report to the Security Council on 19 March 2004,

“There have been several achievements in justice sector reform. The decree on the reformed code of criminal procedure was issued in mid-February [2004], providing a versatile system under which jurisdiction can be shifted to provincial courts from district courts where necessary. This should enable the gradual transfer of criminal cases to the formal justice system, though it is conditional upon an effectively functioning provincial infrastructure and the rehabilitation of district courts. Construction of provincial courts is under way in nine capitals, while the prioritization of district courts will be determined by the Provincial Stabilization Strategy. On 21 February [2004], a two-week training-of-trainers seminar was initiated with senior judicial and law enforcement personnel on the new criminal procedural code. In addition, 450 judges are being trained by the International Development Law Organization, an intergovernmental organization that promotes the rule of law and good governance.” [390] (p9)

5.62 According to Amnesty International in March 2004, “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)

5.63 According to the Freedom House Afghanistan Report 2004,

“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.” [41] (p8)

5.64 A Danish fact finding mission to Afghanistan in March/April 2004 reported that “Almost all sources consulted by the delegation were of the opinion that no rule of law exists in any place in Afghanistan not even in Kabul. 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.” [8a] (section 5.2.1)

5.65 The Danish fact finding mission also reported that

“UNAMA was of the opinion that the institutions, which should protect people against assault are not powerful enough to do so if the perpetrators are warlords or powerful persons from the government or the police force. 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, which 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.” [8a] (section 5.2.1)

5.66 On 21 July 2004, the United Nations Development Programme (UNDP) reported

“The justice system is being rebuilt in Afghanistan in a UNDP project that includes the construction of buildings for the administration of justice throughout Afghanistan. Construction on the Kunduz Provincial Court was completed on 7 July [2004], while groundbreaking for the expansion of the Attorney General’s Office in Kabul took place this morning at a ceremony attended by senior Afghan justice officials and officials from the Embassies of Italy, Canada and the United Kingdom.

The construction works are part of the UNDP “Rebuilding the Justice Sector of Afghanistan” project, implemented in partnership with the Judicial Reform Commission and the justice institutions of Afghanistan and funded by the Governments of Italy, Canada and the United Kingdom. The project aims to rehabilitate the physical justice facilities destroyed by decades of conflict. In the initial phase, provincial justice buildings, including courts, Attorney General’s offices, Ministry of Justice buildings and prisons, are being rehabilitated in the provinces of Kunduz, Badakhshan, Baghdis, Herat, Nangahar, Paktia and Kabul.” [47b]

5.67 On 12 August 2004, the UN Secretary-General reported that

“While progress remains slow, several initiatives have been taken to reform the system of justice: a year-long training programme organized by the Judicial Reform Commission for young professionals was recently concluded; the International Development Law Organization continues to run courses for judges, prosecutors and personnel from the Ministry of Justice from Kabul and the provinces; and Italy, as lead nation, has organized a six-week training programme for 120 professionals on the interim code of criminal procedure for judges, prosecutors, defence lawyers and policemen. Other initiatives include the establishment of a department for the administration of juvenile justice within the Ministry of Justice and the start of a pilot legal aid project. In the area of law reform, drafts of a penitentiary law, a juvenile code and by-laws for the new code of criminal procedure are being developed....

Progress is hampered by a lack of coordination between the main justice institutions; the inroads made by the drug mafia at many levels within the institutions of State, the slow expansion of effective national security institutions, interference by civil and military authorities in the administration of justice, as well as a lack of adequate financial support and coordination of reform programmes in the security sector.” [39d] (p11)

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Legal Rights/Detention

5.68 The Bonn Agreement of December 2001 provided for a legal framework to be applicable on an interim basis until the adoption of a new Constitution. This legal framework would be made up as follows:-

"i) The Constitution of 1964, a/ to the extent that its provisions are not inconsistent with those contained in this agreement, and b/ with the exception of those provisions relating to the monarchy and to the executive and legislative bodies provided in the constitution; and

ii) existing laws and regulations, to the extent that they are not inconsistent with this agreement or with international legal obligations to which Afghanistan is a party, or with those applicable provisions contained in the Constitution of 1964, provided that the Interim Authority shall have the power to repeal or amend those laws and regulations." [39b] (p2)

5.69 Article 31 of the Constitution adopted in January 2004 states that “Every person upon arrest can seek an advocate to defend his rights or to defend his case for which he 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.” [15] The constitution also states that “All specific decisions of the courts are enforceable, except for capital punishment, which is conditional upon approval of the President.” [15]

5.70 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)

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

“The Lawyers Union of Afghanistan explained that 30 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 used. 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 by 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.” [8a] (section 5.2.2)

5.72 According to the Danish fact finding report,

“UNAMA explained that in reality not only secular law but 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 possess [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 still according to the new constitution, Afghan law may not be in conflict with Islam.” [8a] (section 5.2.2)

5.73 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 therefore they are trying to incorporate the Shuras into the formal legal system to the extent that their work does not conflict with human rights.” [8a] (section 5.2.3)

5.74 According to the Danish fact finding report,

“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 will 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 do 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.” [8a] (section 5.2.1)

5.75 UNHCR informed the Danish fact finding mission that “The state cannot offer any protection for individuals against persecution and violation. As an Afghan, you have to go to your network to find protection. In spite of the efforts to establish a legal system with a functioning police and courts, warlords continue to rule. This also applies for conflicts concerning land.” According to UNAMA, “Court sentences are not enforced if the local warlord does not agree 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.” [8a] (section 5.2.1)

5.76 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 next 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.” [8a] (section 5.2.1)

5.77 According to a UNAMA spokesman on 14 March 2004,

“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. Currently there are some 45 juveniles aged from seven to 18 who have been arrested and detained with adults. Seventy per cent await trial and the rest have been convicted. The national strategy, led by the Ministry of Justice (MOJ) with support from the Ministries of Labour and Social Affairs, Interior, Women's Affairs and UNODC will: strengthen juvenile justice administration including establishing a focal point in the MOJ; set up new premises for the Kabul Youth Court and train experts on juvenile justice. The strategy includes reform of corrections' administrations for offenders as well as the establishment of a residential institution for offenders aged 15-18 in Kabul. The aim is to extend these initiatives to the provinces later.” [40c] (p2)

5.78 The Freedom House Afghanistan Country Report 2004 states

“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.” [41] (p4)

5.79 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)

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Death Penalty

5.80 The Consitution of January 2004 allows for capital punishment, conditional on the approval of the President. [15]

5.81 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)

(See also Section 6A, [Human Rights](#) paragraph 6.29)

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Internal Security

General situation

5.82 In September 2003, the International Crisis Group reported that “After the Coalition toppled the Taliban in November and December 2001, militias that had collaborated with it or taken advantage of a security vacuum assumed power.” This resulted in a patchwork of militia fiefdoms, with varying levels of internal organisation. [26d] (p2)

5.83 A UNHCR Returnee Monitoring Report issued in the spring of 2003, covering the period January 2002 to March 2003, stated that

“Security-related incidents were exacerbated by the absence of the rule of law, limited influence of the central authority beyond Kabul City, and by both limited

interventions and escalating counter-terrorist operations by the Coalition forces. The delay in embarking on the demobilization and disarmament process contributed to an unsettled security environment, permitting the presence and influence of local commanders who have used their military power to commit acts of extortion, looting, harassment, arbitrary and private detention, kidnapping and sexual abuse of women. Other major factors cited by interviewees as contributing to a precarious security situation are the lack of effective legislation, administrative and judicial structures in rural areas. Additionally, but not insignificantly, there were temporary disruptions to security as a side effect of action by the Coalition forces in their pursuit of Al Qaida terrorists.” [11h] (p7)

5.84 According to the same UNHCR report,

On 15 December 2002, President Karzai issued two decrees, on disarmament and the separation between civilian and military structures. The former calls for the countrywide collection of arms and disarmament along with the reconstruction and rehabilitation of the national army. The second decree separates the competencies and responsibilities of the civil and military institutions: none of the military or civil cadres can perform a second job or duty in the military or civil institutions, meaning that several provincial leaders would have to relinquish one title or the other.” [11h] (p7-8)

5.85 In July 2003 a UNHCR position paper noted “The absence of systematic or multilateral de-commissioning and disarmament, the lack of law enforcement, coupled with the war economy, have given rise to banditry and criminality. Insecurity is high on several roads, including on some of the main road-links. Road travel has become more dangerous in certain areas, with money being demanded by bandits and by individual commanders through the establishment of checkpoints or ambushes.” [11i] (p25)

5.86 Europa Regional Surveys of the World: South Asia 2004 records that “Minister of Defence Fahim and his allies from the Panjshir Valley, north of Kabul, had taken control of the country’s security shortly after the fall of the Taliban, and in mid-2003 they seemed reluctant to allow any distribution of that power.” [1a] (p62)

5.87 According to Amnesty International in July 2003,

“Continued factional fighting among regional and local commanders, targeting of aid personnel, crime and banditry, and the resurgence of forces allied to the Taleban, have resulted in a situation of generalized instability in up to two-thirds of the country. Regional and local commanders, including in the north, the west and the south of the country, have continued to fight local “turf wars”, leading in many instances to the death of civilians, destruction of property, and fresh displacement.... The security situation across Afghanistan has steadily deteriorated in 2003, leading many observers to fear for the long-term stability and reconstruction of the country.” [7f] (p1)

5.88 In a report to the UN Security Council dated 23 July 2003, the Secretary-General stated that

“The overall security situation throughout Afghanistan remains fragile and, in many areas, exhibits signs of deterioration. During the reporting period, localized tensions between rival factions in the north have taken a dramatic turn for the worse. During June and July [2003], the Junbish forces of General Abdul Rashid Dostum and the Jamiat forces of Ustad Atta Mohammed repeatedly clashed in Balkh, Samangan and Sari Pul Provinces, resulting in direct intervention by the two factional leaders.” [391] (p8)

5.89 According to Amnesty International in July 2003, “On 11 June 2003, fighting between the forces of Abdul Rashid Dostum and Ustad Atta Mohamed in Sholgara district, south of the city of Mazar-i-Sharif, killed at least two civilians and wounded another.” [71] (p1) The BBC reported on 6 July 2003 that at least 11 people had been killed in clashes over the previous four days between the two rival militias. [25ah]

5.90 In his July 2003 report the UN Secretary-General said “The presence of ISAF [International Security Assistance Force] in Kabul has greatly contributed to security in the capital, reducing crime and instilling a measure of confidence in its citizens.” [391] (p20) The Secretary-General also noted that “Despite progress made in rebuilding the national army and police, much more needs to be done to reform the security sector, and there remains a pressing need for international security assistance beyond Kabul.” [391] (p2) According to UNHCR in July 2003, “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.” [111] (p41)

(See also Section 5 on ISAF paragraphs 5.132 to 5.153)

5.91 The report of the UN Secretary-General in July 2003 observed that members of groups thought to be aligned with the Taliban, Al Qa’ida and Hekmatyar (leader of Hizb-i-Islami), had stepped up their activities along the southern and eastern borders of Afghanistan, resulting in repeated clashes with Coalition and Afghan National Army forces operating in the region. [391] (p1)

5.92 According to the Secretary-General’s report,

“United States and Afghan military forces in Khost and Paktya Provinces have come under rocket attack on several occasions. The International Security Assistance Force (ISAF) suffered the deadliest attack in its 18 months of operations on 7 June 2003 when a suicide car bomber drove into a German ISAF bus, killing four soldiers and one bystander, and injuring 29 others. Attacks against the assistance community have intensified significantly over the past three months, jeopardizing the safety of both international and national staff. In March [2003], an international staff member of the International Committee of the Red Cross was assassinated in Uruzgan Province, the first killing of a foreign aid worker in Afghanistan since 1998.” [391] (p9)

5.93 On 14 August 2003, BBC News reported a spate of attacks mainly in the south and south-east of the country. According to the report,

“Two aid workers from the Afghan Red Crescent Society have been killed and three others injured in an ambush south-west of the capital, Kabul. In a separate incident,

the United Nations refugee agency, UNHCR, announced that it was suspending operations in Kunar Province in eastern Afghanistan after a rocket was fired near one of its compounds. The UN and a number of other aid agencies had already suspended activities in parts of southern Afghanistan following a flurry of attacks in those areas. The latest incidents come amid a deteriorating security situation and followed one of the bloodiest days in Afghanistan in the past year. Some 60 people were killed in violent incidents on Wednesday. These included an explosion on a bus which Kabul blamed on the Taliban, a battle between Afghan Government forces and suspected Taliban and al-Qaeda elements, and factional fighting.” [25q]

5.94 On 24 August 2003, UNAMA announced the establishment of a peace commission that had been established in Maymana, Faryab Province, formed by representatives of the Governor’s office, the major factions (Jamiat and Jonbesh) and the Faryab police. The Commission will be facilitated by UNAMA with support from the Mazar-i-Sharif based Provincial Reconstruction Team (PRT). According to UNAMA “The Faryab Commission will be able to respond more quickly to problems in the province. The new Commission will meet weekly to address, mediate and resolve issues that have the potential to degenerate into fighting. These tensions are generally caused by local commanders who are vying for more power and to extend their territory, control and influence.” [40bb] (p1)

5.95 On 24 August 2003, UNAMA also reported that a voluntary disarmament process, organised and conceived by the Security Commission of the North, began in Sholgara on 16 August 2003. According to UNAMA, the Sholgara disarmament is supported by Generals Abdul Rashid Dostum, Ustad Atta Mohammad and Sardar Saidi: the key leaders of Jonbesh-e-Melli, Jamiat-i-Islami and Hizb-e-Wahdat, who have reaffirmed their commitment to enhancing security in the north. However, this exercise is not part of the national DDR programme, which has yet to begin. [40bb] (p1-2)

5.96 On 5 September 2003, the BBC reported that a coalition campaign against remnant Taliban forces had been launched in the mountainous territory of southern Afghanistan, resulting in the deaths of around 124 enemy fighters and five government soldiers. [25o]

5.97 The Freedom House country report of 2004 notes 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. The 5,300-strong International Security Assistance Force (ISAF), mandated by the UN and currently led by NATO, is responsible only for security in Kabul. Following the Bonn conference, some militias were reorganized into a loose grouping of units under the authority of the ministry of defense (MoD). The MoD, headed by Marshal Qasim Fahim, is dominated by Tajik commanders who were part of the Northern Alliance and is seen as unrepresentative and overly partisan. Reforms enacted in September 2003 did introduce more non-

Tajiks and professionals into the ministry but left members of the Shura-yi Nazar faction in charge.

Elsewhere, regional commanders and warlords maintain local militias. These strongmen have declared their nominal allegiance to the central government. The majority have been given high-ranking positions within the TA but are unwilling to disband their private armies or coalesce them into a united force under central government control. In addition to their military clout, armed groups or parties dominate the political landscape through control of provincial governorships or central government ministries in Kabul....Some governors combine military and civilian authority in a way that is not mandated by current constitutional arrangements. For example, the governors of Herat and Kandahar do not have formal military positions but act as the de facto leaders of the armed forces in the provinces under their control.” [41] (p9-10)

5.98 The Secretary-General to the UN reported on 3 December 2003 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 of armed factions; (b) building a new national army; (c) training a new national police force and border guard; (d) rehabilitating the justice sector; and (e) counter-narcotics.

Momentum for reform was set by the 1 December 2002 presidential decree establishing the Afghan National Army and calling for the disarmament, demobilization and reintegration of all factional forces and the reform of the Ministry of Defence. Unfortunately, the pace of reform has been slower than desired. Indeed, each step of the process has met with opposition from political leaders at the highest levels.

Nonetheless, important progress was made with the implementation in September 2003 of a Ministry of Defence reform plan. The plan called for 22 “first tier” positions within the Ministry to be restaffed so that the leadership would be more representative of Afghanistan’s diversity. This meant, in particular, decreasing the influence of the Defence Minister’s Panshiri faction. The reform, when accomplished, was less sweeping than had been hoped. As a result, many Afghans continue to believe that real power remains in the hands of a single faction. This sentiment is particularly strong among the Pashtun population in the south.” [39] (p6-7)

5.99 In September 2003, the Integrated Regional Information Networks (IRIN) reported that according to a senior analyst with the International Crisis Group, the reforms are intended to create a more equitable ethnic balance within the ministry and encourage national disarmament. Divisional Commanders in several regions, including the Pashtun southeast and the Uzbek regions of the northeast, had previously said that they would not comply with national disarmament if all the leadership positions in the Defence Ministry were held by Panjshiri Tajiks. [36a]

5.100 In August 2003, BBC News reported that “Mr Karzai earlier this week announced

a change of governors in Zabul and Kandahar, both provinces where anti-government Taliban insurgents have been active in recent months.” [25p] On 14 August 2003, the BBC also reported that President Karzai had reiterated that Ismail Khan could not remain military commander of western Afghanistan while governor of Herat Province. According to the BBC report, “The announcement came as part of a major reshuffle of provincial governors and officials by the National Security Council. President Karzai said earlier this year that officials could not hold both military and civil posts.” [25r]

5.101 In a report to the UN General Assembly on 3 December 2003, the Secretary-General said that President Karzai and the Ministry of Interior had successfully replaced corrupt and incompetent officials both in Kabul and in the provinces. According to the report

“In certain cases, however, the new appointments have been resisted by local incumbents. This underscores the need for further efforts by the central government to ensure that all government officials accept its legal authority to make appointments and enforce civil administration decrees. The creation, on 11 June 2003, of the Independent Reforms Commission of Administrative and Civil Services should facilitate merit-based appointments and promotions of government officials... The Commission has the authority to remove corrupt or unqualified government officials. The establishment, also in June 2003, of a Salary Payment Task Force by the Ministry of Finance is expected to streamline payment mechanisms, help combat corruption, improve the retention rate of civil servants and help instil loyalty to the central Government.” [39j] (p 3-4)

5.102 According to an International Crisis Group report in September 2003,

“Discussions with Afghans about governance and security eventually come down to one point: the need to disarm the commanders currently holding power in most of the country. Without this, virtually all the key elements of the political process set out in the December 2001 Bonn agreement – including a new constitution, judicial reform and elections – will continue to be viewed with justifiable scepticism. If political space and much of the economy remain monopolised by individuals and parties with the threat of force behind them, the possibility for ordinary citizens to express their will through political institutions and to pursue justice through legal institutions will remain virtually nil.” [26d] (p1)

5.103 In November 2003 the Human Rights Research and Advocacy Consortium (HRRAC), which includes the Afghan Independent Human Rights Commission, published the findings of the Consortium’s first piece of collaborative research. The Consortium was established in early 2003 to engage in proactive research and advocacy on human rights issues over a sustained period. The HRRAC 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. [70a] (p(i))

5.104 The Consortium’s first research project was undertaken between April and June 2003 and in total 1,479 Afghan men and women participated from eight locations

across the country: Kabul, Gardez, Kandahar, Zaranj, Herat, Saripul, Panjao and Faizabad. The survey found that

“A mixed picture emerged about security issues. Whilst most respondents (92%) felt safe walking around their village or town, all 31 group discussions prioritized security as the key issue for Afghanistan moving forward. Those surveyed in Gardez (76%) and Kandahar (80%) felt significantly less secure than elsewhere.

Overall 83% of respondents felt more secure now than three years ago, but there was significantly less optimism about security in Gardez (23%) and Kandahar (53%). Group discussions revealed fears about the rise in theft, the presence of armed groups and the related lack of rule of law and central authority. Women generally felt the same level of security walking around their village/town as men, possibly as the boundaries of public space women are allowed to travel in are extremely restricted. Group discussions revealed this may also be linked to perspectives on the Taliban. Women recognised that security was good in an abstract sense under the Taliban, but personally felt insecure and restricted at that time, and therefore much safer now.” [70a] (p2)

5.105 The HRRAC report also found that

“Most respondents (48%) held the police responsible for providing protection against crime. The majority (82%) of respondents thought that those they held responsible for providing security were fulfilling their responsibilities satisfactorily....Disarmament was prioritised as the most important thing to do to improve security. Group participants also thought that without disarmament it would be extremely difficult to hold free and fair national elections, or to make significant progress with reconstruction....Concerns about threats to long term peace included armed groups, rule by gun, lack of rule of law and impunity for commanders and warlords.” [70a] (p2)

5.106 In a report to the UN General Assembly on 3 December 2003, the Secretary-General stated that,

“Security remains a major concern throughout much of the country. Unchecked criminality, outbreaks of factional fighting and activities surrounding the illegal narcotics trade have all had a negative impact on security. The primary source of instability remains terrorist activities by suspected Taliban, Al-Qaida, and supporters of Gulbuddin Hekmatyar [leader of Hizb-i-Islami]. 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)

5.107 In a report of 30 December 2003 to the UN Security Council, the Secretary-General said that

“The reporting period [July to December] saw an increase in terrorist activity, factional fighting, activities associated with the illegal narcotics trade and unchecked criminality. In the last 90 days, the number of reported incidents targeting civilians exceeded the total of those that occurred in the first 20 months following the signing of the Bonn Agreement. At their height during the reporting

period attacks against the humanitarian community escalated from a rate of one per month to one almost every two days. This rate has subsided over the past several weeks, though threats against the international community remain and a number of steps have been taken to minimize exposure to them. Attacks on international and national staff of the assistance community and officials of the central Government have been concentrated in the south and the south-east. Previously, such acts were largely conducted in relatively remote or isolated areas, but in recent months they have expanded to city centres.” [39k] (p2)

5.108 The Secretary-General continued,

“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. Lack of access to assistance or structures of the State risks further alienating the population, which is predominantly Pashtun, and may increase their willingness to tolerate, if not support, the presence of those among them who have an agenda that is at odds with the peace process.” [39k] (p2)

5.109 Following the murder of the UNHCR official in Ghazni, the Agency Coordinating Body for Afghan Relief (ACBAR), which represents over ninety national and international NGOs working in Afghanistan, issued a press release on 17 November 2003. ACBAR’s advocacy and policy coordinator said: “This attack will again force NGOs to reevaluate the conditions under which they are working. ACBAR has repeatedly warned the international community of the worsening security situation. If assistance and development work is to continue in large swathes of the South and South East of Afghanistan, then the international community must immediately act to assist the government in the provision of effective security.” [75]

5.110 On 30 December 2003, the Secretary-General to the UN Security Council reported that

“In response to the increased threat against the United Nations and the aid community, on 26 November [2003] President Karzai established two national task forces, bringing together the Afghan security ministries, the International Security Assistance Force (ISAF), the coalition forces and the United Nations. One task force is working on short-term measures to ensure the necessary security for the Bonn processes and for aid and reconstruction efforts, while the second is to work on responses to security threats over the longer term.” [39k] (p3)

5.111 The Secretary-General’s report continued

“The arbitrary rule of local commanders and the presence of factional forces in

significant portions of the country continued to be another source of insecurity. Allegations continued that communities under their control are often deprived of their basic rights and are victims of serious human rights abuses. The north, in particular, has suffered the effects of factional fighting. In October [2003], just weeks before the planned start of the pilot phase of the disarmament, demobilization and reintegration programme, the population of Mazar-i-Sharif (Balkh province) was subjected to intense interfactional fighting — 6 people were reportedly killed and 30 injured. The Minister of Interior negotiated a ceasefire and heavy weapons disarmament agreement with General Atta Mohammed and General Dostum, the implementation of which is being supervised by the Joint Security Commission, with the participation of the Mazar-i-Sharif provincial reconstruction team and UNAMA... Thus far, the forces of General Atta Mohammed have demonstrated compliance with the agreement; the forces of General Dostum have shown some resistance, as reflected in the fact that they have handed over fewer weapons. Some observers have suggested that this resistance to disarmament may be intended to maintain a point of leverage in the ongoing discussions with the Government relating to General Dostum's future position.” [39k] (p3)

5.112 According to the UN Secretary-General's March 2004 report,

“Insecurity in the country continues to follow a well-known pattern and has shown no signs of significant improvement. Civilians continue to be killed in inter-factional fighting. Attacks by extremist elements on aid agencies, both national and international, and on government officials continue to occur, predominantly in the southern provinces. On 21 February [2004] an Australian national was killed and a United States and a United Kingdom national were seriously wounded when their helicopter was attacked in Panjwai district, Kandahar. On 5 March a Turkish road engineer and an Afghan security guard were killed in Shah Joy district, Zabol, when their vehicle was ambushed by suspected Taliban; a Turkish engineer and a security guard were also kidnapped. The next day a member of the Red Crescent Society was shot dead outside the provincial capital, Qalat. Recently, however, some of the most deadly incidents have occurred outside the southern high-risk areas. Last December in Farah Province five members of a government census team were killed; and in February five Afghan aid workers were killed in a rural area of Kabul Province. This supports the consensus view that extremist groups, even if unable to launch military operations, can and will attack unprotected targets affiliated with the Transitional Administration or the aid community. Given this pattern of attacks, national and international non-governmental organizations maintain a low profile in the south and operate cautiously in other areas of the country. This seriously constrains the implementation of activities such as reconstruction, the census and voter registration in rural areas.” [39o] (p4)

5.113 The Secretary-General's report also 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.

At the same time, factional feuds, rivalries and, increasingly, drug-related incidents continue to affect the lives of the population. 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)

5.114 A Danish fact finding mission to Kabul in March/April 2004 reported the views of several sources on the security situation. According to the Danish report, “UNAMA stated that ISAF still does not operate to any great extent outside Kabul despite the fact that the number of peacekeeping forces in Afghanistan seems to be increased.” [8a] (section 3.1.1)

5.115 UNAMA advised the fact finding mission 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 have been any attacks directed against the civilian population in Kabul. DACAAR noted that “The attacks that have taken place have been directed against 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. [8a] (section 3.2.1)

5.116 According to the Danish fact finding report of March/April 2004, “UNHCR explained that the southern part of the central areas is controlled by two factions of the Hazara party, Hezb-e Wahdat. There are clashes between the two factions, led by Karim Khalili and Mohammad Aqbari respectively.” [8a] (section 3.2.2)

5.117 Most sources interviewed by the Danish fact finding mission said 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. [8a] (section 3.2.3)

5.118 According to the Danish report,

“UNCHR found that the security situation in Nangarhar in the east of Afghanistan is relatively stable. The organisation has access to half of the districts in the province. ... 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. UNHCR explained that the organization currently [does] not have any fully functioning offices in Khost and Kunar due to the poor security situation there....SCA does not work in Kunar, Khost, Laghman or Paktika because the coalition forces presence is causing instability.... SCA found that the local population is intimidated by local warlords, who use all their means to maintain

control and to exploit the local resources especially for the growing of opium. The source found that in some areas the security situation is very unstable and equivalent to the situation before Taliban achieved power. SCA was informed that in the eastern provinces conflicts are particularly related to access to land.” [8a] (section 3.2.3)

5.119 UNHCR described the security situation in southern Afghanistan as very unstable. They were also of the view that the central government had less control in the southern areas today than 18 months ago. According to the Danish report “In April 2003 UNHCR had access to 90% of the districts in the south. In November 2003 the organization only had access to 20% of the districts. The UNHCR explained that the lack of international organizations in these areas has the consequence that the local population is losing [sic] faith in the central government. The UNHCR do not advise people to return to the southern and south eastern parts of the country. Nevertheless some people do so, and according to the source these people certainly have a network to return to.” [8a] (section 3.2.3)

5.120 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 work for these groups. According to the Danish report, “Nevertheless, UNHCR due to their limited presence in the area, is not in a position to monitor the situation for the local population or to offer them any protection. 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.” [8a] (section 3.2.3)

5.121 According to the Danish fact finding report, “DACAAR was familiar with cases in southern Afghanistan where Taliban groups have intimidated the population. In 2003 such groups threatened to kill taxi drivers in Jalalabad [Nangarhar province] who accepted foreigners as passengers in their taxis.... The ICG took the view that the local populations in southern, south-eastern and eastern Afghanistan works 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.” [8a] (section 3.2.3)

(See also Section 6C, Taliban paragraphs 6.331 to 6.353)

5.122 According to the Danish report of March/April 2004, various sources consulted including UNHCR, UNAMA and IOM, were of the view that security in northern Afghanistan is fairly good, but there are tensions between General Dostum and Mohammad Atta. [8a] (section 3.2.4)

5.123 According to the Danish report

“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 casualties [sic] within military ranks, but do not affect the civilians. UNHCR explained that all of the Faryab province is now controlled by the Uzbek-party, Junbesh-e-Milli which is led by General Dostum. This has according to UNCHR

[sic] contributed to the stabilization of the province. The human rights position has improved, and General Dostum has allowed Pashtuns to return to the area. Also the Jowzjan province is controlled by Junbesh-e-Milli. 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.” [8a] (section 3.2.4)

5.124 The Danish fact finding report also commented on the situation in western Afghanistan. The report states

“In Herat, in the western part of the country and which up to now has been regarded as one of the more stable regions, fights broke out on 21st March 2004 between troops loyal to Herat’s governor, Ismail Khan and troops loyal to the government nominated commander General Zahir. The conflict arose as a result of an extended period of tensions between the two leaders and was initiated when the governor’s son and Minister for Aviation and Tourism, Mirwais Siddiq was killed when he trying to force his way into the general’s palace. Subsequently, the government sent troops from the ANA to Herat.” [8a] (section 3.2.5)

5.125 On 24 March 2004 the UN Assistant Secretary-General for Peacekeeping Operations said that the recent fighting in Herat and factional fighting in the north of the country strongly indicated that security remained an unresolved problem. However, the situation in Herat had calmed down following the deployment of Afghan Government troops. [39a] (p2) According to the Danish fact finding report of March/April 2004, UNAMA was of the view that the fact that the central government had deployed the ANA to Herat could be seen as a test of the government’s ability to exercise its control outside Kabul. [8a] (section 4.1)

5.126 A number of sources interviewed by the Danish fact finding mission in spring 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 IOM, the central government has only been able to increase its power slowly outside Kabul and most regions outside Kabul continue to be led by local warlords. [8a] (section 4.1)

5.127 In April 2004, the Berlin Conference on Afghanistan resulted in the Berlin Declaration. 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) The Berlin Declaration welcomed NATO’s commitment to expand ISAF’s mission by establishing five additional Provincial Reconstruction Teams (PRTs) by summer 2004 and further PRTs thereafter, as well as the readiness of ISAF and OEF to assist in managing security ahead of the elections. [40t] (p3)

5.128 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. 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. Requests for an expansion of the International Security Assistance Force (ISAF) beyond Kabul have resulted in an amended mandate from the UN but it will take time for NATO, which oversees ISAF, to find sufficient resources for more than a gradual expansion.” [37] (p2)

5.129 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)

5.130 According to the AREU report, the minimal investments of the international community, despite repeated calls by President Karzai, the UN, NGOs and the Afghan people to do more, has resulted in a security situation that is deteriorating daily and is markedly worse than it was at the start of the Bonn process in January 2002. The report states 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)

5.131 According to the UN Secretary-General in a report to the General Assembly Security Council on 12 August 2004,

“The security situation in Afghanistan is volatile, having seriously deteriorated in

certain parts of the country. Attacks on national and international forces and on electoral, government and humanitarian workers and their premises in southern Afghanistan have intensified. At the same time, in a disturbing development, several of the most serious acts of violence since the start of the Bonn process took place in the north and west of the country, areas that had been considered low-risk. The protagonists of this destabilizing activity range across a gamut of interests hostile to the peace process, from extremist elements (Al-Qaida and the Taliban, whose numbers include cross-border insurgents), to factional forces and criminals, including some involved in drug trafficking. Acts of violence have, increasingly, been directed at the staff and offices of the electoral secretariat and United Nations workers.” [39d] (p6-7)

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

5.132 The Bonn Agreement of December 2001 raised the possibility of an international security force for Afghanistan and the participants in the UN talks requested the assistance of the international community in helping the new Afghan authorities in the establishment and training of Afghan security and armed forces. [39b] (Annex 1)

5.133 According to NATO in June 2004, the International Security Assistance Force (ISAF) was created in accordance with the Bonn Agreement. The concept of a UN-mandated international force was launched to assist the Afghan Transitional Authority (ATA), to create a secure environment in and around Kabul and to support the reconstruction of Afghanistan. [63b] (p1)

5.134 According to the Department for International Development (DFID) on 11 June 2002, “ISAF is not specifically mandated to assist the Afghan police in Kabul. It is mandated to provide a stable and secure environment for the political process up until the Loya Jirga and beyond in support of the Interim and Transitional Administrations.” DFID also noted that ISAF are not responsible for the protection of individuals or minority groups, and have no official authority to investigate complaints or take action. [51]

5.135 According to NATO in June 2004,

“ISAF is not a UN force, but is a coalition of the willing deployed under the authority of the UN Security Council....Initially, individual nations volunteered to lead the ISAF mission every six months. The first ISAF mission was run by the United Kingdom. Turkey then assumed the lead of the second ISAF mission. The third ISAF mission, as of February 2003, was led by Germany and the Netherlands with support from NATO.

Since 11 August 2003, ISAF is supported and led by NATO, and financed by the troop-contributing countries. The Alliance is responsible for the command, coordination and planning of the force. This includes providing a force commander and headquarters on the ground in Afghanistan.

NATO's role in assuming the leadership of ISAF in August 2003 overcame the problem of a continual search to find new nations to lead the mission and the

difficulties of setting up a new headquarters every six months in a complex environment. A continuing NATO headquarters also enables small countries, which find it difficult to act as lead nations, to play a strong role within a multinational headquarters.” [63b] (p1)

5.136 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.” [39j] (p 10)

5.137 According to NATO in June 2004, “ISAF’s mandate was initially limited to providing security in and around Kabul. In October 2003, the United Nations extended ISAF’s mandate to cover the whole of Afghanistan (UNSCR 1510), paving the way for an expansion of the mission. In December 2003, the North Atlantic Council, NATO’s principal decision-making body, authorised the Supreme Allied Commander, General James Jones, to initiate the expansion of ISAF by taking over command of the German-led Provincial Reconstruction Team (PRT) in Kunduz.” [63b] (p2)

5.138 In a report on 30 December 2003 to the UN Security Council, the Secretary-General stated that “The Security Council’s adoption of resolution 1510 (2003) on 13 October, authorizing the expansion of ISAF, gave rise to optimism that stability would come to the areas most in need.” [39k] (p7)

5.139 On 19 March 2004, the Secretary-General to the UN reported that

“Under the command of the North Atlantic Treaty Organization (NATO), ISAF has continued to make an invaluable contribution to the security of Kabul. Since the takeover by Germany of the Konduz provincial reconstruction team on 6 January [2004], NATO has also begun its deployment outside Kabul, as authorized by the Security Council in resolution 1510 (2003) of 13 October 2003. The recent decision of NATO to further expand its operations in Afghanistan is encouraging, as are indications that it will take over the three existing provincial reconstruction teams in the north — Mazar-e-Sharif, Konduz and Herat — and possibly set up two more by June 2004.” [39o] (p11)

5.140 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) The report continues “While the ISAF force has increased from less than 5,000 to just over 6,000 since last year, NATO nations have still not fulfilled their 2003 commitments for a substantial expansion of ISAF; the deployment of a 250-man German PRT to Kunduz remains ISAF’s only move outside Kabul.” [22a] (p10-11)

5.141 On 25 June 2004, HRW called for NATO to immediately expand its forces in Afghanistan to provide security for the elections scheduled for the autumn. Furthermore, “Human Rights Watch noted that over fifty humanitarian and human

rights organizations working in Afghanistan called on NATO members last week to increase their troop commitments to ISAF.” [17j]

5.142 In June 2004, NATO advised that

“PRTs [Provincial Reconstruction Teams] 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. As of 31 December 2003, the military component of the Kunduz PRT is under ISAF command as a pilot project for the further expansion of the mission.” [63b] (p2)

5.143 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)

5.144 Commenting on the creation of Provincial Reconstruction Teams in January 2004, the HRW report noted that the teams combined 300 to 400 military and intelligence personnel with reconstruction specialists. According to HRW,

“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)

5.145 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. It remains to be seen how the PRTs will interact with the newly reconstituted ISAF under NATO command.” [17e] (p5)

5.146 On 28 January 2004, a writer for the Washington File (a product of International Information Programs, US Dept of State) reported that

“General James Jones, the Supreme Allied Commander, Europe for the North Atlantic Treaty Organization (NATO) testified as to the role of Provincial Reconstruction Teams (PRTs) in the country. He said the PRTs enable the NATO-led International Security Assistance Force (ISAF) “to facilitate and create an environment that allows for reconstruction and nation-building activities to proceed.”.... The PRTs are composed of both civilian and military elements. He explained that the civilian component, made up of Afghans, U.N. personnel and non-governmental organizations (NGOs) perform reconstruction and infrastructure projects, while the military component provides security.” [40bc] (p1-2)

5.147 According to the Washington File report,

“The PRTs, he [General Jones] said, are “designed to meet specific requirements relative to security, terrain and socioeconomic conditions” for the province to which they are assigned. “In this way, a properly-sized, efficient military PRT element, working in close cooperation and synchronized with a civilian element, can have a significant effect and influence on a considerable geographic portion of Afghanistan,” said Jones.” The general added that NATO is planning to add four or five additional PRTs, and said Afghan National Army (ANA) soldiers will accompany the military components and gradually assume more responsibility.” The report also noted that, according to General Jones and the US State Department’s Coordinator for Afghanistan, Ambassador William Taylor, the security situation in Afghanistan is also improving through the training of police and ANA soldiers. [40bc] (p2-3)

5.148 On 4 March 2004, Agence France-Presse (AFP) reported that, according to an official statement, the US-led coalition forces in Afghanistan had set up a new civil-military team in southwestern Ghazni province to improve security in the region hit by violence. The official statement noted that the team in Ghazni, manned by approximately 50 US soldiers, will focus on reconstruction and security as well as providing conditions for non-governmental organizations operating in the region. [40ax]

5.149 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.” [390] (p11-12)

5.150 According to a report published by the AREU in June 2004,

“The PRT concept was formally announced in November 2002. Since then 16 PRTs have been established, mostly in the East, Southeast and South, but also in the major regional centers in the West, Central and Northern regions. 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)

5.151 The AREU report continued

“In the end, it is difficult to generalize with regards to the PRTs. Behavior 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 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)

5.152 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)

5.153 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)

Disarmament, Demobilization and Reintegration Programme (DDR)

5.154 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)

5.155 In the same report, the Secretary-General announced that the initiation of the disarmament programme, due to commence on 1 July 2003, had been delayed, pending the implementation of a series of reforms at the Ministry of Defence. The reforms aimed to restructure the senior echelon of the Ministry and to appoint people from differing political, regional and ethnic backgrounds to important high level positions. [39i] (p10)

5.156 According to the UN Secretary-General’s report “The first phase of the disarmament, demobilization and reintegration programme consists of a pilot project to disarm 1,000 ex-combatants in each of six designated locations, namely, Bamian, Gardez, Kabul, Kandahar, Kunduz and Mazar-i-Sharif. Lessons learned from the pilot phase will be incorporated into the main phase of the Afghan New Beginnings Programme, disarming the remaining 94,000 ex-combatants, which is to begin as soon as possible thereafter. The regional offices of the Programme will support the disarmament process. Preparations are already under way in Bamian, Gardez, Kandahar and Kunduz.” [39i] (p10)

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

“Under the Afghan New Beginnings Programme, the pilot phase of the disarmament, demobilization and reintegration [DDR] programme began on 24 October [2003] in Kunduz province. With financing from Japan and assistance from the United Nations Development Programme (UNDP), 1,008 ex-soldiers were processed through the disarmament and demobilization phases. Nine hundred and twenty-six weapons were collected and transported to Kabul, where they are being stored by the Afghan National Army Central Corps under a dual-lock system and held by the Ministry of Defence and the international observer group. By 11 December [2003], 1,004 of the ex-soldiers had selected reintegration options.” [39k] (p4)

5.158 The Secretary-General also noted that

“In Kabul, the pilot disarmament, demobilization and reintegration programme began on 10 December [2003]. Thus far 2,000 soldiers from eight units have been identified by the Ministry of Defence to take part in the Kabul pilot project. Two hundred of them have been disarmed, and the remainder are undergoing verification. All eight units will be decommissioned and their components reintegrated by the end of January [2004]. Similar to the process in Mazar-i-Sharif, disarmament, demobilization and reintegration in Kabul will hopefully take place in parallel with the ISAF-sponsored heavy weapons cantonment plan, which began on 10 December [2003] with the collection of 250 heavy weapons. This is a very welcome and important development because disarmament in Kabul was called for in the Bonn Agreement, and the delay in its implementation until now has been a source of contention and distrust. Its credible conduct could make an essential

contribution to building wider public confidence that the disarmament, demobilization and reintegration process serves all of Afghanistan's interests, not only factional interests." [39k] (p5)

5.159 On 22 January 2004 a feature article by Radio Free Europe/Radio Liberty reported that

"Last week, in a program that is backed by the NATO-led International Security Assistance Force for Afghanistan (ISAF), Afghan militia commanders in Kabul turned in more than 100 armored vehicles and heavy artillery pieces to the central government. That handover was seen as an important initial step toward demilitarizing the Afghan capital. Much of that equipment belonged to the military wing of Defense Minister Fahim's Jamiat-e Islami faction....ISAF's deputy commander, Major General Andrew Leslie, said disarmament in Kabul has been a tremendous success. He said it shows that rival commanders are beginning to trust each other on disarmament. More importantly, Leslie said the program shows that commanders who don't trust each other are at least ready to trust ISAF. Militia commanders in Kabul are expected to hand over another 300 heavy weapons during the next month. If successful, the program would remove all of Jamiat-e Islami's heavy artillery from the Afghan capital." [29a] (p2)

5.160 According to the Radio Free Europe/Radio Liberty article, General Abdul Rashid Dostum, the ethnic Uzbek commander who heads the Jonbesh-e Melli-Islami, gave a press conference on 21 January 2004. The source reported that

"Speaking at a press conference yesterday in the northern Afghan city of Mazar-e Sharif, Dostum stressed that much of his private militia is participating in a UN disarmament program that is aimed at bolstering the authority of the central government by helping to build a multiethnic Afghan National Army...However, officials at a British-run Provincial Reconstruction Team near Mazar-e Sharif noted recently that the 50th Regiment of Dostum's militia continues to refuse to surrender its heavy artillery. When asked about the British PRT's report on the 50th regiment, Dostum insisted that some of his militia forces have the right to retain their heavy weapons until rival militia disarm...Altogether, some 100,000 militiamen across Afghanistan are supposed to surrender their weapons under the UN program...Dostum also told journalists that he would personally intervene in cases where some members of his militia have been accused of hindering the return of refugees in northern Afghanistan by robbing them or confiscating their property." [29a] (p1-2)

5.161 On 19 March 2004 in a report to the UN Security Council, the Secretary-General stated that

"The voluntary disarmament, demobilization and reintegration programme has shown some success but fallen short of expectations. As at 6 March 2004, a total of 5,373 ex-soldiers or officers have been demobilized since the pilot process started in October [2003]. The experience of the pilot disarmament, demobilization and reintegration projects in Konduz, Gardez, Mazar-e-Sharif and Kabul is being reviewed by the Afghan Transitional Administration, Japan as lead nation, UNAMA and the United Nations Development Programme (UNDP) to see whether

improvements can be made. The review revealed a series of shortcomings typical in demobilization operations including the handing in of old weapons and the demobilization of part-timers and “reservists” as opposed to full-time members of active units. Lack of political will on the part of factional leaders was also apparent, as evidenced in the go-slow approach of General Dostum in the north.

A worrying pattern has been the widespread extortion of demobilized soldiers by local commanders, which led the Afghan New Beginnings Programme to stop severance payments to soldiers as part of the overall reintegration package. The pilot projects implemented to date have shown the need for more political engagement at high levels of government to pave the way for more significant disarmament, demobilization and reintegration.” [390] (p8)

5.162 According to an International Crisis Group Asia Briefing of 30 March 2004, “NATO's planned four-phase expansion across Afghanistan provides a framework within which to create an interim security regime that would enable DR [disarmament and reintegration] and facilitate the rebuilding of Afghanistan's own security institutions. But NATO's appeal to member states to contribute a modest three battalions in the north to cover the first two phases of that expansion has yet to result in a single firm commitment.” [26a] (p10)

5.163 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 by June 2005 and of the Reintegration activities by October 2006, as agreed between the Government and the international community. [401] (p8)

5.164 On 17 May 2004, BBC News reported that

“The Afghan government has launched a nationwide campaign to disarm the country's militia forces, seen as crucial to the holding of elections.... The United Nations-backed plan is for 40,000 former fighters to be demobilised by the end of June [2004]. But UN officials say that some regional leaders are jeopardising the process.... In many cases commanders have given inflated figures, partly to enhance their local status and power, but also in the hope of claiming more funds for demobilising their men.

Yet some Afghans are concerned the Western-backed disarmament programme is uneven, pressuring some commanders but not others, and therefore risking renewed instability....Some Western diplomats say even the Defence Minister, Qasim Fahim, is a problem on this issue, dragging his feet on revealing what weapons his supporters still control.” [251]

5.165 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)

5.166 According to the Center for Defense Information in July 2004, “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)

5.167 On 1 August 2004, a UNAMA spokesman reported that “In all, a total of 17 military units throughout Afghanistan have been decommissioned under the DDR programme. Demobilization and reintegration activities are continuing throughout eight regions in Afghanistan.” [397] (p2)

5.168 According to a report by the UN Secretary-General on 12 August 2004,

“There has been insufficient progress in the disarmament, demobilization and reintegration of factional forces. The commitment made at the Berlin conference was to achieve the disarmament, demobilization and reintegration of no less than 40 per cent of the stated troop strength of 100,000 Afghan Militia Forces, as well as the cantonment of all heavy weapons under credible supervision by June, ahead of the 2004 elections. As at 31 July [2004], the number of men who had turned in their weapons and entered the disarmament, demobilization and reintegration programme stood at some 12,245 or, based on Ministry of Defence figures, a little over 12 per cent of the Afghan Militia Forces’ troop strength. In the conduct of the disarmament, demobilization and reintegration exercise led by Japan, however, it became evident that the actual troop strength was significantly less than 100,000 and might stand at 60,000 or less, in which case the actual percentage of disarmament, demobilization and reintegration achieved to date would be closer to 20 per cent.

It is worth noting that the participation of the various army corps in the exercise has been very uneven. Afghan Militia Forces units in the south-east have been practically demobilized and, in the south, disarmament, demobilization and reintegration was discontinued when it was assessed that a minimum number of soldiers from the Afghan Militia Forces units was required in the fight against the Taliban and Al-Qaida. Among the corps and units whose contribution to disarmament, demobilization and reintegration — relative to their strength — was inadequate, were the forces loyal to the Minister of Defence [Fahim Khan]. These include the two largest corps of the Afghan Militia Forces, the central corps in Kabul and the corps in Parwan; only 5 per cent of these units have entered the disarmament, demobilization and reintegration programme.” [39d] (p9)

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National Security Directorate (Amniat)

5.169 According to a report issued by Amnesty International in March 2003,

“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." [79] (p9-10)

5.170 In July 2003, an Amnesty International report noted that the NSD was carrying out arrests and detention across the country. According to the report "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... All those in detention are foreign nationals." [7e] (p28)

5.171 A Danish fact finding report 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. [8a] (section 5.2.5)

5.172 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." [40f] (p11)

(See also Section 6A Human Rights paragraphs 6.3 - 6.4)

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Accountability Department

5.173 The US State Department International Religious Freedom Report 2003 (USSD), published on 18 December 2003 recorded that "In November 2001, the former Department of Vice and Virtue was dissolved and replaced by the Department of Accountability and Religious Affairs. According to the Minister of Hajj and Mosques, all former members of the Department of Vice and Virtue were no longer employed by the Ministry." [2f] (p3)

5.174 In August 2002 Reuters News Service reported that an Accountability Department similar to that of the notorious religious police of the ousted Taliban regime, but with less draconian powers had been established. According to Reuters, Deputy Chief Justice Fazl Ahmad Manawi explained that the Accountability Department was tasked with ensuring that Afghan Muslims refrained from crimes such as drinking alcohol, fornication and sodomy. Reuters reported that

"Manawi said the department would be headed by a well-known former Mujahideen (holy warrior) figure, Mohammad Mustafa, who has a degree in religious affairs, and would function under the orders of the Supreme Court.... Manawi was reported as saying that accountability employees were trying to

persuade people not to pursue vice and unlawful acts. Manawi also stressed that offenders would face gentler punishments than under the Taliban. The new punishments would depend on the crime, but included fines, imprisonment and some lashings. The Supreme Court would have the final say in the administering of punishments, which would not be carried out in public, as they were under the Taliban....Manawi said the Accountability Department had a staff of nearly 300, including 50 women who would visit schools to make sure that they observed Islamic codes.” [24b]

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Army

5.175 On 18 March 2003, the UN Secretary-General reported that

“On 1 December 2002 President Karzai signed a decree that provides the basis for the new Afghan National Army (ANA), the disarmament, demobilization and reintegration of all factional forces and the reform of the Ministry of Defence....Also in accordance with the 1 December decree, an advisory committee was created on 18 February 2003, bringing together key Afghan ministers for security sector reform, representatives of the lead nations and UNAMA to promote the ANA and the disarmament, demobilization and reintegration processes. A step towards the reform of the Ministry of Defence was taken on 20 February 2003 when 15 positions, including that of a deputy minister, were created or changed to create a better ethnic balance among the senior personnel.” [39h] (p8)

5.176 In July 2003, the International Committee of the Red Cross (ICRC) reported that they had launched a programme to train officers of the future Afghan National Army in the law of armed conflict. According to the ICRC, “Under the Geneva Conventions, it is the responsibility of the Transitional Islamic State of Afghanistan to ensure that the rules and principles of the law of war are known and implemented by all members of the Afghan armed forces. The ICRC is assisting the country’s authorities by organising teaching and providing documentation.” [42e]

5.177 On 4 September 2003, the UN Office for the Coordination of Humanitarian Affairs (UN OCHA) Integrated Regional Information Network (IRIN) reported that “Plans to reform the Defence Ministry in Afghanistan were finally approved by the country’s cabinet this week.” A senior analyst with the International Crisis Group stated that the reforms, including 22 new appointments, were intended to create a more equitable balance within the leadership of the Ministry and encourage national disarmament and demobilisation among commanders who felt they lacked representation in the current Defence Ministry structure. According to IRIN, “Afghan officials and foreign observers have said it would be another three years before the army and new national police force could fully take charge of security in the country....Last month some 1,000 Afghan National Army soldiers backed by US and Italian troops took part in their first major combat operation against suspected Taliban militants in southeast Afghanistan.” [36a]

5.178 In December 2003 the UN Secretary-General reported on the progress of the Afghan National Army. His report to the Security Council stated that

“Towards the aim of reaching a strength of 70,000 troops under a 10-year plan, 12 battalions have so far been trained and established under the lead of the United States of America, representing a total force strength of 6,500 (all ranks). These troops are currently engaged in security roles, such as in the disarmament, demobilization and reintegration programme (guarding cantonment sites of heavy weapons); in counter-terrorism and stabilization operations led by coalition forces; and in assisting with the provision of security during the Constitutional Loya Jirga (four battalions).

During the reporting period [July to December 2003], several steps were taken to address instances of attrition from the army and to attract recruits dedicated to career service. Basic pay for new recruits has increased; adjustments have been made to the leave policy for those recruited from more remote areas of the country; and improvements have been made in the facilities for religious observance. National army volunteer recruitment centres have been established in five provinces, and a further 29 new centres are planned. Steps have also been taken to accelerate the training of Afghan National Army troops. The number of new recruits who can participate in training has increased by 750, to 2,250, and the length of courses has been adjusted.” [39k] (p5)

5.179 In January 2004, the UN Office for the Coordination of Humanitarian Affairs (OCHA) Integrated Regional Information Network (IRIN) reported that

“More than a quarter of the newly-trained 10,000-strong Afghan National Army (ANA) have left the service since its formation in mid-2002, officials at the Afghan Ministry of Defence told IRIN on Sunday. “Around two to three thousand soldiers have fled the ANA so far,” General Zahir Azimi a spokesperson for the ministry said. The widespread desertion of so many new troops is a serious challenge to the internationally-trained and supervised ANA, seen as critical to the country's future peace and stability. Azini said tough training, low wages, factional links and forced recruitment were the key causes behind the decision of so many new soldiers to foresake the force. The new army is scheduled to grow to 70,000-strong and replace the armed private militias - said to number around 100,000 - currently being disarmed by the Afghan government.” [40v](p1)

5.180 On 27 May 2004, the head of UNAMA reported to the UN Security Council that the ANA was almost 10,000 strong and had demonstrated its potential for extending the authority of the central government in recent deployments to Herat in the west and Maimana in the northwest, following bouts of fighting. According to the report, “The training of officers and soldiers for the ANA has been accelerated after the building of further capacity at the military training centre in Kabul and a total of 1,800 additional troops are now undergoing training. It is planned that this acceleration in training will be sustained. The ANA will also in the next few months start to establish permanent bases in cities outside Kabul, the first of these being in Kandahar.” [39c] (p5)

5.181 According to a June 2004 report by the AREU, the new ANA currently numbers around 10,000 and formally belongs to the Ministry of Defense [MoD]. However, according to AREU, “Coalition trainers retain substantial effective control over its activities. Reform and professionalisation of the MoD has begun, but still has

far to go; the ministry is still considered overly dominated at some levels by former Northern Alliance factional commanders.” [22a] (p9)

5.182 On 12 August 2004 the UN Secretary-General reported that measures taken to improve the quality of ANA recruits and reduce attrition rates continued to be implemented. According to the report, “New volunteers are now being recruited at the newly established national army volunteer centres currently in 10 regional centres, and emphasis is being placed on training Afghans to recruit the recruits. Attrition has now been reduced from 15 per cent in November 2003 to a current 1.3 per cent per month.” [39d] (p9)

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Police

5.183 In a report issued in March 2003, Amnesty International (AI) reported that “Throughout the last 23 years of armed conflict, there has been no civilian police force in Afghanistan.” [7g] (p6) Commenting on the police force at the time of their report, AI noted that “Much of the police force consists of former Mujahideen, who have extensive military experience but little or no professional police training or experience.... Many of the former Mujahideen have been involved in armed conflict for much of their lives, and are accustomed to acting with impunity. While there are some committed police officers, they are in the minority and their presence is insufficient to counter the overwhelming magnitude of the problems that prevent necessary police reform and professionalization.” [7g] (p7)

5.184 AI also reported that, in Afghan law, the police fall under the jurisdiction of the Ministry of Interior although in practice, within the Ministry of Interior, it is unclear who is responsible for policing. According to AI,

“The police have the powers to arrest and detain according to the law, a responsibility that is not afforded to other state bodies or institutions. However, in Afghanistan, state actors other than the police are carrying out a policing role without any clear legal basis. This undermines any attempts by the police to establish themselves in Afghanistan. As long as other law enforcement systems are in operation, the police will not be able to enforce the rule of law, and will not have the powers to carry out their duties effectively. In the provinces outside Kabul, members of the police are allied to different regional commanders. At a field level, Amnesty International was told by many centrally-appointed police commanders that they often have no effective control over the police in their district, who act with impunity.” [7g] (p8-9)

5.185 In July 2003, the UN Secretary-General reported to the UN Security Council that,

“On 6 April 2003, President Karzai issued a presidential decree mandating a new structure for the Ministry of the Interior and the establishment of a national police service consisting of 50,000 police officers and 12,000 border guards. The new structure separates the provincial administration of the Ministry from the police, establishes a clear chain of command for all police forces down to the district level, and consolidates responsibility for all policing functions under the Ministry of Interior. The Ministry has devised an ambitious five-year framework for creating

the national police service....On 30 April 2003, the autonomous Human Rights Department of the Ministry of the Interior was inaugurated. The structure of the Department will be replicated within every provincial police department and, once implemented, is expected to serve a "watchdog" function within the national police structure, following up on reports of abuse by police. The Afghan Independent Human Rights Commission is supporting the new department by temporarily lending staff and organizing human rights workshops for police." [39] (p11)

5.186 According to the Afghanistan Reconstruction Trust Fund (ARTF) Report to Donors 2003, a UNDP police project is funded by the Law and Order Trust Fund for Afghanistan (LOTFA), whose main purpose is to finance priority police activities. The ARTF report states that

"The issue of salary payments to the police is critical to security as it has implications on the reliability and integrity of the police, and ultimately law and order... However, in spite of the reimbursement by LOTFA of salary expenditures for police personnel, preliminary findings already indicate that up to three months delays in the payment of salaries of the police were reported in several cases. It was noted that, while the police officers, patrolmen and sergeants receive their salaries through the Finance Department of the Ministry of Interior, non-police staff of the Ministry of Interior get their salaries regularly through the Provincial Departments of the Ministry of Finance (as do all other government employees). As a result, additional delays and costs are incurred for the transfer of salaries to the province. Preliminary findings also indicate that in some instances, police staff reportedly received only about 80 percent, the rest having been deducted from their salary to cover various costs." [59] (p15-17)

5.187 According to the ARTF report, the LOTFA Steering Committee had reviewed immediate measures to be taken in support to the Ministry of Interior to ensure that the funds are used efficiently and that police staff is paid on time. These measures included technical advice, the establishment of a Management Unit at the Ministry of Interior; computerization of the payroll system; introduction of a police ID card system and the setting up of a Monitoring Committee. [59] (p17-18)

5.188 In a report to the Security Council on 30 December 2003, the Secretary-General noted that

"The Ministry of Interior has begun implementing far-reaching reforms geared towards the implementation of a five-year plan to develop a national police service of some 50,000 members and a force of 12,000 border guards....For the border guards, the focus in 2004 will be on the establishment of a Kabul International Airport Headquarters and on beginning to make eight regional battalions operationally ready. Where these police have been deployed in three provinces, they have contributed to stability, public confidence and the maintenance of law and order. Yet, at this early stage of the process, the number of trained police remains too low and ill equipped to provide the full support needed by the central Government in its efforts to establish itself in the provinces. In an effort to address this shortage, the first regional police training programme, in Gardez (Paktia province), completed its first two-week course on 5 December [2003], graduating 26 police officers. The completion of a permanent training facility is scheduled for

the end of December. Current plans foresee additional training centres, in Bamian, Jalalabad, Herat, Kunduz and Mazar-i-Sharif, operational by June 2004. Until the central Government can be assured of sufficient income, including the receipt of customs revenues due from the provinces, funding for police salaries, infrastructure and equipment will continue to be dependent on voluntary donor funds contributed to the UNDP-administered Law and Order Trust Fund. In this regard, the commitment by the European Union of 50 million euros to the Trust Fund in September 2003 was very welcome, fulfilling the current requirements for the payment of salaries and other expenses for the police.” [39K] (p5-6)

5.189 The Freedom House Afghanistan Country Report 2004 states that “The current interior minister, Ali Ahmad Jalali, is in charge of reforming the police and has been fairly proactive in this regard. However, extensive police reform remains constrained by a lack of available finances —donors have been exceedingly slow to provide for the Law and Order Trust Fund for Afghanistan (LOTFA), the main funding mechanism for supporting police reform —as well as by insufficient security for foreign donors to work on retraining projects outside Kabul.” [41] (p11)

5.190 On 19 March 2004 the UN Secretary-General reported that

“At present, a total of 4,339 police officers, including border police have been trained through the German Police Programme and United States training programmes. In Kabul, the German Police Programme is overseeing the training of 1,500 officer cadets and 500 border police at the Kabul Police Academy. Police instruction is now being conducted by Afghans, following the completion of the training-of-trainers programme. In spite of this effort, an insufficient number of trained and well-equipped police in the provinces has consistently been identified as one the major obstacles to the expansion of government authority. To redress this shortfall, seven regional police training centres are being established by the United States and are expected to be operational by the end of March.” [39o] (p8)

5.191 A Danish fact finding mission to Kabul in March/April 2004 were told by the Lawyers Union of Afghanistan that policemen from approximately eight or nine of Kabul’s 18 police districts have been trained. [8a] (section 4.3.1)

5.192 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

“In 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.” [8a] (section 4.3.1)

5.193 In April 2004, a Progress Report on the implementation of the Bonn Agreement, attached to the Berlin Declaration, stated that

“Rebuilding of the Afghan National Police, including border police, as well as anti-narcotics police force, is well under way. All major police facilities in Kabul have been rebuilt and equipped, work has begun in four provinces and is under way in seven more provinces. More than 5000 commissioned and non-commissioned

police officers, amongst whom an albeit still small number of women, have so far been trained at the National Police Academy, about 4000 officers and patrolmen have been given training courses in four regional training centers. Three more centers will follow with a view to training up to 20.000 patrolmen by the forthcoming elections. The Law and Order Trust Fund provides for the regular payment of salaries and non-lethal equipment to the police.” [40t] (p11)

5.194 On 27 May 2004, Jean Arnault, the Special Representative of the Secretary-General (SRSG), reported to the UN Security Council that the number of trained police had grown rapidly in parallel with the accelerated building of the ANA. According to the SRSG,

“Five out of a total of seven regional training centres are now operating and some 12,500 policemen have been trained. In addition, a further 1,500 police have graduated from the national police academy. These police officers and men are a vital resource. However, there is a real danger that their potential will not be fulfilled should they and more than thirty-five thousand other police officers and men due to be trained by the end of 2005 are not given adequate support and mentoring on the ground. Such support is yet another reason to stress the importance of the deployment of international security forces far and wide as a platform for the consolidation of police forces.” [39c] (p5)

5.195 According to a June 2004 report by the AREU,

“The Ministry of the Interior (MoI) controls the approximately 12,000 Afghan National Police, the Border Police and all province- and district-level police agencies as well. Total police in the country are estimated at 50,000-60,000. Most of these are believed to have had no police training and little necessary equipment (including weapons and ammunition); although as many as 20,000 are expected to complete new multi-week police training programs by fall 2004. Many provincial and district police agencies are little different from factional, ethnic-based militias. Reform and professionalisation of the MoI has not meaningfully begun. Although the Interior Minister himself is Pashtun, the ministry is considered dominated by former Northern Alliance factional commanders.” [22a] (p9)

5.196 On 12 August 2004, the UN Secretary-General reported that

“The need for Afghanistan to have a trained and properly equipped national police force is acute, both for long-term state-building and in particular in the context of the upcoming elections. The existing force suffers from a shortage of trained policemen and equipment and weak command and control structures. Efforts to train a national police force have intensified through the operation of five regional training centres nationwide. These are in addition to the German-supported Police Academy and the United States-led Central Training Centre, both in Kabul. To date some 19,500 police have received training, which includes an eight-week basic Central Training Centre/regional training centre course, a four-week course for illiterate officers and a two-week transitional integration programme for veteran officers without any formal police training. Of those trained, some 4,000 have received at least one year’s training at the Police Academy. The target strength of the force provides for a core of the 47,500 national police, 12,500 border police

and 2,500 highway police to be reached by the end of 2005.

There are as yet no facilities at the provincial and district level to provide new graduates with on-the-job training and mentoring. Provincial reconstruction teams recently made a commitment to help, to the extent resources permitted and in their area of operation, to support and mentor the police. They are also helping finance the building of some government offices and police stations and filling key logistic and equipment shortfalls. This assistance is encouraging, but by its nature can only address part of the overall need.

International support for Afghanistan's police was reaffirmed and increased through the holding of the Doha conference on police reconstruction in Afghanistan on 18 and 19 May [2004]. Representatives from 26 countries met in Qatar at the invitation of the Governments of Afghanistan, Germany, Qatar and the United Nations, and confirmed that \$350 million in international resources would be earmarked for police programmes over the next few years." [39d] (p10)

(See also Section 6A Human Rights paragraphs 6.5 – 6.8, 6.22)

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Prisons and Prison Conditions

5.197 According to an Amnesty International (AI) report dated 8 July 2003,

"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)

5.198 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)

5.199 According to a UN Secretary-General report in March 2003, "There is at present no general prison in the capital, and all the prisoners regardless of their status are held in the Kabul detention centre, an overcrowded and dilapidated facility adjacent to the Kabul police headquarters. The Afghan prison authorities have started reconstruction of the Pul-i-Charkhi prison outside Kabul, but sufficient funds for this reconstruction and the rehabilitation of the prisons sector have not been provided." [39h] (p10)

5.200 The July 2003 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)

5.201 According to the AI report “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)

5.202 The AI report further 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. According to AI, the project's key components are:

- “(a) revising national legislation concerning rules and regulations of prisons;
- (b) establishing the Prison Administration of the Ministry of Justice as focal point for all matters pertaining to penitentiaries, including a national policy for detained women;
- (c) rehabilitating prison capacity in Kabul;
- (d) improving conditions in the detention centre of Kabul;
- (e) setting-up a special detention centre for women, with due attention to the needs of women with small children.

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)

5.203 According to the AI report of July 2003, “In March 2003 the administration of prisons was transferred from the Ministry of Interior to the Ministry of Justice.” [7e] (p1) According to UNAMA on 28 July 2003, the key objective of this transfer was to improve the general standard of prisons starting with Kabul. UNAMA advised that

“At this stage Cellblock 1 of Pol-e-Charki prison, which is 90 per cent complete, will be assessed by engineers to ensure that the basic needs of prisoners are met - water and electricity; that the structure of the building is safe for both prisoners and staff and that there is compliance with established international standards on prisons. It is hoped that when this project is finished it will be the model for other prison projects beginning with Cellblock 2 of Pol-e-Charki prison. The current cost of renovating Cellblock 1 is US\$2 million, with US1 million already provided by the Italian Government funded. Part of this funding will also go towards renovation of the female prison section in the Kabul Police Headquarters and construction of a kitchen in those headquarters.” [40as]

5.204 The US State Department Report 2003 (USSD), published on 25 February 2004, recorded that most NGOs noted that the change of administration of prisons would facilitate an improvement in prison conditions. [2e] (p 4)

5.205 According to the AI report of July 2003,

“Hundreds of women and girls are being held in prisons across the country, the majority for violating social, behavioural and religious codes. Girls from 13 years of age are being held in prison with adults alongside elderly women of approximately 70 years of age. The majority of women prisoners are from 18 to 25 years of age. Like men and children, they are being held for months in prisons across the country before having the legality of their detention determined by a judge. Women are being held often within a compound in the main prison area rather than in a separate compound.” [7e] (p8)

5.206 A report published by AI in August 2003 stated that “The AIHRC (Afghan Independent Human Rights Commission) investigation unit has started to monitor the prison system from an international human rights law perspective. However, the AIHRC currently lacks the capacity to engage in an all encompassing judicial monitoring program, including court observation.” [7q] (p3)

5.207 In December 2003, the UN OCHA Integrated Regional Information Network (IRIN) reported on conditions in Pol-e Khomri provincial jail in the northeastern Baghlan Province. According to the report,

“When IRIN visited it, the inmates were on hunger strike in protest against insufficient food and poor living conditions in the antiquated and overcrowded facility... The United Nations Office on Drugs and Crime, which is the lead agency in implementing reform within the justice and penal systems, told IRIN that conditions in Pol-e Khomri prison were similar to prisons in other parts of Afghanistan. It said it had already started justice and prison reform in the capital, Kabul, with an intention to start operating outside the city soon. Meanwhile, officials in Kabul told IRIN that lack of sufficient funds for prisoners' food and logistics constituted the major problem for all the approximately 3,000 convicts in the 32 government-run prisons across the country.” [40aa]

5.208 The US State Department Report 2003 (USSD), published on 25 February 2004, recorded that “Prolonged pretrial detention, due to a severe lack of resources in the judicial system, remained a problem.... Overcrowding and limited food and medical supplies contributed to deteriorating health and even death among prisoners.” [2e] (p2)

5.209 The USSD 2003 also noted that

“Prison conditions remained poor; there reportedly were many other secret or informal detention centers. Prisoners lived in overcrowded, unsanitary conditions in collective cells and were not sheltered from severe winter conditions. Prisoners reportedly were beaten, tortured, or starved. According to TISA [Transitional Islamic State of Afghanistan] officials, there were 612 prisoners at Kabul City prison at year's end [2003]....With the assistance of NGOs and the UN during the year, the TISA was organizing programs for the renovation and humanization of

prisons. For example, the AIHRC (Afghan Independent Human Rights Commission) established a “complaints” department within the Ministry of Justice and eight interagency commissions visited prisons in April [2003] to assess prison conditions. Further, in May [2003] the Minister of Justice called a donors meeting to discuss moving prisoners from the Welayat detention center to Pul-i-Clarki prison, where two wings of the prison were under renovation; however, no prisoners were moved at year’s end. [2003] A number of regional leaders, particularly Ismail Khan in Herat and General Dostum in Shiberghan, maintained secret or unofficial prisons that most likely held political detainees. Herat prison held 600 to 700 prisoners. Shiberghan prison held approximately 3,500 inmates, including Taliban fighters and a number of Pakistanis. The TISA permitted the International Committee of the Red Cross (ICRC) to visit all prisons which it controlled and the ICRC conducted such visits during the year; however, fighting and poor security for foreign personnel limited the ability of the ICRC to monitor prison conditions.” [2e] (p4)

5.210 In January 2004, an International Committee of the Red Cross (ICRC) newsletter stated that

“In Afghanistan, where the internal conflict between Governmental and Coalition forces on the one hand, and opposition groups on the other, results in a number of persons detained, the ICRC visits some 60 Afghan and US places of detention, including prisons, police stations, and interrogation centres....The organisation does not speak in public about the conditions in the places of detention. However, the visits of its delegates and their findings are the subject of reports and recommendations to the authorities....Depending on the needs, the ICRC also contributes to the well-being of the detainees by providing some essential items such as soap, blankets and clothes.” [42b] (p2)

5.211 A Danish fact finding mission to Kabul in March/April 2004 interviewed several sources about the prison system. Their report of June 2004 noted 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. The source mentioned that the new director of the NSD has acknowledged the bad conditions for people in custody and is keen to improve the conditions for people in prison.” [8a] (section 5.2.4)

5.212 According to the same Danish report,

“Between 900-1,000 persons are held in custody in Sheberghan [Shiberghan] prison which is situated in the northern part of Afghanistan. After the Taliban surrendered in Kunduz in 2001 over 3,500 persons were arrested and transferred to the Sheberghan prison. Out of this group 900 people are still being held in custody there. Some of these people are Afghans from southern Afghanistan and others are from Pakistan. In the beginning of 2002 the situation in the prison was of a level that compelled the ICRC to provide food for the prisoners, but the situation has improved since. One of the main questions for the prisoners is how long they will be imprisoned, as their situation has not been clarified. The committee mentioned that there are about 100 female prisoners in Afghanistan of which 70-80 are held in the Central Herat Prison.” [8a] (section 5.2.4)

5.213 UNAMA told the Danish fact finding mission that the prisons in Herat are well organised and well maintained. According to an international NGO, conditions for women prisoners have improved and the NGO was overseeing 31 women imprisoned in Kabul. According to the source, 521 men were being held in a prison in Kabul, which was built for 200 occupants. [8a] (section 5.2.4)

5.214 According to the June 2004 Danish fact finding report,

“The prisons represent an area that the Italian ambassador described as very problematical. 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.” [8a] (section 5.2.4)

5.215 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)

5.216 According to the HRW report,

“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)

5.217 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)

5.218 In March 2004, Amnesty International (AI) noted its concern at the long term arbitrary detentions at Bagram airbase and other detention centres run by US military forces. AI reported that, despite repeated requests, they had not been permitted to visit

detainees at those places and the detainees continued to be held in a legal black hole. [7a] (p2) 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." [7j]

5.219 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]

5.220 In a report to the UN Security Council on 19 March 2004, the Secretary-General stated that

"Reform of the correctional system has thus far focused on Kabul. In February, the United Nations Office on Drugs and Crime completed the first round of rehabilitation and reconstruction of the Kabul male detention centre. Work is also progressing on upgrading the main prison at Pol-e-Charki and the Kabul female detention centre. The Transitional Administration has devised a long-term redevelopment plan for the reform of the national prison system. For the next fiscal year, the focus will be on approval of a strategic direction, the rehabilitation of several regional prisons, the establishment of a headquarters facility for the prison administration, and the establishment of a training centre for correctional officers. In the longer term, offender classification systems, programmes for offenders, and a gradual release system will be introduced. Those reforms, however, depend on redressing the critical funding shortage due to competing fiscal priorities facing the Afghan Transitional Administration and the low level of donor support for the reform of the correctional system." [39o] (p10)

5.221 According to Amnesty International in March 2004,

"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)

5.222 On 13 May 2004, a UNAMA spokesman announced that

“Some 800 prisoners have been transferred from Shibergan to Kabul. All with the exception of 75 are being held in the old and partially destroyed compound of Pul-e-Charki prison. The other 75 are being held in the new Block of Pul-e-Charki because they have tuberculosis and as such are receiving medical treatment from the International Committee of the Red Cross (ICRC) and non-governmental organizations (NGOs). The remaining prisoners in the old compound have been given blankets, mattresses, pillows and water for drinking and washing from the ICRC. The Afghan Government is providing food.

A team comprised of UNAMA and the United Nations Office on Drugs and Crime (UNODC) have visited the facilities and say that at present there are no humanitarian concerns or violations. The prisoners seem to be satisfied that they have been transferred from Shibergan to Kabul because some of them hope that this will be a stepping-stone towards eventual release. None of them have registered any complaints about ill treatment. The team also observed that treatment by the jailers/wardens was humane. Each holding centre is securely fenced with secure locks. Access to visit the prisoners is also given. Efforts nevertheless are underway to provide for a less concentrated distribution of detainees within the existing facilities in the older compound.” [40a] (p2)

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Military Service

5.223 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 government intends to have the ANA reach a maximum size of 70,000 men by 2010, but training for ANA battalions has proceeded at a slow rate —by June 2003, only 6,500 personnel had been trained, of which only 4,500 were serving on active duty. 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.” [41] (p10)

5.224 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] (p1)

5.225 According to the January 2004 IRIN report,

“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]

5.226 According to a Danish fact finding report published in June 2004, "The UNHCR explained that an increasing number of young boys are being compulsory recruited to the armies of local commanders in north western 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 of 14 and up. The UNHCR did not know the magnitude of compulsory recruitment." [8a] (section 7.1)

(See also Section 6 on Children paragraphs 6.246, 6.258)

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Medical Services

General

5.227 In July 2003, UNHCR reported that,

"Health infrastructure and human resources, public and private, are now grossly inadequate for a population of 24 million. Institutions have collapsed, physical facilities have been destroyed and the human resource base has been eroded, particularly of female professionals critical to women's health care in light of the predominant cultural observance of gender segregation....There is a strong urban bias to the limited hospitals and clinics, with many of the facilities located in Kabul, while rural services are unevenly distributed....Psychiatric health care facilities are almost non-existent and lack essential medical supplies. Private pharmacies are the main dispensers of medical treatment in many places." [11i] (p29-30)

5.228 A report by a Swedish fact finding mission published in April 2003 reported the Regional Director of the Swedish Committee for Afghanistan as saying that "In general it is not possible to treat serious diseases in Afghanistan, for example, dialysis is not available and kidney problems cannot be treated at all." [61] (p23) In July 2003, a UNHCR report concurred that "Persons with serious illness or chronic medical conditions cannot expect to find treatment available in Afghanistan." [11i] (p30)

5.229 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 severely (sic) underfinanced. The gravity of the situation is reflected in some of the worst health indicators found anywhere in the world.” [42c] (p6)

5.230 According to the IFRC report

“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 severely (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)

5.231 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)

5.232 In a report dated 8 December 2003, the IFRC noted that the government, with the support of the World Bank, European Commission, USAID and Asian Development Bank was in the process of contracting the services proposed under

the BPHS package, in designated provinces or clusters, to non-governmental organisations (NGOs). The NGOs must then provide the whole BPHS in that province/cluster and build the capacity of the Ministry of Health staff for a period of up to three years. Sustainability after this time had not yet been addressed. [42d] (p3)

5.233 In January 2004, a 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.” [71] (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)

5.234 In its report of September to December 2003, the Afghanistan Reconstruction Trust Fund (ARTF) reported on the Charikar Provincial Hospital in Parwan province. The ARTF reported that “According to the Deputy Head of the hospital, there are 120 staff members, including doctors and administrative support personnel. The hospital has 40 beds for elective, surgical, children and internal medicine wards, and is receiving some 450 outpatients daily, around 60 percent of whom are women from the city and districts of the province.” [59] (p30)

5.235 The ARTF also reported on the Provincial Health Department and District Hospital in Balkh province. According to the ARTF

“In Balkh province there are, in addition to the main provincial hospital located in the center of Mazar city, 17 health centers in 15 districts and 11 clinics in Mazar city. In total there are 825 Health sector personnel including doctors, nurses and other support staff in the Balkh province. Over 500 outpatients are cared for and more than 50 inpatients are admitted to the hospital daily. All units of the hospital are operating normally. Patients are not only from Mazar but also come from [from] other districts of Balkh province and provinces further north like Faryab, SariPul, Jawzjan, Samangan, Baghlan, Takhar and Badakhshan. These provinces have less access to medical facilities. The Mazar hospital employs 135 doctors and 137 nurses. Medicines and supplies are provided from different sources (WHO, UNICEF, Ministry of Public Health, SCF UK and US and some other NGOs).”

The report noted, however, that medical equipment in the hospital was badly outdated. [59] (p32)

5.236 In a programme update of 8 December 2003, the International Federation of the Red Cross and Red Crescent Societies advised that “In many places the ARCS [Afghan Red Crescent Society] clinic provides the only access to health care for vulnerable families, who know they will receive consultation from qualified and dedicated doctors and that the appropriate drugs will be available free of charge.” The IFRC also noted that “There is still an unmet need for health facilities in many remote areas of Afghanistan. Constraints include finding qualified health staff to work in remote areas.” [42d] (p3) According to the UN News Centre in January 2004 there was one physician for every 50,000 people in Afghanistan. [39n]

5.237 An ICRC newsletter of January 2004 advised that the ICRC supports and renovates hospitals in Kandahar, Ghazni, Mazar, Shiberghan, Samangan, Jalalabad and Kabul. According to ICRC, “In September 2003 only, the facilities assisted by the ICRC provided health services to some 6,500 in-patients, some 30,000 out-patients, and performed more than 3,500 operations....The ICRC runs 6 orthopaedic centres in the country (Kabul, Mazar, Herat, Gulbahar, Faizabad, and Jalalabad). 38 per cent of the amputees assisted are mine victims. Over 55,000 patients have been assisted since 1988.” [42b] (p6)

5.238 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)

5.239 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)

5.240 According to the ACF paper, 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)

5.241 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)

5.242 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]

5.243 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)

Women, children and the disabled

5.244 In July 2003 the UN Population Fund reported that, as part of the Ministry of Public Health’s efforts to help reduce maternal mortality, the Khair Khana Hospital in northwest Kabul had been rebuilt and refurbished. In addition to a fully equipped obstetric and gynaecology ward which opened in May 2003, the hospital also began handling general medicine, internal medicine, outpatient and emergency cases. [40at] (P1-2)

5.245 In August 2003, UNICEF advised that “In 2002, more than 11 million children were immunized against measles in Afghanistan.” This was followed by a second campaign in June 2003 in which a further 5 million children aged nine months to five years were vaccinated. UNICEF noted that “Prior to these campaigns, measles was estimated to contribute to up to 15-20% of deaths among children under five in Afghanistan. The progress made in immunization efforts underlines steady improvements in the infrastructure and systems available to health teams as part of the country’s Expanded Programme on Immunization (EPI). ...Since the beginning of 2002, there has been a notable reduction in the number of reported cases of measles in Afghanistan, from over 400 per month in January 2002 to less than 50 per month by mid-2003. The success of the June measles campaign is another step forward in the already drastic reduction of measles incidence in Afghanistan.” [44b] (p1)

5.246 In January 2004, a report by BAAG (British Agencies Afghanistan Group) noted that

“The Sandy Gall Afghanistan Appeal (SGAA) provides physiotherapy services at

its main centre in Jalalabad. They have managed to continue almost as usual despite the insecurities leading to occasional temporary suspensions of their outreach programmes in rural Nangahar (sic) and Laghman provinces. In June 2001 SGAA set up a mother and child physiotherapy clinic in Khair Khana, a northern suburb of Kabul. It serves people from rural areas of the Shomali plain. Children that receive assistance include those suffering from the after effects of polio, cerebral palsy and congenital defects. Women are treated who have osteoarthritis, rheumatoid arthritis, fractures and neurological complaints.” [71] (p28)

5.247 According to the BAAG report, the physical rehabilitation centre in Kandahar, within the Mirwais hospital, sought to address the physical needs of the disabled in southern Afghanistan. According to BAAG, “Currently, the centre has three departments, prosthetic, orthotic (which produces orthoses and mobility aids, including walking aids and wheelchairs), and physiotherapy. There is a separate section for women which is run by female physiotherapists and technicians.” [71] (p28-29)

5.248 In February 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 “In January, the Centre of Excellence for EmOC in Herat Province was inaugurated, following the completion f [of] the hospital renovation and provision of equipment and medicines. A team of trainers in the hospital attended the training on EmOC in Kabul during 2003 and are to train other service providers from their respective provinces in the coming months. Medicines, renewable supplies and basic equipment for EmOC, sufficient for a year, are being distributed to 24 provincial hospitals.” [40az] (p5)

5.249 UNICEF also advised that “March 27 [2004] will initiate the first of the three-round Maternal and Neonatal Tetanus Campaign, which aims to reduce one of the world’s highest maternal mortality and to protect new born babies against neonatal tetanus.” [40az] (p5) In July 2004, the 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)

5.250 In February 2004, UNICEF reported that in 2003 there had been 8 confirmed polio cases despite an intensive campaign to interrupt polio transmission. According to UNICEF, there were sub-national Immunization Days in 30 provinces during 26-28 January 2004, targeting 5.3 million children under the age of five. Preparation had also started for the first round of Polio National Immunization Days scheduled during 9-12 March 2004, aiming to reach 6 million children. [40az] (p4)

5.251 In July 2004, the WHO reported that to date in 2004, 3 polio cases had been confirmed. According to the WHO more than 6 million children under 5 had been vaccinated against polio and during 2003 86 EPI [Expanded Programme on Immunisation] fixed centres had been established throughout the country taking the total to 642. [43] (p1-2) 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)

5.252 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. Eight people are currently being taught the special skills needed to treat children suffering from cerebral palsy. Close to 200 children have been registered for the programme since it was launched in January 2004, and the number is rising daily as word of the centre's existence gets around. Some parents are bringing their children for treatment from as far away as Mazar-i-Sharif and Kandahar.” [42a]

5.253 In August 2004, according to Afghan Connection, an organisation which refurbishes and equips clinics and hospitals and provides medical training, 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)

5.254 According to the International Medical Corps (IMC) in June 2004, 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.... This year, IMC will operate 361 health posts, 40 comprehensive health centers, six basic health centers, four district hospitals and two emergency obstetric centers in nine provinces--Bamyan, Kabul, Khost, Kunar, Laghman, Nangarhar, Parwan, Paktika and Wardak--benefiting more than 700,000 Afghans, mostly women and children.” [40a]

5.255 On 3 June 2004, UNICEF reported that

“Women in northern Afghanistan are to be provided with improved obstetric care services following the opening of the region's first Centre of Excellence in emergency obstetric care on Saturday 5 June [2004]. The centre, which will serve a population of 1.7 million people, is expected to handle more than 3,700 cases of complicated pregnancies each year. On average, 1,100 maternal deaths occur in the northern region annually, mostly due to lack of access for women to health care services and properly qualified medical staff.... The new Centre of Excellence in Mazar is part of a national programme led by the Afghan Ministry of Health with the support of UNICEF that aims to tackle Afghanistan's high levels of maternal mortality.

UNICEF and its partners aim to ensure that every province in Afghanistan has a functioning obstetric care facility by the end of 2004, and will establish a total of five Centres of Excellence around the country. To date 25 provinces now have a basic emergency obstetric care facility.” [44a]

5.256 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. Adult life expectancy is barely 46 years, and even lower for women.

In the short term, the United States has put a priority on rebuilding health clinics and schools, training midwives and teachers, and providing supplies, such as textbooks and medical equipment. Even in rural areas, basic health services are now available to more than 2.5 million people in 21 provinces; 90 percent of the recipients are women and children....USAID has rehabilitated 140 health facilities (clinics, birth centers, feeding centers, and hospitals, and currently has 72 new clinics under construction. Basic health services are now being provided to over 4.8 million Afghans, mostly through NGOs.

The Rural Expansion of Afghanistan’s Community-based Healthcare (REACH) program is significantly reducing maternal and child mortality and morbidity in Afghanistan. Of the \$52 million total funding for REACH in FY 2004, over \$10 million is being given in grants for the delivery of health services by local women-focused NGOs and to vocational training for women as community healthcare workers and midwives. Over the next three years, REACH plans to provide the Ministry of Health’s basic package of health services to an estimated 11,000,000 Afghans.” [2a] (p9-10)

(See also Section 6B on Women paragraph 6.195 and Children paragraphs 6.245 to 6.262)

HIV/AIDS

5.257 In October 2003 the World Bank Group reported that there was no reliable data on the prevalence of HIV/AIDS in Afghanistan. At that time, 11 cases had been reported and the main mode of transmission was believed to be blood transfusion and sharing contaminated needles during drug use. [69c] (p1) The report 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 or to treat opportunistic infections or prevent mother to child transmission. WHO [World Health Organisation] estimates that only half of the 44 medical facilities that transfuse blood are able to screen the blood for HIV.” [69c] (p2)

5.258 According to the World Bank Group report, “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.” [69c] (p3)

Mental Health

5.259 According to a January 2004 report by the British Agencies Afghanistan Group (BAAG),

“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.” [71] (p22)

5.260 In March 2004, an article on mental health in Afghanistan was published in Lemar-Aftaab, an independent magazine that focuses on Afghan culture. According to the report by Dr. Amin Azimi,

“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.” [40aw] (p1)

5.261 A Danish fact finding mission to Kabul in 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.” [8a] (section 9.3.3)

5.262 An international NGO explained to the Danish fact-finding mission that

“The problem with treatment for mental deceases [diseases] is that treatment is highly work intensive. The source knew of a 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 patients. Apart from this programme there are almost no possibilities for treatment. It may be possible to purchase anti-depressive medications in Afghanistan.” [8a] (section 9.3.3)

5.263 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 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)

5.264 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)

5.265 In May 2004 the Afghanistan Research and Evaluation Unit (AREU) published a report on urban vulnerability in Afghanistan. According to the AREU report, “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 expecially is a major problem. Apart from that, dissatisfaction and even anger about the lack of respect towards them is prevalent.” [22b] (p21)

Other medical conditions

5.266 According to the January 2004 BAAG report, “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.” [71] (p25)

5.267 A Danish fact finding mission to Kabul in March/April 2004 reported in June 2004 on the availability of treatment for certain illnesses. According to their report,

“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% 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 2 to 4% 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 thought that the initial treatment of diabetes can be carried out in Afghanistan but that there are problems with long term treatment. Insulin is very expensive, and the patient has to pay for the medicine himself. Another problem in this context is that there is a general lack of the required facilities to store medicines in a responsible manner. An international NGO was of the opinion that there are no regular and continuous possibilities for treating diabetes in Afghanistan.” [8a] (section 9.3.3)

5.268 The WHO told the Danish fact-finding mission that simple heart and lung diseases cannot be treated in district or provincial hospitals, but require referral to larger hospitals where such problems can be dealt with to a certain extent. According to the Danish report “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 treatment must travel either to Iran or Pakistan.” [8a] (section 9.3.3)

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Educational System

5.269 According to a US State Department Report (USSD) of 22 June 2004,

“Women were systematically denied opportunities for education and vocational training under the Taliban, and female illiteracy was widespread even before the Taliban. According to preliminary data from UNICEF, 71% of Afghans nation-wide are illiterate (defined as 15 years of age and above). Female illiteracy countrywide is 86%. The situation is especially dire in rural areas, where 92% of women are

illiterate.... 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. To date, 205 schools of all types have been rebuilt (or built from scratch), 25 million textbooks have been provided, and 7,000 teachers have been trained. In 2003, according to the Afghan Ministry of Education, 5.8 million children attended school. Thirty five percent of these students were girls – by far the highest number in Afghan history. The Afghan Ministry of Education aims to have girls make up 50 percent of the student enrollment.” [2a] (p10)

5.270 According to a June 2003 press release by the Hochschulrektorenkonferenz (HRK), the voluntary association of state and state-recognised universities and other higher education institutions in Germany,

“Some 35,000 students, including 6,000 women, are currently matriculated at the 16 universities in Afghanistan. The higher education sector faces great challenges: All the universities have to commit themselves to reconstructing their infrastructure; yet, the damage of war means that some, such as the universities in Herat, Kandahar and Mazar-e-Sharif, do not even have a campus or intact buildings at their disposal any more. Time is pressing, however, since great demand and rising quality standards can be expected to result in notable expansion of the higher education sector taking place.” [45]

5.271 A Human Rights Watch (HRW) report published in July 2003 reported “There are now some 4,000 formal schools in Afghanistan, but many children still lack access to schools. Where schools do exist, limited resources are not always used to provide the same facilities and classes for girls as for boys. Even in Kabul, where there are more resources generally, the policy of strict segregation is having an impact.” [17f] (p77)

5.272 The same HRW report also noted that,

“In Ghazni, Kabul, Kandahar, Logar, Sar-e Pul, Wardak, Zabul, Jawzjan, and Laghman provinces from August 2002 to June 2003, there have been more than thirty attacks on girls' and boys' schools in which educational materials, tents, and building have been burned or bombed, according to reports collected by Human Rights Watch. School attacks often coincide with the anonymous distribution of threatening documents—locally called “night pamphlets”—in mosques or high-traffic areas. These night pamphlets warn parents not to send girls to school or threaten Afghans working with the government, with foreigners, or with so-called infidels....Although most of the attacks have been on girls' or coeducational schools, at least seven boys' schools in Kandahar were physically attacked in early 2003. Many schools have reopened after being attacked, and many teachers and girls told Human Rights Watch that they would continue despite threats. However, others have been deterred.” [17f] (p82)

5.273 The Constitution adopted in January 2004 recognised that education is the right of all citizens of Afghanistan. [15] 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)

5.274 On 4 March 2004, a spokesman for the UN Assistance Mission in Afghanistan (UNAMA) advised that while girls accounted for 34 percent of total enrollment throughout the country that figure is primarily due to high enrollment in Kabul. Wide gender disparities persisted in many provinces where girls represented less than 15 percent of total enrollment. Furthermore, significant numbers of girls and boys were not attending school, even where services existed. According to the spokesman, "The United Nations Children's Fund (UNICEF) estimates that up to 1.5 million girls of school age are not enrolled in classes. Safety and security, distance from home, and inadequate school facilities are the main reasons cited by families for not sending children, both girls and boys, to school. In the case of girls, we should also highlight that a shortage of female teachers continues to be a main obstacle to girls going to school." [40an] (p2-3)

5.275 A report by the Human Rights Research and Advocacy Consortium (HRRAC) in 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)

5.276 The HRRAC report also noted that despite the achievements made only just over half of all Afghan children age 7-13 attended school. According to the report "The figures for girls are worse than for boys – only 34% of those enrolled in primary school are girls....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)

5.277 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)

5.278 According to the HRRAC report, "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)

5.279 A Danish fact finding mission to Kabul in March/April 2004 reported that "The UNAMA mentioned that the numbers of children who attend to [sic] 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 100 pupils from the age of 4 to 28 in one class, which was intended for 30-35 students. Therefore the SCA was concerned about the quality of the teaching. The source further explained that no national school policy has yet been worked out. The sources stated that everybody has access to primary schools, but access to secondary schools remains a problem. The sources mentioned that the local communities are financing several secondary schools. 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." [8a] (section 9.2)

5.280 In the Berlin Declaration of April 2004, the Afghan Government committed to preparing a Poverty Reduction Strategy Paper in order to prepare a medium term strategy for poverty reduction. This strategy included "Ensuring that all girls and boys complete compulsory education (9 years) and have opportunities to continue at higher levels, with special attention paid to the inclusion of girls who have been prevented from access to education." [40f] (p6-7)

5.281 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)

5.282 On 29 July 2004 the World Bank approved a US\$35 million grant to improve access to and the quality of education in Afghanistan. According to the World Bank,

"As the country emerges from years of neglect to the sector, good quality education becomes a crucial component of the country's long-term development strategy. "There has been a tremendous demand for education, since the rebuilding of Afghanistan begun," says Keiko Miwa, Education Specialist with the World Bank in Kabul. "...Although many teachers do not receive their salaries on time and have received little or no training, they continue to come to school and teach as best they can. There is so much enthusiasm." The Education Quality Improvement Program, supported by the US\$35 million World Bank grant, aims to keep the momentum and respond to a golden opportunity.... The Education Quality Improvement Program will be implemented by the Ministry of Education,

and it is consistent with the country's strategy of promoting an increased role and capacity for the communities and schools with policy guidance from the government.” [40q]

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6 Human Rights

6A Human Rights Issues

General

6.1 The US State Department Report 2003 (USSD), published on 25 February 2004, recorded that

“The arrival of the Operation Enduring Freedom (OEF) forces and the collapse of the Taliban in 2001 helped begin an end [to] the decades-long pattern of serious human rights abuses, including extrajudicial killings. However, inter-factional fighting between regional commanders, persistent Taliban and al-Qa’ida activity, and criminal activity contributed to continued reports of unlawful deprivations of life. Militants targeted foreigners and local employees of NGOs for unlawful killings. Civilians also were killed during fighting between OEF forces and rebel forces.” [2e] (p2)

During the year [2003], the TISA [Transitional Islamic State of Afghanistan] investigated the November 2002 unlawful police killing of two demonstrators in Kabul and an unknown number of persons have been arrested. The case has been referred to the Supreme Court; however, there had been no trial date set by year's end. There were reports of deaths in custody.” [2e] (p2)

6.2 According to the USSD (2003), “Intimidation, attacks, and killings took place during the 2002 Loya Jirga [Grand Council] process.” [2e] (p2) Human Rights Watch (HRW) documented abuses by political actors in Afghanistan during the selection process to the Loya Jirga and numerous additional cases of threats, arrests and killings that took place during the Loya Jirga in June 2002. According to a July 2003 HRW report

“During the loya jirga itself, several powerful military and party leaders threatened less powerful delegates, and agents of the Amniat-e Melli [National Directorate of Security] spied on and delivered threats to delegates. Those involved in the threats and surveillance included forces under Defense Minister Fahim and Minister of Education Qanooni, agents of Burhanuddin Rabbani and Abdul Rabb al-Rasul Sayyaf, and officials of the Hezb-e Wahdat and Harakat-i Islami parties of Afghanistan. Agents of Ismail Khan, the governor of Herat, also threatened participants, as did Abdul Haji Qadir, a Nangarhar leader who later served as the vice-president of Afghanistan and who was assassinated on July 6, 2002.” [17f] (p46)

6.3 According to a HRW report of November 2002, military, police, and Amniat [intelligence] forces in Herat have committed numerous cases of torture, beatings and arbitrary arrests in addition to politically motivated violence. According to HRW

“Independent and credible sources with access to detainees, including UNAMA officials, confirmed that torture is common place at the Herat police station and Amnat compound, and offered reliable evidence of a larger pattern of torture and beatings by the forces under the control of Ismail Khan. In the Herat police station, special rooms have been set up to carry out torture. Electric shock is commonplace. Human Rights Watch heard testimony from witnesses and victims about the use of crank electrical generators with wires – a torture device that has been used in Afghanistan since the 1980s.” [17h] (p36-37) HRW also reported that Pashtuns are specially targeted for arbitrary arrest and abuse in Herat. [17h] (p5)

6.4 In March 2003, Amnesty International (AI) reported that “Members of the NSD have committed human rights violations, including arbitrary detention and torture. Indeed, one member of NSD admitted to an Amnesty International delegation that torture was being committed by NSD officers. To Amnesty International’s knowledge, at least three men have been permanently disabled due to the torture inflicted in NSD detention centres.” [7g] (p10)

6.5 The AI report also noted that “Police in Afghanistan are committing human rights violations. In the absence of standard operating procedures, they are not aware of what is expected of them, preventing accountability. Inadequate domestic laws, that do not conform to international standards, lead to the committing of human rights violations even if police were upholding laws to the letter.” [7g] (p35)

6.6 According to the same report, AI had talked to many men and children who alleged ill-treatment and torture by the police, predominantly during interrogation, reflecting the lack of basic investigative skills and resources available to police and a general tolerance of violence in society. Common methods of torture included beating with an electric cable or a metal bar, electric shocks, and hanging detainees from the ceiling by their arms, sometimes for several days. [7g] (p36)

6.7 The USSD (2003) noted that

“The TISA and its agents’ respect for human rights improved during the year [2003]; however, many serious problems remained, especially where its authority was challenged outside Kabul. Members of local security forces committed arbitrary, unlawful, and some extrajudicial killings, and officials used torture in jails and prisons. Prolonged pretrial detention, due to a severe lack of resources in the judicial system, remained a problem. Prison conditions remained poor. Overcrowding and limited food and medical supplies contributed to deteriorating health and even death among prisoners. The Karzai Government generally provided for the freedom of speech, the press, assembly, association, religion, and movement; however, problems remained.” [2e] (p 2)

6.8 According to a HRW report in July 2003 on human rights abuses in southeast Afghanistan,

“Afghans interviewed by Human Rights Watch described numerous cases of soldiers and police arresting, beating, and holding people for ransom, and the existence of “private prisons” in Kabul city, and in Laghman, Paktia, and Nangarhar provinces.

In both Nangarhar and in its capital, Jalalabad, Human Rights Watch found a pattern of arbitrary arrests by local police and army troops under the command of Hazrat Ali, the military commander for the Eastern Region of Afghanistan, and his brother-in-law, Musa, a high-level military commander in Nangarhar. Residents of Nangarhar, U.N. staff, and even government officials described soldiers and police regularly arresting people, often on the pretext that they were suspected of being members of the Taliban, beating them, and ransoming them to their families for money. U.N. humanitarian officials in Kabul told Human Rights Watch that they had documented cases of arbitrary or illegal detention of villagers throughout Nangarhar, as well as in neighboring Kunar and Laghman provinces.” [177] (p20)

6.9 The HRW report also noted that

“Many prominent Afghan commanders, officials, and former mujahidin leaders, including officials in the Afghan ministry of defense, ministry of interior, and the intelligence agency, the Amniat-e Melli, are responsible for or are implicated in many of the abuses. Many of the abuses documented in this report were committed by soldiers belonging to militias and other forces under the command of high-level officials or political leaders. Several former mujahidin political leaders and military commanders who are not officially part of the Afghan government but who maintain military or quasi-military forces and exercise de facto governmental control of certain areas have also been implicated in violations. In some cases, officials or political leaders are responsible because they knew of the abuses but did little or nothing to prevent them. In other instances—especially cases of threats and arrests of journalists and political actors—some officials and political leaders were directly involved.

Serious human rights violations of the kind detailed in this report are not confined to the southeast—they are taking place throughout Afghanistan. Human Rights Watch has received information throughout 2003 about serious human rights violations in the southern province of Kandahar by troops under governor Gul Agha Sherzai; abuses in northern provinces around Mazar-e Sharif by troops under Atta Mohammad and Rashid Dostum; and continuing crackdowns on basic human rights by the governor of Herat, Ismail Khan.” [177] (p10)

6.10 The HRW report acknowledged that attempts had been made by the Afghan Transitional Administration (ATA), under difficult circumstances, to address the ongoing problem, such as Ministry of Defence reform and planning for disarmament, demobilization and reintegration (DDR). However, HRW also advised that the ATA, UNAMA and other international bodies had been overly cautious in their attempts to remove warlords and rotate or dismiss military commanders responsible for human rights violations. [177] (p11)

6.11 A UNHCR report in 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)

For more information on the above categories, see also paragraphs on former KHAD and PDPA members 6.272 - 6.287; Women 6.173 - 6.244; Freedom of speech and media 6.47 - 6.65; Pashtuns 6.134 - 6.142; Former Taliban members 6.354 - 6.361; Sikhs and Hindus 6.82 - 6.95; Converts 6.96 - 6.100.

6.12 In October 2003, Human Rights Watch (HRW) wrote an open letter to President Karzai expressing its concern about reports of recent incidents of political intimidation and violence associated with the election process for the upcoming CLJ. According to the letter, "We have heard that a climate of fear exists in every region of the country, and that many representatives and former loya jirga participants are afraid to be involved in the forthcoming constitutional loya jirga." [17a]

6.13 According to a HRW report published in January 2004, "Human Rights Watch documented numerous instances of warlords intimidating local representatives during the constitutional drafting process, which ended in December [2003]. These warlords are intent on imposing their own representatives on the upcoming Afghan government and thus completing their entrenchment as sources of power, a process that they began during the emergency loya jirga (grand council) in June 2002." [17e] (p 9)

6.14 An AI press release of 2 January 2004 stated that "Amnesty International has received reports that intimidation and fear of retribution are preventing some delegates from participating freely in the CLJ. Dominance by strong political and armed factional leaders and the absence of the rule of law in many parts of the country contributes to an atmosphere of insecurity for delegates who wish to act independently of powerful political groups. Some delegates fear for their [sic] safety of their families and for their own lives, especially after they return home at the end of the CLJ." [7b]

6.15 The USSD (2003) report noted that "Countrywide elections for the candidates to the CLJ took place in November and December [2003]. Despite reports of intimidation of representatives, most independent observers deemed the registration and election free and fair." [2e] (p1) The USSD (2003) report also noted that "Human rights sources indicated that political intimidation and violence in the CLJ registration process was a problem." [2e] (p2)

6.16 The AI 2004 country report on Afghanistan, covering events from January to December 2003 noted that,

"A deteriorating security situation undermined human rights. Serious human rights abuses and armed conflict continued in many areas. The criminal justice system

remained ineffective and was a source of violations rather than a mechanism for providing justice. Women and girls in particular faced discrimination in the justice system. Police lacked pay, training and control structures. Prison conditions were poor. Detainees were held for excessive periods before appearing before a judge. Women and girls faced a high level of violence. Rape and sexual violence by armed groups was reportedly common. Violence in the family, and forced and underage marriage, were widespread. Past human rights abuses were not addressed and the international community did not provide the necessary support to ensure progress in this area. The US-led coalition was responsible for arbitrary detentions as the “war on terror” continued.” [71] (p1)

6.17 The AI report further noted that

“Police failed to protect human rights and often committed violations themselves. Lack of pay, training, proper command and control structure and effective oversight mechanisms contributed to a situation in which violations continued to be perpetrated with impunity. Detainees were held for prolonged periods, sometimes for over a year, before being brought before a judge. Torture and arbitrary detention were commonly used by police to extract confessions or money....

Violations of fair trial procedures were routine – access to defence counsel was virtually non-existent, there was no presumption of innocence, and convictions based on little or no evidence were common. Many judges lacked proper training or professional skills and the justice system remained highly politicized. Judges and independent prosecutors could not function impartially in many areas because of local politics or threats by armed groups. In many rural areas, jirgas or shuras (informal justice mechanisms) were used to resolve most disputes, including crimes such as murder. Women’s rights were particularly violated in both the formal and informal justice system.” [71] (p2)

6.18 On 30 December 2003, the Secretary-General to the UN Security Council reported that

“The overall human rights situation during the reporting period [July to December 2003] has not improved, and is unlikely to do so until the security situation does so.

Issues noted in previous reports continue to be a subject of concern, including intimidation against independent media and political groups; human rights violations committed by local government officials, particularly police, including arbitrary arrests, intimidation, torture and extrajudicial killings; abuses committed by local commanders and armed groups, such as extortion, intimidation, rape, murder, illegal detention and forced displacement; abuses against women and children, including trafficking, sexual violence and forced marriage; and property seizure and forced displacement, particularly by government officials using the cover of law for personal gain. Abuses committed by local commanders and armed groups remain of serious concern.” [39K] (p 12)

6.19 The Secretary-General also noted that, notwithstanding the efforts which had been made to expand its authority, the Government remained, in too many cases, unable to

address arbitrary rule by too many of its own agents. The report continued

“However, there have been a number of positive signs during the reporting period. Some local officials, including senior police officers, have been removed following monitoring and investigative work carried out jointly by the Afghan Independent Human Rights Commission and UNAMA. For example, in Herat the Minister of Interior removed the Chief of Criminal Police, who was allegedly involved in many abuses, including illegal detention and torture, after a joint investigation by the Commission, the Ministry of Interior and UNAMA. In response to concerns about child trafficking, a number of awareness-raising workshops have been organized jointly between the Commission and UNAMA. The Ministry of Interior and the Ministry of Labour and Social Affairs are also taking an earnest interest in the problem and are seeking to develop mechanisms to address it. A number of apparently trafficked children have been returned, and the border police have increased vigilance to prevent cross-border trafficking. Land disputes, forcible occupation of lands and properties by commanders and forced evictions make up a significant portion of complaints received by UNAMA and the Commission.” [39k] (p12)

6.20 The preamble of the new constitution adopted in January 2004 states two of its aims as “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.” [15] Article 29 of the new 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, or imprisoned, or convicted to punishment. Punishment contrary to human integrity is prohibited.” [15]

6.21 On 15 January 2004, the UN Secretary-General stated that “The Constitution, which has now entered into force, provides a permanent foundation for re-establishing the rule of law in Afghanistan...And it includes provisions aimed at ensuring full respect for fundamental human rights, including equal rights for women.” [40b7]

6.22 In a report to the UN Security Council on 19 March 2004, the Secretary-General stated that “As only limited progress has been made in the deployment of a professional, effective and accountable police force in the country, the overall human rights environment is a persistent cause for concern. UNAMA and the Afghan Independent Human Rights Commission continue to receive complaints of abuse by local commanders and local officials, particularly police and intelligence agents. Violations include intimidation, extortion, arbitrary arrest, illegal detention, and forced occupation of lands and houses.” [39o] (p12)

6.23 The Secretary-General also noted that

“Against this background, we welcome the development of government institutions for the monitoring and protection of human rights. The Ministry of Foreign Affairs has established a Human Rights Unit and, with training by the Office of the United Nations High Commissioner for Human Rights (OHCHR), is initiating a programme of annual human rights treaty reporting... The Ministry of the Interior’s Human Rights

Unit, established in 2003, has expanded its operations to 24 provinces nationwide and has increased its Kabul-based operations. The unit has been limited by a shortage of resources, but the commitment to allocate \$1.67 million from the Law and Order Trust Fund for Afghanistan should improve its capacity to monitor human rights compliance by the police force and to provide human rights training.” [39o] (p12)

6.24 In March 2004, 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)

6.25 In April 2004, the Berlin Declaration committed to the holding of free and fair elections in Afghanistan, as provided for under the Bonn Agreement. The Afghan Government committed to:

- “Before the holding of the elections, ensuring the full exercise by citizens, candidates and political parties, of their political rights under the new Afghan Constitution, including freedom of organization, freedom of expression and the principle of non-discrimination, as well as paying particular attention to the participation of women as voters and candidates.
- Issuing instructions to civil servants and military personnel concerning their duty of political impartiality and the protection of political freedoms and taking appropriate sanctions against those who fail to fulfil their obligations.
- Ensuring freedom of the press and equitable access by candidates and political parties to government media.
- Requesting the Afghan Independent Human Rights Commission and UNAMA to verify the full exercise of political rights throughout Afghanistan and prepare public reports on a regular basis with a view to determining that, ahead of the elections and, in particular, during the electoral campaign, conditions exist that are conducive to the holding of free and fair elections.” [40t] (p4)

6.26 The Berlin Declaration stated that “The Government is committed to the continued development of a system of governance based on the rule of law and the promotion and protection of the human rights of the Afghan people in order to reinforce national unity, as laid down in the Afghan Constitution. The Government is committed to

strengthen the institutional and organizational mechanisms that will translate these rights into practice.” [40t] (p7)

6.27 According to the Freedom House Afghanistan country report 2004, published on 6 April 2004

“Authorities subject Afghans to arbitrary arrest and detention, often with the aim of extracting bribes in exchange for a prisoner’s release. Torture, which takes place predominantly during interrogation, is a continuing concern in both police stations and prisons.... In addition to abuse at the hands of police and security forces, armed groups, some of which are affiliated with high-ranking officials within the TA, arrest and detain criminal suspects and political opponents.... Violent criminal offenses committed by armed men (both state and non-state actors), including armed robbery, rape, and kidnapping, continue to contribute to a climate of insecurity for the majority of Afghans.” [41] (p4)

6.28 The Freedom House report also noted that “One of the most pressing concerns in Afghanistan today is that both citizens and foreigners have little protection from terror by both quasi-governmental and non-state actors.” [41] (p4)

6.29 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. According to the report “Abdullah Shah was shot at a jail outside Kabul last week after being convicted of killing 20 people. 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.” [25t]

6.30 In May 2004, the European Council on Refugees and Exiles (ECRE) issued guidelines for the treatment of Afghan asylum seekers and refugees in Europe, which 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 also paragraphs on former KHAD and PDPA members 6.272 -6.287; Women 6.173 –6.244; Freedom of speech and media 6.47 - 6.65; Pashtuns 6.134 -6.142; Former Taliban members 6.354 -6.361; Sikhs and Hindus 6.82 -6.95; Converts 6.96 -6.100; Persons in Conflict with present power brokers 6.379 – 6.382

6.31 A Danish fact-finding mission visited Afghanistan in March/April 2004. According to their report of June 2004:

“The Co-operation Centre for Afghanistan (CCA) [an Afghan NGO involved in human rights programmes] had not heard that the present security forces should have used torture and committed mass murders like Khidamat-i-Ittala’at-i-Dawlati (KHAD), but found that the use of torture by the security forces could not be excluded²⁵. CCA informed that it is generally known that the warlords use torture in the provinces.

The Lawyers Union of Afghanistan stated that torture is forbidden by law, but that the reality is very different. In the regions governed by warlords, it is common that people in custody are beaten up until they confess the crime. 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.

An international NGO stated that torture does take place in the police stations, but not in prisons. Persons arrested by the police can expect to be beaten up until they confess to whatever they are accused of. Moreover, people who are arrested on suspicion of infringing the law can often be detained for more than a week in the police station, even though the law prescribes that one should go before a judge within 24 hours.” [8a] (section 5.2.5)

6.32 On 23 August 2004, the UN Office of the High Commissioner for Human Rights (UNHCR) reported that the Independent Expert on Human Rights in Afghanistan, Professor Cherif Bassiouni had concluded his first official visit to the country on 22 August 2004, having been appointed by the Secretary-General in April 2004. According to UNHCHR,

“In a press conference given last week-end, the Independent Expert explained that even though much progress has been made in the past two years, the human rights situation in Afghanistan continues to encompass a range of concerns. These include past and present violations committed by state and non-state actors as part of a widespread or systematic policy, as well as by individuals who operate outside the law’s control. These constitute gross violations of fundamental human rights and

include extra judicial execution, torture, arbitrary arrest and detention, inhuman conditions of detention, illegal and forceful seizure of private property, child abduction and trafficking in children, and slave-like practices with respect to women.

The Government has indicated at the highest level its commitment to human rights, democracy and the rule of law, the Independent Expert explained. There is therefore no issue as to the Government's policy commitment to these goals. The concern, however, is with their realization.” [40y]

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Afghanistan Independent Human Rights Commission

6.33 In a report of August 2003, Amnesty International noted that

“The Afghan Independent Human Rights Commission (AIHRC) was set up in June 2002. The AIHRC has a mandate to investigate and monitor human rights violations and to establish a programme of human rights education. The AIHRC has established regional offices and is receiving, and actively investigating, allegations of human rights abuses. The AIHRC has departments that are concerned with women’s rights, the rights of the child and transitional justice. The AIHRC investigation unit has started to monitor the prison system from an international human rights law perspective. However, the AIHRC currently lacks the capacity to engage in an all encompassing judicial monitoring program, including court observation. The AIHRC has competent staff who have already carried out a significant amount of work. Progress has been made despite long delays on the part of the Office of the High Commissioner for Human Rights (OHCHR) in delivering a promised program of technical assistance to the AIHRC.” [7d] (p3)

6.34 The Amnesty International report also noted that

“The AIHRC has recently established a unit that is assigned the task of dealing with “transitional justice”. The AIHRC has commenced collecting information regarding past human rights violations and international crimes...Although the AIHRC “transitional justice” unit has started to collect information compiled by human rights organisations over the past 23 years, it does not have the mandate to commence criminal investigations into past violations of human rights and international crimes. Moreover, the security situation in Afghanistan means that it is extremely dangerous for Afghan members of the AIHRC to start to conduct comprehensive interviews with victims and their families without the support of international staff. In addition, the AIHRC has no capacity to conduct forensic or other technical investigations into past human rights violations and international crimes.” [7d] (p36)

6.35 The Human Rights Research and Advocacy Consortium (HRRAC), which includes the AIHRC, was established in 2003. According to a November 2003 research report by the HRRAC, “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)

6.36 On 3 December 2003, the UN Secretary-General reported that the AIHRC had begun to operate at the national level following the opening of seven satellite offices across the country between March and May 2003. According to the report

“The Commission has consulted with the Judicial Reform Commission and the Constitutional Commission to ensure that the latter adequately reflects human rights concerns, and has also organized a number of human rights education and training seminars for an array of constituents, including Government ministries, journalists, mullahs and religious scholars and the national police. Additionally, the Human Rights Advisory Group, established in the context of the consultative process for the national development budget and chaired by the Commission, has provided a monthly forum for representatives of the Government, the donor community, the United Nations and non-governmental organizations to coordinate broader human rights issues.” [39j] (p11)

6.37 In January 2004, Human Rights Watch reported that, in the constitution adopted in January 2004, “The Afghan Independent Human Rights Commission is given a mandate, but lacks many of the powers necessary for it to credibly protect basic rights.” [17c] (p3)

6.38 According to the UN Secretary-General, in a report to the UN Security Council on 19 March 2004,

“The new constitution clearly articulates a role for the Afghan Independent Human Rights Commission beyond its current mandate, which will expire in June 2004... While the Commission continues to focus on the need to address current human rights violations, attention is now turning to past abuses. The Commission has begun a nationwide public consultation to ascertain the views of the population on how those crimes should be addressed. It is expected that this exercise, which is carried out with the support of the International Centre for Transitional Justice, will be completed in mid-2004.” [39o] (p13)

6.39 On 13 May 2004, UNAMA announced the opening of the ninth provincial office of the AIHRC in Maimana, Faryab province. [40a] (p2)

6.40 In June 2004, a Danish fact finding report noted that

“The Afghan Independent Human Rights Commission (AIHRC) concentrate their work within five main areas: training in human rights, the promotion of women’s rights, the protection of children’s rights, monitoring and investigation, and transitional justice. ... UNAMA supports AIHRC, which according to UNAMA is an important organization in the promotion of human rights. The Commission has established eight offices but cannot, according to UNAMA, 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.” [8a] (section 4.4)

6.41 According to the same Danish report

“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. More than 500 complaints concerning past human rights violations have been received by the Commission, which is also currently engaged in establishing a database in order to register the violations....

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 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 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 report.” [8a] (section 4.4)

6.42 The Danish report of June 2004 noted that

“The EU Special Representative found that the establishment of the AIHRC is one of the best things, which has happened during 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, AIHRC still is in need of foreign support and economic assistance. The members of the AIHRC's and employees receive threats from powerful people and are still lacking some 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 that involve conflicts with warlords. For this reason the

AIHRC should be supported by human rights observers from the UN throughout the country.” [8a] (section 4.4)

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Domestic and International Non-Governmental Organisations (NGOs)

6.43 In a paper published in January 2004, the British Afghan Agencies Group (BAAG) reported that “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.” [71] (p 6)

6.44 The BAAG report continued “In 2002, the AIMS (Afghanistan Information Management Service) database indicated that provision of NGO services had increased significantly throughout many regions of the country and there was reasonable coverage of health and education services. Currently this is being severely affected by the lack of security faced by both national and international aid workers. 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.” [71] (p 50)

6.45 The BAAG report concluded that “In spite of insecurities, NGOs continue to face the challenges presented whilst balancing the need to protect their staff against the weight of fulfilling their humanitarian responsibilities....The NGO sector is the largest implementer of humanitarian assistance in Afghanistan today...NGOs will continue to bring their much needed expertise to Afghanistan, funded by governmental donors, the EC and the significant private support base that many have that allow specialised programmes, which would not otherwise attract funds, to be implemented.” [71] (p 50)

6.46 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 false accusation is particularly unjustified as MSF honours the separation of aid from political motives as a founding principle. The sole aim of the organisation is to provide assistance to populations in distress in the name of medical ethics and solely based on their needs. This threat undeniably constitutes a refusal by the Taliban to accept independent and impartial humanitarian action.” [72]

(See also Section 4 History paragraphs 4.47, 4.71 – 4.72 and Section 5 Internal Security, paragraphs 5.92 – 5.93, 5.107 – 5.112, 5.117 - 5.120, 5.131)

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Freedom of Speech and Media

6.47 The Freedom House Afghanistan country report 2004, published on 6 April 2004 records 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 new press law approved in February 2002 included restrictions on press freedom such as onerous registration requirements and a prohibition on publishing anything that could be considered blasphemous.... 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.” [41] (p16)

6.48 In a report to the UN Security Council in March 2003 the Secretary-General reported that “During the past 12 months, the media in Afghanistan has gone from near non-existence to being a very vibrant sector, in spite of the paucity of resources and occasional limitations imposed by State agents. According to the Ministry of Information and Culture there are now over 170 publications in the country. The electronic media is also expanding. The most recent illustration of this trend was the launch on 8 March 2003 of Radio the Voice of Afghan Women, an independent FM radio station in Kabul. Afghanistan television and radio, which a year ago had only three or four functioning stations (from a pre-war total of 18 television and 21 radio stations) now operates 11 TV and 14 radio stations, albeit with many limitations in their programmes, broadcast reach and coordination with Kabul headquarters.” [39h] (p 13) In April 2003 it was reported by the BBC that cable television, which had been forbidden from broadcasting in January 2003, had begun broadcasting again after President Karzai’s cabinet passed a law allowing them to go back on the air. [25ai]

6.49 Human Rights Watch (HRW) reported in July 2003 that

“Press and media in Afghanistan enjoyed a rebirth after the fall of the Taliban, but still have struggled greatly. Scores of newspapers opened in Kabul city in 2002 and early 2003, but other cities have far fewer new publications. There are several independent newspapers in the country, but many publications, both within and outside of Kabul, are run by political parties and do not contain objective news

articles, only editorials and opinion pieces.... Some newspapers are government-owned: the Ministry of Information and Culture runs a newspaper in Kabul, and local governors own their own papers.... There are few genuinely independent newspapers in Afghanistan, and most editors of these are under severe pressure.” [17f] (p 59)

6.50 The US State Department Report 2003 (USSD) published on 25 February 2004 reported that the Government generally provided for the freedom of speech and the press; however problems remained. [2e] (p 2) According to the USSD,

“The 1964 Constitution, in effect under the Bonn Agreement, somewhat provided for freedom of speech and of the press; however some senior officials attempted to intimidate journalists and influence their reporting. Government intimidation and surveillance of journalists continued to inhibit open, public discussion of political issues. There were reports of self-censorship by journalists. All information must follow Shari’a law, and a publication could be suspended when the article on “forbidden content” was violated. However, the independent media were active and differing political views publicly were reflected to some extent. The State owned at least 35 publications and almost all of the electronic news media. All other newspapers were published only sporadically and for the most part were affiliated with different provincial authorities. Some government officials through political party ties maintained their own communications facilities.” [2e] (p 8)

6.51 The USSD also noted that “There were a few reports [in 2003] that government forces prohibited music, movies, and television on religious grounds... However, televisions, radios, and other electronic goods were sold freely, and music was played widely. There were approximately 150 commercial and governmental Internet cafes in the country, 15 of which were in government offices.” [2e] (p 9)

6.52 Article 34 of the Constitution adopted in January 2004 states that “Freedom of expression is inviolable. Every Afghan has the right to express his thought through speech, writing, or illustration or other means, by observing the provisions stated in 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, will be regulated by the law.” [15]

6.53 A Danish fact finding mission to Kabul in March/April 2004 reported in June 2004 that “A number of sources believed that the freedom of speech has improved after the fall of the Taliban regime, although there are still limits to which extent this “freedom” is exercised.” According to AIHRC, freedom of speech has improved in Kabul but its limits depend on who is being criticized. The International Crisis Group was of the view that people who openly report on human rights risk reprisals, citing 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. The EU Special Representative stated 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.” The CCA (Co-operation Centre for Afghanistan) agreed that those who write 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 is necessary. [8a] (section 5.3)

6.54 According to the Danish fact finding report, “The Lawyers Union of Afghanistan found that the nice picture others paint regarding Afghan conditions with respect to freedom of speech was false. In Kabul everybody is very careful about what they say or write and in the provinces freedom of speech simply does not exist.” [8a] (section 5.3)

6.55 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. According to the article, “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.” [18e] According to Reporters Without Borders (RWB) in their 2004 Annual Report Radio Arman (Hope) was the first commercial station to be launched by an Afghan. RWB note 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 voices 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.” [62] (p1)

6.56 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.” [48] (p1) According to the Institute for War and Peace Reporting (IWPR) on 7 April 2004, the new law governing the news media, approved by President Karzai and his cabinet last month, bans criticism of Islam or insults to officials. According to IWPR,

“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]

6.57 The July 2004 AIHRC-UNAMA report also reported on the freedom of expression in respect of political rights in different parts of the country,

“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 the southeast, the state owned television and the newspaper “The Voice of Paktya” have not reported on any political issues related to the elections, with the exception of an article on the presidential candidate belonging to the Mangal tribe. However, this could be attributed to the general lack of interest in these issues within the region at this early stage of the electoral process. 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 conducting 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.” [48] (p2-3)

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Journalists

6.58 According to the 2004 Reporters Without Borders Annual Report, published on 3 May 2004,

“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. A spokesman for the United Nations Assistance Mission in Afghanistan (UNAMA) said these incidents fostered an

environment that restricted free expression. The head of the Afghan Independent Human Rights Commission, Abdul Ahror Romizpour, said the critical press was the target of threats from certain senior officials, politicians, warlords and mujahideen commanders. In 2003, this commission succeeded in getting a woman writer acquitted after she had been sentenced to death for blasphemy in the northern city of Mazar-i-Sharif by a local assembly of religious leaders for writing an article about the role of women in the next constitution.” [62] (p2)

6.59 The Reporters Without Borders Report also noted that

“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).” [62] (p2)

6.60 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. [71] (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. [62] (p3)

6.61 In a report published in July 2003, Human Rights Watch advised that, “Security forces in many provinces in Afghanistan, including Kabul, continue to harass, threaten, arrest, and beat up local journalists and editors in Afghanistan to punish them for what they have published or broadcast, or to intimidate them not to publish in the future.” [171 p 59] According to HRW “The current media law is outdated and does not provide proper legal protections for media activity.” [171] (p 91)

6.62 The UN Secretary General reported in July 2003 that “In view of continuing threats against journalists, the importance of reforming the press law is emphasized.” [391] (p 2) The Secretary General also noted that “One positive sign was the appointment by the President, on World Press Freedom Day, of a commission to protect journalists. Nonetheless, intimidation of journalists in Afghanistan, and threats against them have continued during the reporting period most notably in Herat, where the local government appears intent on silencing any form of opposition, but also in Kabul and Mazar-i-Sharif.” [391] (p14)

6.63 UNHCR reported 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.” [111] (p 36)

6.64 The US State Department Report 2003 (USSD), published on 25 February 2004 noted that journalists were subjected to harassment, intimidation, and violence during 2003. According to the USSD 2003, “During the year [2003], the government maintained departments that were pre-disposed to crack down on journalists. Members of the intelligence service, National Directorate of Security, reportedly stalked out journalists’ homes, followed them on the street, visited their offices, and delivered threats to stop publishing critical articles. While some independent journalists and writers published magazines and newsletters, according to Reporters Without Borders, circulation largely was confined to Kabul and many were self censored.” [2e] (p8-9)

6.65 The Freedom House Afghanistan country report 2004, published on 6 April 2004 records that “Journalists have faced threats and harassment by both state and non-state actors. Advocacy groups have documented several cases of senior officials and regional warlords intimidating journalists in an attempt to influence their reporting.” [41] (p16)

(See also [Section 6A](#) paragraph 6.30 for ECRE guidelines)

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Freedom of Religion

Background and Demography

6.66 The US State Department Report on Religious Freedom 2003 (USSD) published on 18 December 2003, noted that reliable data on the country’s religious demography was not available as a census had not been taken for decades. The USSD 2003 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 one per cent 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, recently some minorities have begun to return. Non-Muslims such as Hindus, Sikhs and Jews are now estimated to number only in the hundreds.” [2f] (p2)

6.67 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.” [111] (p5-6)

6.68 According to the USSD 2003,

“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 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 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-i-Sharif, there is a mix of Sunnis (including ethnic Pashtuns, Turkmen, Uzbeks and Tajiks) and Shi'a (Hazaras and Qizilbash), including Shi'a Ismailis." [21] (p 2)

6.69 According to the Freedom House 2004 country report "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." [41] (p6)

6.70 The US State Department Report 2003 (USSD) published on 25 February 2004, notes that "The Government continued a policy of religious tolerance during the year; however, custom and law required affiliation with some religion." [2e] (p10)

6.71 According to the USSD 2003,

"Licensing and registration of religious groups do not appear to be required by the authorities in any part of the country. The small number of non-Muslim residents may practice their faith but may not proselytize. Blasphemy and apostasy were punishable by death. In the spring, a journalist in Mazar-i Sharif was accused in a local newspaper affiliated with the Jamiat-i-Islami Party of insulting Islam in an article she had written about the formation of the country's next constitution. The journalist, Mariya Sazawar, was accused of writing that Islamic rules were oppressive to women. The local religious scholars recommended that she be sentenced to death. In March [2003], a local court acquitted her; allegations of blasphemy were not confirmed." [2e] (p10)

6.72 The US State Department Report 2003 (USSD) on Religious Freedom, published on 18 December 2003, records 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, however, 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 Department of Vice and Virtue, under which the Taliban’s draconian religious police force operated, ceased to exist. It was replaced by the Department of Accountability and Religious Affairs, whose stated goal was to promote “Islamic values,” but lacks any enforcement or regulatory authority.” [21] (p5)

(See also Section 5 on the [Accountability Department](#) 5.173 – 5.174)

6.73 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. According to the IWPR,

“The final document [draft constitution] states explicitly that “The religion of the state of the Islamic Republic of Afghanistan is the sacred religion of Islam”, thus putting the faith at the heart of the state as well as its people. Whilst Islamic law is given an explicit place in the final draft 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)

6.74 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.” [15]

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Religious Groups

Shia (Shiite) Muslims

6.75 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)

6.76 The US State Department Report 2003 (USSD) on Religious Freedom, published 18 December 2003, 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. Most Shi'a Muslims are members of the Hazara ethnic group, which traditionally has been segregated from the rest of society for a combination of political, ethnic, and religious reasons. Throughout the country's history, there have been many examples of conflicts between the Hazaras and other citizens. These conflicts often have had economic and political roots but also have acquired religious dimensions. The treatment of Shi'a varied from locality to locality. However, the active persecution of Afghanistan's Shi'a minority, including Ismailis, under the Taliban regime has ended and, although some discrimination continues at the local level, Shi'a generally are once again free to participate fully in public life." [2f] (p4-5)

6.77 The USSD 2003 also noted that "In September 2002, the Shi'a community in Kabul was able to openly celebrate the birthday of Imam Ali, one of the most revered figures in the Shi'a tradition. Shi'a also celebrated without incident the 10th of Muharram (Ashura), which marks the murder of the Prophet Mohammad's grandson, Hussein. Under the Taliban, Shi'a could not openly celebrate their holy days, though 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." [2f] (p3)

6.78 The US State Department Report 2003 (USSD), published on 25 February 2004, records that

"Shi'a, including the predominately Hazara ethnic group, were among the most economically disadvantaged persons in the country. Relations between the different branches of Islam in the country were difficult. Historically, the minority Shi'a faced discrimination from the majority Sunni population. The Shi'a minority advocated a national government that would give them equal rights as citizens.... Before the December 2001 collapse of the Taliban, repression by the Taliban of the Hazara ethnic group, which is predominantly Shi'a Muslim, was particularly severe. Although the conflict between the Hazaras and the Taliban was political and military as well as religious, and it was not possible to state with certainty that the Taliban engaged in its campaign against the Hazaras solely because of their religious beliefs, the religious affiliation of the Hazaras apparently was a significant factor leading to their repression." [2e] (p10)

6.79 According to the Institute for War and Peace Reporting (IWPR), 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]

(See also [Section 6A](#) paragraph 6.30 for ECRE guidelines and [Section 6B Hazaras](#) paragraphs 6.146 - 6.163)

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Ismailis

6.80 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 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.” [11f] (p20)

6.81 The US State Department Report 2003 (USSD) on Religious Freedom, published 18 December 2003, 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. [2f] (p5)

(See also [Section 6A](#) paragraph 6.30 for ECRE guidelines)

Sikhs and Hindus

6.82 In June 2002 a report from the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) noted that the first presence of Hindus and Sikhs in Afghanistan was around 200 years ago. According to the report, “Of the estimated 50,000 Hindus and Sikhs living in Afghanistan 10 years ago, most have left. Only about 1,000 Sikhs remain in the country today, half of them concentrated in Jalalabad, the provincial and commercial capital of the eastern Nangarhar Province.” According to the UNOCHA report, Sikhs and Hindus suffered most during the time of the mujahedin between 1991 and 1994 when most of them left the country. Sikhs and Hindus had previously established factories in Kabul and operated a healthy exporting business, trading in Afghan goods such as dried fruit, textiles and precious stones. Under the Taliban, however, they were marginalised and not allowed to have any major stake in local economies as they had previously done. They had to resort to opening small shops selling food and textiles. [40f]

6.83 A report by the Afghan Professional Alliance for Minority Rights (APAMR) on 22 May 2003 stated that the mass migration of Sikhs and Hindus 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)

6.84 The APAMR report also noted that in 2002 some 50 Hindu/Sikh families returned from India. “The returnees who have found their houses totally ruined have neither shelter of their own nor the capability to even rent a house.” The Hindus and Sikhs who have returned to Afghanistan are reported to be mostly living in temples (Daramsals) in Kabul and other provinces, as they do not have a house or job to support themselves. [64a] (p6) Some of the returnees were too afraid to attempt to repossess their properties for fear of reprisals from the present occupants. [64a] (p7-8) The APAMR report estimated that 1200 Hindu and Sikh families were living in Afghanistan including 350 families in Kabul. [64a] (p 4)

6.85 According to the APAMR report, in March 2003 representatives of the Hindu/Sikh community in Helmand province visited APAMR saying that their community was experiencing problems in Helmand province. It was alleged that the governor of the province had demolished their shops in the centre of the province and allocated some lands for the Muslims whose shops were demolished but refused to allocate lands for Hindus. APAMR referred the case to the Ministry of Interior and the ministry promised to solve the problem, however at the time the APAMR report was published the problems had not yet been resolved. [64a] (p9-10) Representatives of the Hindu and Sikh community emphasised to APAMR that they had not been consulted about the selection of a member for the Constitution Commission to represent their community and they have not been consulted about the difficulties and problems their community face. [64a] (p11)

6.86 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.” [71] (p12)

6.87 In July 2003 the UNHCR reported

“There are some 3,500 Sikh and Hindu families in Afghanistan, mainly living in the Kabul, Ghazni, Kandahar, Helmand and Nangahar provinces. Until 1992, they had not suffered from discrimination and could exercise their religion freely in the urban centres where they predominantly lived. During the civil war and the Taliban rule, many of their temples were destroyed or used as military bases. The community still suffers from the consequences of a more rigorous and less tolerant application of

Islamic values by the State and the various factions in power during the last 14 years. As a result, the community still faces various forms of intimidation in public places and children cannot attend earlier existing Sikh/Hindu schools. Some of the Sikh and Hindu returning families from India have claimed that they have not been able to recover their property.” [11i] (p37-38)

6.88 The US State Department Report 2003 (USSD), published on 18 December 2003, noted that “The fall of the Taliban and the subsequent establishment of the AIA and TISA 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.” [2i] (p4)

6.89 The APAMR report of May 2003 noted that in some provinces, including Kandahar, Helmand, Khost, Nangahar and Ghazni there is either no school for the Sikh and Hindu community, or their schools are effectively poor and destroyed and need to be supported and reconstructed. [64a] (p5-6). Representatives of the Hindu and Sikh community advised APAMR that people are unwilling to send their children to other Afghan schools for fear of mistreatment. [64a] (p4) According to the Freedom House 2004 country report, Hindus and Sikhs have had some difficulty in obtaining cremation grounds and building new institutions of worship. [41] (p6)

6.90 In a report on land issues published in September 2003, UNHCR noted that there were some complicated cases regarding the land of members of ethnic and religious minorities who had returned to Afghanistan. They had been forced to sell their lands or property during the Mujahideen or Taliban regimes and now wished to recover them. The report noted “Their only legal claim is that they had been coerced to sell their land at the time, which would be difficult to prove. For example, members of the Hindu minority group in the provincial capital of Helmand, Lashkarhga claim that they were forced to sell their shops in the main Lashkargha bazaar to Mujahideen commanders prior to their expulsion from the area. These groups are currently trying to recover their property, although most of them do not hold documents evidencing their title. Their cases are currently pending with both the District Shura and the district.” [11g] (p8)

6.91 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]

6.92 In December 2003, the Institute for War and Peace Reporting (IWPR) reported that the draft constitution being considered by Afghanistan’s Loya Jirga was causing disquiet amongst the Hindu and Sikh community over what they see as its lack of protection for them as minority religious groups. One of the three Hindu and Sikh delegates said that “Article 3 talks only about respect for Islam, and does not mention other religions”. The delegate also believed that the stipulation that the head of state must be Muslim is discriminatory. According to the IWPR, “In the draft, Islam is proclaimed the state religion although religious minorities are given freedom of worship.” [73a]

6.93 In the final version of the Constitution adopted in January 2004, Article 2 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.” [15]

6.94 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)

6.95 In June 2004, a Danish fact finding mission to Kabul in March/April 2004 reported that “The AIHRC mentioned that Sikhs and Hindus had some problems under the Taliban regime, 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 that Sikhs or Hindus had been subjected to any form of harassment but had the impression that they might be subjected to discrimination. [8a] (section 5.4)

(See also [Section 6A](#) paragraphs 6.11 and 6.30 for UNHCR and ECRE guidelines)

Converts and Christians

6.96 In a report dated July 2003, UNHCR advised that “The risk of persecution continues to exist for Afghans suspected, or accused, of having converted from Islam to Christianity, or Judaism. Conversion is punishable by death throughout Afghanistan.” UNHCR reported that the Chief Justice Fazul Hadi Shinwari, in an interview with Reuters on 24 January 2002, confirmed that “Proselytising Christians may face the death penalty and Muslims who drink alcohol could be given 80 lashes.... He also warned foreigners against trying to convert Afghans from Islam: ‘The Islamic government, according to Sharia, is bound to punish those who get involved in anti-

Islamic activities.... We can punish them for propagating other religions – such as threaten them, expel them and, as a last resort, execute them, but only with evidence.’ Nevertheless, at the time of writing of the report, no such harsh punishment was reported.” [11i] (p38)

(See also Section 5, Death Penalty paragraphs 5.80 to 5.81)

6.97 According to the US Department of State in their 2003 report on religious freedom in Afghanistan, “Conversion from Islam was considered apostasy and was punishable by death under Shari’a. During reporting period [2003] there was no information available about converts and no information available concerning restrictions on the training of clergy. Immigrants and non-citizens were free to practice their own religions.” [2f p3] The US Department of State also advised in the same report that there had been no reports of forced religious conversion in 2003. [2f] (p4)

6.98 Commenting on the new constitution on 29 January 2004, the Christian Broadcasting Network said that

“Under this new constitution, there is no freedom of conversion. A Muslim who converts to Christianity or any other religion could face the death penalty. Muslims and non-Muslims who dissent or criticize Islam are subject to blasphemy or apostasy charges. And, depending on how judges interpret Islamic law, Christian evangelism could be considered a crime. Under the new constitution, distributing Christian literature, holding Bible classes and raising money for Christian activities, could be considered against the sacred religion of Islam.” [82]

6.99 In June 2004, a Danish fact finding mission to Kabul in 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. Converting people from Islam to other religions, however, is punishable by 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 get problems with his own family and social network, which will not accept the conversion, and later he will get problems with the surrounding community.” [8a] (section 5.4)

6.100 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]

(See also Section 6A paragraphs 6.11 and 6.30 for UNHCR and ECRE guidelines)

Mixed marriages

6.101 According to the Danish fact finding report of June 2004,

“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. However, the source was of the opinion that foreign women generally have more problems being integrated into the community than foreign men.

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 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.” [8a] (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 have 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.” [8a] (section 6.9)

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Freedom of Assembly and Association

6.103 According to the US State Department Report 2003 (USSD), published on 25 February 2004,

“The 1964 Constitution, in effect under the Bonn Agreement, states that citizens have the right to assemble without prior permission and to form political parties; however, tenuous security and likely opposition from local authorities seriously inhibited freedom of assembly and association outside of Kabul during most of the year [2003]. On October 11 [2003], the TISA passed a Political Parties Law that obliges parties to register with the Ministry of Justice and requires political parties to pursue [pursue] objectives that are inline with the principles of Islam. In Kabul, a spectrum of organizations and political parties operated.” [2e] (p9)

6.104 The USSD 2003 also noted that

“Police used harassment and excessive force against demonstrators during the year [2003]. For example, in May, Kabul police arrested and beat several students for protesting against nepotism in Kabul University’s grading system. No action was taken against security forces who forcibly dispersed demonstrations or meetings in 2002 or 2001. The Government allows for freedom of association; however, there were reports of harassment by local officials during the year [2003]. For example, in Herat, Ismail Khan’s officials harassed and interfered with the Professionals’ Shura, the Herat Literary Society, and the Women’s Shura.” [20 p9]

6.105 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, Islamic school of thought (mazhab-I fiqhi) and region [sic] is not permissible.

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.” [15]

Article 36 states “The citizens of Afghanistan have the right to un-armed demonstrations, for legitimate peaceful purposes.” [15]

6.106 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.” [48] (p3)

6.107 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. [48] (p4)

6.108 According to the AIHRC-UNAMA report, "Freedom of expression and association is particularly curtailed in Herat where even registered political parties are prevented from establishing offices and operating openly." [48] (p7) The report further noted that "In the west, party activists do not consider the environment conducive for political activities. The majority of parties continue to hold clandestine meetings and feel that conducting open political activities would be tantamount to "political suicide" because of the Governor's intolerance of political activists." [48] (p4)

6.109 The AIHRC-UNAMA report 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." [48] (p7-8)

Employment Rights

6.110 According to the US State Department Report 2003 (USSD), published on 25 February 2004, "The Bonn Agreement revived the 1964 Constitution's broad provisions for protection of workers and a mixture of labor laws from earlier periods; however, little is known about labor laws, their enforcement, or practices. Labor rights were not defined beyond the Ministry of Labor, and, in the context of the breakdown of governmental authority, there was no effective central authority to enforce them. The only large employers in Kabul were the governmental structure of minimally functioning ministries and local and international NGOs." [2e] (p15)

6.111 The USSD 2003 also noted that "Current law is not fully in compliance with internationally recognized workers rights to form free trade unions. 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." [2e] (p15)

6.112 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." [15]

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People Trafficking

6.113 According to the US State Department Report 2003 (USSD) published on 25 February 2004

“There was no legislation prohibiting trafficking in persons. However, in November [2003], President Karzai approved the establishment of the Commission for the Prevention of Child Trafficking and pledged to establish a National Action Plan to combat trafficking. A 2002 U.N. report on Women and Human Rights reported increasing anecdotal evidence of trafficking in Afghan girls to Pakistan, Iran, and the Gulf States. Some girls reportedly were kept in brothels used by Afghans. The whereabouts of many girls, some as young as 10, reportedly kidnapped and trafficked by the Taliban remained unknown. The U.N. July [2003] report also noted that many poor families were 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 capturing and abduction of women and children in the southern part of the country.” [2e] (p16)

6.114 The USSD 2003 report noted that

“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. In October [2003], 42 children trafficking victims were rescued and taken to a shelter operated by a local NGO. Trafficking victims, especially those trafficked for sexual exploitation, faced the risk of contracting sexually transmitted diseases, including HIV/AIDS. Trafficking victims, especially those who were exploited sexually, also faced societal discrimination, particularly in their home villages and within their own families, as a result of having been trafficked.” [2e] (p16)

6.115 A report by the International Organisation for Migration (IOM) in October 2003 noted 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)

6.116 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)

6.117 According to a US State Department (USSD) Report on Trafficking in Persons, published on 14 June 2004,

“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)

6.118 The same USSD report also noted that

“The Transitional Islamic State of Afghanistan does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so despite severe resource constraints.... Afghanistan’s law enforcement actions against trafficking improved during 2003, as police arrested suspected traffickers and for the first time rescued victims. The judiciary currently applies a mix of legal codes, Shari’a law, and customary law. Traffickers may be prosecuted under a number of statutes prohibiting kidnapping, rape, forced labor, transportation of minors, and child endangerment. In September 2003, police in Takhar intercepted a convoy carrying more than 50 children from Badakhshan and arrested eight men on suspicion of trafficking. Two people were arrested in Baghlan for allegedly kidnapping 12 children from Badakhshan with the intent to traffic them to Peshawar, Pakistan. Unreliable communication between government officials, and a lack of crime statistics in general, preclude the systematic monitoring of trafficking cases. Given the resources of the Transitional Islamic State of Afghanistan, adequate border monitoring is not feasible.” [2b] (p1)

6.119 The USSD report further noted that

“The Transitional Islamic State of Afghanistan established an inter-ministerial Child Trafficking Commission that includes representatives from international organizations to develop coordination between ministries. UNICEF and the Afghan Independent Human Rights Commission conducted a workshop on child trafficking in September [2003] for police officers from all 32 provinces, border police officials, and representatives from the Ministries of Justice, Women’s Affairs, and the Kabul Juvenile Court. The Ministry of Hajj and Religious Affairs also held meetings in Kabul with 100 mullahs (Islamic clergy) to discuss trafficking and enlist their support in using their positions of influence to spread an anti-trafficking message. In October [2003], provincial government officials, representatives from the Ministry of Justice, police, and local NGOs attended workshops on abduction and child trafficking in the northern provinces of Kunduz and Takhar. The Afghan Independent Human Rights Commission conducted

workshops on trafficking and disseminated posters on child rights and trafficking to schools, government departments, and the police.” [2b] (p2)

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Freedom Of Movement

6.120 According to the US State Department Report 2003 (USSD), published on 25 February 2004,

“The 1964 Constitution, in effect under the Bonn Agreement, provides for these rights for men [freedom of movement, foreign travel, emigration and repatriation]; however, in practice, their ability to travel within the country was hampered by sporadic fighting, brigandage, landmines, a road network in a state of disrepair, and limited domestic air service. Despite these obstacles, many men continued to travel relatively freely, with buses using routes in most parts of the country. The law also provides that women are required to obtain permission from a male family member before having an application for a passport processed. In some areas, women were forbidden to leave the home except in the company of a male relative. Commercial trade was impeded as local commanders and criminals continued to demand road tolls and at times closed roads. Taxi, truck, and bus drivers complained that militia and police personnel operated illegal checkpoints and extorted them for money and goods. In September [2003], President Karzai called for an end to all checkpoints; however, warlords largely ignored his order.” [2e] (p10-11)

6.121 A Swedish Fact Finding Mission to Afghanistan in November 2002 reported in April 2003 that, “According to UNHCR Afghanistan all Afghans have the right to travel freely inside and outside Afghanistan. Travel is possible in almost the whole country but is limited by looting along the roads. The roads in western Afghanistan from Herat to the north and from Herat to Helmand are unsafe. The road between Kabul and Ghazni is also unsafe. However, the situation has improved greatly and is still improving. A sign of this is the decrease in the number of roadblocks.” [61] (p 17) A spokesman for the United Nations Assistance Mission to Afghanistan (UNAMA) stated that it was possible for anyone experiencing problems in one area of Afghanistan to move to another place. [61] (p 10)

6.122 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.” [111] (p 41)

6.123 According to a Human Rights Watch (HRW) report published in July 2003 on human rights abuses in southeast Afghanistan, there were no longer government regulations barring women from studying, working, and going outside without wearing a burqa or without a close male relative (a mahram). However, in practice many women and girls were not going out, particularly in rural areas, due to fear of

being targeted by armed men. [17f] (p 12) According to HRW, many of the abuses of women and girls such as kidnapping, rape, armed robbery, and extortion have devastating consequences for the liberty of movement of women and girls. The report notes that “These abuses severely restrict their ability to leave home, seek education, access health care, visit family members, buy food, or to do anything else that requires leaving their compounds and moving in a public place.” [17f] (p 73)

6.124 In a report to the United Nations Economic and Social Council on 19 December 2003, the Secretary-General reiterated that “The insecurity and increasing incidence of sexual violence threaten to reverse the gains made especially for girls and women as many are afraid to venture out of their homes to attend school or go to work for fear of abduction or rape by armed groups.” [39f] (p19) The Secretary-General also advised that women in Afghanistan continued to face significant obstacles, including restrictions on movement. [39f] (p20)

6.125 A Danish fact finding mission to Kabul in March/April 2004 reported in June 2004 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.” [8a] (section 5.5)

See also section on Women paras 6.174 – 6.195

6.126 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 an NGO or the like. The situation for single women however is complicated.” [8a] (section 5.5.)

See also section on Single Women and Widows paras 6.196 to 6.202

6.127 According to the Danish fact finding report,

“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.” [8a] (section 5.5.)

6.128 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. In the south, Taliban activities have all but prevented public participation in several districts, and particularly in Zabul, Southern Ghazni, Northern Kandahar and Northern Helmand. There are clear indications that anti-government forces have made it a priority objective to prevent people from exercising their basic right to participate in the electoral process.” [48] (p5)

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6 B Human Rights Specific Groups

Ethnic Groups

Introduction

6.129 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.” [41] (p6)

6.130 Europa Regional Surveys of the World: South Asia 2004 records that, following the emergency loya jirga of June 2002, “President Hamid Karzai was reappointed Chairman of the multi-ethnic administration, which comprised: 11 Pashtuns, eight Tajiks, five Hazaras, three Uzbeks and one Turkoman. Two women were appointed to the administration: Dr Suhaila Siddiqi and Dr Sima Samar.” [1a] (p62) On 1 March 2004, the current Administration reflected a similar ethnic mix, according to the Afghan Ministry of Foreign Affairs. [67]

6.131 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] (p 19)

6.132 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 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)

6.133 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 man or woman- have equal rights and duties before the law” [15] 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. [40be]

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Pashtuns

6.134 According to the UNHCR in July 2003, 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)

6.135 In 1997, a 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)

6.136 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)

6.137 The Freedom House Afghanistan Country Report 2004 records 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." [41] (p6)

6.138 In November 2002 HRW issued a report on the situation in western Afghanistan and reported that, in Herat, "Members of the Pashtun minority are specially targeted for abuse. UN and nongovernmental organization (NGO) staff estimate that even as other refugees have returned, tens of thousands of Pashtuns have fled western Afghanistan to Kandahar, Iran and Pakistan in the last nine months to escape persecution." [171] (p 5) A Swedish fact finding mission in November 2002 reported that Pashtuns were still considered by some to be traitors. For example, by Ismail Khan in Herat. [61] (p 18)

6.139 According to a UNHCR report issued in July 2003,

"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." [111] (p 19)

6.140 In October 2003 the first Displaced Persons Council (DPC) meeting for Pashtuns took place in Kabul. The DPC is a joint initiative of the Ministry of Refugees and Repatriation (MORR) and UNHCR, intended to complement the activities of the Northern Return Commission and increase the participation of the displaced persons themselves in this process. The summary of the DPC report noted that

"The continued presence and influence of abusive commanders in the North-West was consistently identified by participants as the most serious obstacle to return. Commanders are still strengthening their own power through occupation of the displaced persons' property, encouraging the planting of poppies on this land, taxing the civilian population on any harvests produced, forcibly recruiting young men or engaging civilians in forced labour. Although the US coalition intervention in Afghanistan was welcomed as providing a good opportunity for peace, serious disappointment was expressed over the Coalition's use and support of the aforementioned commanders and competing factions, the latter further perpetuating the crimes against humanity committed in the north west....

Some participants questioned the ability or will of the main leaders in the north to deal with the low level commanders. One participant noted that mid last year, General Dostum had agreed to his petition for restitution of his property in Sayedabad district of Saripul, but the concerned commanders refused to comply with Dostum's instructions and received no penalty for not complying." [49] (p2-3)

6.141 On 21 March 2004, a UNAMA spokesman announced that "Go and See" visits were underway in the Northern Provinces. According to the spokesman,

"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]

6.142 A Danish fact finding report of June 2004 reported that, "The UNHCR informed that internally displaced Pashtuns who have returned 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. [8a] (section 6.1)

(See also [Section 6A](#) paragraphs 6.11 and 6.30 for UNHCR and ECRE guidelines)

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Tajiks

6.143 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)

6.144 According to UNHCR in July 2003, Tajiks comprise about 25% of the population making them the second largest ethnic group and they are Persian speaking Afghans. [11] (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)

6.145 A Danish fact finding report of June 2004 noted that, according to UNHCR, “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.” [8a] (section 3.2.2)

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Hazaras

6.146 According to the US State Department Report 2003 (USSD), “Before the December 2001 collapse of the Taliban, repression by the Taliban of the Hazara ethnic group, which is predominantly Shi’a Muslim, was particularly severe.” [2e] (p10)

6.147 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 Pastuns 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) According to the UNHCR in July 2003, Hazaras constitute about 19% of the population. [11f] (p5)

6.148 According to a Minority Rights Group (MRG) briefing in November 2003, Hazaras have been traditionally marginalised in Afghan society. MRG report 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.” [7e] (p6)

6.149 The MRG Report of November 2003 also notes 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. According to the MRG report “They 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)

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6.150 According to the US Citizenship and Immigration Services (USCIS) in April 2003, "Since the fall of the Taliban regime, ethnic Hazaras, most of whom are Shi'ite, apparently have faced little persecution from remnants of the militant group, although the Resource Information Center was unable to find specific information about the condition of Hazaras who actively opposed the Taliban. An Afghanistan researcher with Amnesty International said that her organization had not received reports of Hazaras being targeted by Taliban remnants (Researcher 19 Mar 2003)." [30] (p2)

6.151 USCIS further noted that

"Given that security is fragile in much of Afghanistan, it is possible that individual Hazaras could be harassed by Taliban members, yet it is unlikely that Hazaras as a group are being targeted, according to the Dean of International Studies and Programs at the University of Nebraska at Omaha who is a longtime Afghanistan observer.... This is particularly true for those living in the traditional Hazara stronghold in mountainous central Afghanistan, known as Hazarajat, and in Kabul, where many Hazaras work (Dean 3 Apr 2003). Nevertheless, reports emerged in late 2002 of harassment of Hazaras by Taliban allies in a remote part of central Afghanistan, though U.S.-led forces have since taken control of the region." [30] (p2)

6.152 According to a Swedish fact finding mission in November 2002, the Director of Field Coordination Division at UNAMA said that no Hazaras, in Kabul, would be at risk due to ethnicity. The source advised "However, Hazaras in western Kabul could be at risk because the area is controlled by a Pashtun leader, Sayyaf. Hazaras who in any way have a high profile could be seen as a threat and could be at risk even from their own leaders." [61] (p 19) 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. [71] (p24)

6.153 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. [111] (p 20)

6.154 In a report on land issues published in September 2003, UNHCR noted examples of land tenure problems in Kabul. According to the report,

"One such example can be found in sub-district 3 of Kabul province, where 153 families live at the building of the Chaplq shoe factory. They are originally from various provinces such as Parwan, Logar, Kunduz, Kabul and Bamyan. They claim that their land in their areas of origin is still occupied by families of Hazara ethnicity.... Along the same lines, in sub-district 8 and 10 of Kabul City, a number of Hazara families from Sharistan, have claimed that persons affiliated to two major commanders Toran Abdul Ali and Arif Dawari had occupied their houses and land."

6.155 The UNHCR report mentioned other examples in which Hazaras were involved. According to the report

"The ownership of property, including land has been moved from the hands of one group of owners to another by influential actors in the society (mostly commanders and or local authorities). The new beneficiary group would usually consist of political or ethnic allies. To mention an example, 30 ethnic Hazara families claim that they had been distributed land in Chasme Sher village, Puli Khumri district of Baghlan. As a result of persecution at the hand of the Talibans, they subsequently fled the country. They returned in October 2002 to find their homes taken over by Pashtuns from neighbouring villages. The Pashtuns on the other hand, claim that they had been awarded this land during the times of King Zaher Shah's rule. The ethnic Hazara communities do not have documentation pertaining to ownership and are hosted by their relatives. A very similar situation took place in Kandahar, where a group of Hazara returnees claimed to have received land in Hazarajoft and Nad Ali districts of Helmand under a government scheme during Kind Zahir Shah's rule. Their land were expropriated following their expulsion during Jihad, and passed through a number of owners. It is currently controlled by the Head of the Hazarajoft District Profile Police." [11g] (p7)

6.156 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]

6.157 According to the BBC report,

"We're here for several reasons, the most important of which is to promote stability in the region," Colonel Neville Reilly, commander of around 120 New Zealand troops in Bamiyan, told Assignment. "Just by being here, we give confidence to people." The army of New Zealand has set up camp in Bamiyan to operate what is known as a provincial reconstruction team (PRT). The PRT uses horses to patrol the region. Together with several international aid agencies, it says it has met an overwhelmingly positive response from the Hazaras. Colonel Reilly says "99%" of the Hazaras are happy to see them there." [25ad]

6.158 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." According to Reuters, the victims were residents of neighbouring Uruzgan province, where tension had reportedly erupted recently between some Hazaras and ethnic Pashtuns. [40bd]

6.159 In a report on 30 March 2004, the International Crisis Group (ICG) reported that, on 7 March 2004, Haji Mohammad Mohaqqueq, a presidential candidate and former leader of the Hizb-i Wahdat forces in northern Afghanistan, had been removed from his post as planning minister. Conflicting reasons for this were reported. According to the ICG report, "In a press conference the following day, Mohaqqueq accused Karzai of firing him during a cabinet meeting for criticising a decision to transfer some of his ministry's powers to Finance Minister Ashraf Ghani, an ethnic Pashtun, and in retaliation for announcing his intention to run for president." On the other hand, "Karzai's spokesperson, Jawed Ludin, claimed that Mohaqqueq had resigned following a dispute with the president during a cabinet meeting." According to the ICG report, "Although Mohaqqueq had been widely considered an ineffective minister, he frequently spoke in the name of the Hazara community. In announcing his presidential candidacy, he said he was doing so to demonstrate that a Hazara could run for the highest office." [26a] (p9)

6.160 According to a Danish fact finding report of June 2004, UNCHR 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." [8a] (section 6.1)

6.161 According to the same Danish report

"UNHCR explained that the southern part of the central areas is controlled by two factions of the Hazara party, Hezb-e Wahdat. There are clashes between the two factions, led by Karim Khalili and Mohammad Aqbari respectively. The conflicts are concerned with political control and money originating from toll and tax collection and with women, which in this connection is considered as an economic resource....

There are constantly tensions between the two factions of Hezb-e Wahdat. In some districts this has resulted in open conflicts and smaller groups of the population have been internally displaced. Additionally, the source mentioned that the government hardly is [sic] represented in these districts and that approximately 300,000 returned refugees from Iran stay in these areas. Nevertheless, UNHCR was of the opinion that Bamian district and the city of Bamian, which are controlled by Khalili are among the safest places in Afghanistan." According to UNHCR, the New Zealand PRT has an influence on the security situation. [8a] (section 3.2.2)

6.162 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]

6.163 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.” According to the head of the UNHCR sub-office in Peshawar, the refugees were returning mainly to Hazarajat and Ghazni province. [11b]

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Uzbeks and Turkmen

6.164 According to the World Directory of Minorities (1997) “Uzbeks and Turkmen 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 Turkmen 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)

6.165 According to UNHCR in July 2003 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)

6.166 According to the the Institute of War and Peace Reporting (IWPR) in January 2004 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. [15]

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Baluchis

6.167 According to the World Directory of Minorities published in 1997, 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

6.168 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 (Panjshiris)

6.169 According to a UNHCR background paper of June 1997, "The Panjsheris are a sub-group of Tajiks who also practise Sunni Islam, and speak a language known as Panjeri, a dialect of Dari." [11a] (p 5) The World Directory of Minorities (1997) notes 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)

6.170 In a report of 11 June 2002, the Institute of War and Peace Reporting (IWPR) noted that Mohammad Qasim Fahim was appointed head of the Northern Alliance following Masoud's death. Since re-taking Kabul following the fall of the Taliban in late 2001, the Panjshiris asserted a disproportionate control over Kabul and controlled three key ministries: defence, interior and foreign affairs. [73]

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Kuchis

6.171 In December 2003 Refugees International (RI) reported that Kuchis are Pashtuns from southern and eastern Afghanistan. According to RI, “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.” [40bg] (p1)

6.172 According to the RI report,

“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.” [40bg] (p2)

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Women

Overview

6.173 A UN Commission on the Status of Women report dated January 2003 reported that

“Afghanistan's emergence from 24 years of conflict has led to significant achievements and progress for women who went from complete marginalization and denial of rights to participation in several key institutions for the reconstruction of their country, including the Emergency Loya Jirga, the Afghan Transitional Administration, the Ministry for Women's Affairs, the Afghan Independent Human Rights Commission and Judicial and Constitutional Drafting Commissions. One of the major changes has been the re-emergence of women in urban areas with relatively better access to employment, healthcare, and education....Women's progress is, however, determined by post-conflict characteristics and complexities of Afghan society with patriarchal values and traditions which are deeply ingrained.” [6b] (p4)

6.174 In June 2003, Amnesty International reported 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)

6.175 Human Rights Watch (HRW) reported in July 2003 that almost every woman and girl interviewed in southeast Afghanistan said that life now was better than it was

under the Taliban. Many women told HRW that there were no longer any government regulations barring them from studying, working and going outside without wearing a burqa or without a close male relative (a mahram). It was reported that in practice, however, many did not go out, especially in rural areas, for fear of being targeted by armed men. According to the report "Men and women told Human Rights Watch that women and older girls could not go out alone and that when they did go out they had to wear a burqa for fear of harassment or violence, regardless of whether they would otherwise choose to wear it. And in Jalalabad and Laghman, certain government officials have threatened to beat or kill women who do not wear it." [171] (p12)

6.176 The HRW report further noted that

"Human Rights Watch interviewed some women and girls, especially in Kabul, who enjoyed considerable autonomy and liberty of movement. Some women said they enjoyed more autonomy when they were in Kabul and less when they were in rural areas. One woman from Paghman district noted: "We can go with the men to shop in Kabul but not to Paghman town. If we want something from Paghman, the men will bring it". Even among these women and girls, some families imposed conditions on them, such as wearing a burqa and taking an escort." [171] (p 74)

6.177 In a paper published in July 2003, UNHCR reported that "In some urban areas, women are becoming increasingly involved in public life and are returning to work and school." [111] (p22) However UNHCR also advised that discriminatory and conservative traditions remained in a number of provinces and the presence of armed factions continued to pose risks and, at times, give rise to persecution, of some women. UNHCR noted that "The improvements for women noticeable in Kabul and Mazar-i-Sharif are not taking place to the same extent in other urban areas." [111] (p23)

6.178 The UNHCR paper also noted that, despite the 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." [111] (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. [111] (p36)

6.179 In October 2003, an Amnesty International (AI) paper stated that

“Two years after the ending of the Taliban regime, the international community and the Afghan Transitional Administration (ATA), led by President Hamid Karzai, have proved unable to protect women. Amnesty International is gravely concerned by the extent of violence faced by women and girls in Afghanistan. The risk of rape and sexual violence by members of armed factions and former combatants is still high. Forced marriage, particularly of girl children, and violence against women in the family are widespread in many areas of the country. These crimes of violence continue with the active support or passive complicity of state agents, armed groups, families and communities. This continuing violence against women in Afghanistan causes untold suffering and denies women their fundamental human rights.

The criminal justice system is too weak to offer effective protection of women's right to life and physical security, and itself subjects them to discrimination and abuse. Prosecution for violence against women, and protection for women at acute risk of violence is virtually absent. Those women who overcome powerful barriers and seek redress are unlikely to have their complaints considered, or their rights defended.” [7c] (p1)

6.180 The AI report further noted that

“Significant numbers of underage marriages, incidents of physical abuse in the family and other forms of violence were reported to Amnesty International. The vast majority had not been reported to the criminal justice system, and almost none had been subject to investigation or prosecution. Women were largely unsupported when suffering violence, and had very few means to leave violent situations. Amnesty International’s research indicates impunity for such violence on a vast scale. Such impunity perpetuates violence since perpetrators are free to consider their actions as normal and acceptable.” [7c] (p7-8)

6.181 The AI report also noted that

“Amnesty International research indicates a failure on the part of the state to investigate fully serious crimes against women and to protect women at risk. Prosecution for crimes of violence against women including rape and domestic violence is extremely rare. Amnesty International was not informed of any instances of prosecution for either forced marriage or the exchange of women or girls... Some judges interviewed by Amnesty International delegates stated that the practice of using any form of physical violence against a woman, violated the Shari'a. However, the failure to criminalize the practice or offer any form of support to women victims of violence makes it almost impossible for women to bring cases before the courts.” [7c] (p22)

6.182 In a report to the UN Economic and Social Council on 19 December 2003, the Secretary-General advised that “In the two years since the fall of the Taliban regime, the Afghan Transitional Administration supported by the international community has focused considerable attention on the plight of Afghan women and girls. Despite many obstacles, women are playing a crucial role in building a new Afghanistan both politically and economically. They have participated throughout the country in the consultative process in drafting the new constitution.” The report also noted that women continued

to return to the workforce in modest numbers and gain access to education and health services. [391] (p4-5)

6.183 The Secretary-General also noted, however, that “In spite of this progress, the fact that women in many parts of the country continue to face gross violations of their rights, is a matter of concern.” [391] (p5) The Secretary-General said that “The insecurity and increasing incidence of sexual violence threaten to reverse the gains made especially for girls and women as many are afraid to venture out of their homes to attend school or go to work for fear of abduction or rape by armed groups.” The Secretary-General noted reports of a wide range of violations against women and girls in the name of social norms, traditions and protection. These included domestic violence, early and forced marriages, death threats against women activists, intimidation, restrictions on movement, honour killings and “protective” incarceration, particularly in rural areas, where conservative social attitudes prevailed. In rural areas women were threatened by local commanders who violated women’s rights and committed sexual abuse with impunity. It was also noted that “Refugee women and widows also face specific risks associated with lack of security, as well as physical and psychological hardship.” [391] (p19-20)

6.184 According to the US State Department Report 2003 (USSD), published on 25 February 2004,

“At year's end, [2003] local custom and practices generally prevailed in much of the country. Discrimination against women was widespread. However, its severity varied from area to area, depending on the local leadership's attitude toward education for girls and employment for women and on local attitudes....

Most in the international and domestic community noted improvement in the status of women since the Taliban’s fall from power, despite the persistence of certain areas of concern. The central Government named several women to cabinet positions and other areas of responsibility. The Ministers of Health and Women’s Affairs, as well as the Chairwoman of the Afghan Independent Human Rights Commission were women. Women in a number of places 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.” [2e] (p12)

6.185 According to an article by an independent journalist in the New York Times on 8 March 2004, 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]

6.186 The New York Times article further noted that

"Educated women in the cities who were repressed by the old Taliban government have benefited from the changes in Afghanistan, and many are now working and studying. But in villages and remote tribal areas, the new order has not improved women's longstanding low status. Daughters are often exchanged between families, are given in marriage as compensation for crimes, or are married to men two or three times their age. When young girls marry, they leave home to live with their husband's extended family, where the mother-in-law rules the household. Often they are seen as little more than a new source of labor." [28]

6.187 According to Amnesty International in March 2004,

"Women and girls in Afghanistan continue to be threatened with violence in many aspects of their lives both in public and private. Violations of the rights of women and girls, including physical abuse, underage marriage, exchange of girls to settle feuds were widely reported to Amnesty International during the recent visit. Amnesty International also received reports of several women burning themselves in order to avoid forced marriages and physical violence, especially in Herat province... Protection for women and girls who have suffered violence to date remains extremely limited. In Kabul, the numbers of shelters for victims of violence are limited but such facilities do not exist in most areas outside the capital. The scale of the problem in the provinces remains largely unknown. Despite some international resources being donated to the growth of women's civil society groups attempting to combat violence against women, women remain largely unsupported with very few means to seek community and state support. A select number of both Afghan and international non governmental organisations (NGOS) are working to address this issue but they remain in need of further international and Afghan government support." [7a] (p3)

6.188 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)

6.189 The Freedom House Afghanistan Country Report 2004, published in May 2004, records that

“Despite a constitutional provision that all Afghans have “equal rights and obligations before the law without discrimination or preference,” both women and minorities face considerable discrimination. 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. For example, Ismail Khan, the governor of Herat, imposed a number of strictures on women’s freedom of movement and their ability to receive proper education, including forced virginity tests, as well as regulations on proper attire and gender segregation in schools.

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.” [41] (p5-6)

6.190 A Danish fact finding mission to Kabul in March/April 2004 reported in June 2004 that “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. [8a] (section 6.2.1)

6.191 According to the same Danish report, the EU Special Representative was of the view that the situation of 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 today was that they

were economically dependent. According to UNHCR, women have a better chance of getting work in Kabul than in other places. [8a] (section 6.2.1)

6.192 The Danish fact finding report also noted that

“DACAAR [Danish Committee for Aid to Afghan Refugees] was of the opinion that women in Afghanistan have more possibilities today compared to the time under Taliban. The source mentioned that in Kabul the number of women without a burca [burka] increases every day. However, the source had the impression that there is still a large amount of uncertainty about the future for women in Afghanistan and there continue being [sic] strong traditions that limit women’s activities. As an example the source mentioned that some of DACAAR’s female employees cannot take part in supplementary training courses since this would imply that they had to be in the same room as their male colleagues.” [8a] (section 6.2.1)

6.193 The Danish fact finding report of June 2004 interviewed a number of sources about the security situation for women. According to the report

“The UNHCR stated that in northern Afghanistan there has been an increase in the number of rapes of girls and women and that there has similarly been an increase in the 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.” [8a] (section 6.2.2)

6.194 According to the same Danish report, “The Vice Minister for Women said that the generally poor security situation in Afghanistan, the lack of demilitarization and the constant presence of warlords imply that a lot of women are afraid to walk in the street or to go to work. Women are subject to acts of revenge against themselves or their families and to mistreatment within the family.” [8a] (section 6.2.2)

6.195 The Danish report of June 2004 also reported the EU Special Representative, the Swedish Committee for Afghanistan and the World Health Organization as agreeing 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. According to the report “The World Health Organization (WHO) noted that the lack of female health personnel is a big problem, since it is a part of Afghan culture that only women are allowed to examine women. According to the source “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.” [8a] (section 6.2.6)

6.196 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.” [48] (p5)

(See also Section 6A paragraphs 6.11 and 6.30 for UNHCR and ECRE guidelines)

Single Women and Widows

6.197 A Swedish fact finding mission to Afghanistan in November 2002 reported in April 2003 that “Most of the sources interviewed [including the Deputy Minister of Women’s Affairs and the UNAMA Human Rights Team] confirmed that the security situation for women is difficult. Women that are single head of household without extended families to care for them, are vulnerable. Women who are single heads of households are at risk because they have no family protection, no money and no employment. If they have children, the risk is extended to the child.” [61] (p19)

6.198 A Danish fact finding mission to Kabul in March/April 2004 reported the views of a variety of sources on the position of single women in Afghanistan. According to their report of June 2004, the UNHCR and the Vice Minister for Women’s Affairs were both 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 UNHCR, “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.” [8a] (section 6.2.5)

6.199 UNHCR further explained that single women find it very difficult to get by. According to the source, “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.” [8a] (section 6.2.5.)

6.200 The same Danish report also 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 believe that she has also been raped. The source explained that

she herself had 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 set up a house 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 said that a single woman can only settle in Kabul if she is very rich and can afford security guards and get work within an NGO, which 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 get problems if she returns to Afghanistan." [8a] (section 6.2.5)

6.201 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.... Uneducated, illiterate, and lacking basic job skills, many widows are left to fend for themselves.... 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]

6.202 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]

6.203 The Christian Science report noted that in some countries remarriage can resolve the economic problems of widows but in Afghanistan this is most often not a viable option. Although Afghan people love their children, most men would not be prepared to support another man's children and, according to a distribution officer with the food programme, those who are willing to get married to widows are very poor. [40z]

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Legal Provisions

6.204 In November 2002, the International Commission of Jurists (ICJ) reported that "There appears to exist a large degree of confusion over the exact rights of women and their legal status. In June 2002 there were about 30 women confined in Kabul jail.... It appears that these women have no access to lawyers, have no information on their rights, if any, and are generally left in jail until their respective relatives

intervene.” The ICG noted that the most surprising finding of their report was the profound uncertainty regarding the legality of the detention of these women. [57] (p 25)

6.205 In July 2003, Amnesty International (AI) reported that “President Karzai issued the first of several Presidential decrees providing for the release of women in November 2002. According to the decree, 20 women were ordered to be released as part of religious celebrations. However, this raised concern amongst members of the international community. Many of these women were imprisoned for running away from home and could not return to their home on release. As a result of the release, one woman was killed by a family member and another had nowhere to go to. One woman identified to be released as part of President Karzai's decree in November 2002 was somehow overlooked and remained in detention. This underlines the need for safe shelter for women.” [7e] (p8)

6.206 The US State Department Report 2003 (USSD), published on 25 February 2004, recorded that

“Throughout the country, approximately 100 women were held in detention facilities. Many were imprisoned at the request of a family member. Some of those incarcerated opposed the wishes of the family in the choice of a marriage partner. Others were accused of adultery. Some 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. In 2002, Kabul's Police Chief said that the police would continue to arrest women if their husband or family brought a complaint to the authorities.” [2e] (p13)

6.207 On 18 March 2003, the UN Secretary-General reported that Afghanistan had ratified the Convention on the Elimination of All Forms of Discrimination against Women [CEDAW] on 5 March 2003 [39h] (p12) According to the United Nations Division for the Advancement of Women in March 2003, “Consisting of a preamble and 30 articles, it [the Convention] defines what constitutes discrimination against women and sets up an agenda for national action to end such discrimination....Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.” [56] (p1-2)

6.208 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. Amnesty International recognizes the difficulties facing Afghanistan as it seeks to recover from over 23 years of conflict. However, it is vital that measures to protect the rights of women are built into legal and constitutional reform, and integrated into policing and criminal justice processes.” [7c] (p2)

6.209 In January 2004, the Institute for War and Peace Reporting (IWPR) reported that “The final constitution produced by the Loya Jirga provides for better political representation for women in Afghanistan than they have had in the past. The document was amended to state explicitly that the term “citizen” in the phrase “The citizens of Afghanistan have equal rights and duties before the law” applies to both men and women, an important revision in a country where women have in the past been denied civic rights.” [73b] (p5) According to IWPR it is hoped that the new constitution will safeguard women against a number of controversial traditional practices. [73b] (p6) According to a USSD report on Afghan women, children and refugees dated 22 June 2004, “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)

6.210 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)

6.211 A Danish fact finding mission to Kabul in March/April 2004 reported in June 2004 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.

“The AIHRC mentioned as an example a case from February 2004 in which a 16-year-old girl from the province [sic] had been kidnapped, raped and murdered. The case has been investigated and the girl’s body was found and the perpetrator put into prison. However, the penal case has still not been decided. The source predicted that the decision will depend upon which court the case is taken to. If the case is heard at a local district court, the source predicted that pressure will be put on the court and it will end up with a mild punishment for the perpetrator. The AIHRC is therefore working to transfer the case to Kabul, where there is a greater chance that it will be subject to proper proceedings. The President for the Supreme Court is however against transferring the case from the province to Kabul.

The source also mentioned another case from Kabul in which a warlord kidnapped a girl with the intention to rape her. The case came to the attention of the ISAF that managed to prevent the rape and arrested the warlord. After two months, the

warlord was freed without the case being taken to court. At the same time, the girl was held in custody and had to stay in prison with female criminals.” [8a] (section 6.2.3)

6.212 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.” [8a] (section 6.2.3)

6.213 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.” [8a] (section 6.2.3)

6.214 The Danish fact finding report of June 2004 recorded the EU Special Representative as saying that although the new constitution prescribes that men and women are equal, it also states that no law should be passed which conflicts with the guidelines of Islam. Consequently, it will be difficult to change the situation for women. According to the source the latest developments have only improved the situation for a small group of women. The Vice Minister for Women’s Affairs was of the view that the constitution was a positive step for the improvement of the position of women and it was now an important part of the Ministry’s work to implement it. The Vice Minister and the EU Special Representative both said that it is difficult to change the situation of women as they are generally uneducated and do not know their rights. [8a] (section 6.2.1)

6.215 The Danish fact finding report of June 2004 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.” [8a] (section 6.2.3)

6.216 The Vice Minister is 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.” [8a] (section 6.2.3)

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Women’s Participation in Public Institutions

6.217 In a report issued in March 2003 the Secretary-General to the UN Security Council reported that

“Despite enduring years of hardship, the brutality of war, and the continuing widespread denial of their fundamental rights, Afghan women, particularly those in urban areas, are slowly reentering public life as professionals, students and active participants in society. Over 30 per cent of the students who returned to school in 2002 were girls and a third of the teachers were women. Women journalists have been able to return to their jobs as radio and television broadcasters and hundreds of women are working as civil servants and professionals in hospitals, courts, other government and non-governmental organizations, the United Nations and the private sector.” [39h] (p 12)

6.218 A Swedish fact finding mission reported in April 2003 that, according to the Deputy Minister of Women Affairs, the role of the Ministry of Women’s Affairs in Kabul is political. It is promoting areas such as women’s rights, education, health and work. According to the source, “Women come directly to the Ministry with their problems and they cannot help all the women that ask for help because they do not have the funding. The ministry has a law group that are focusing on women’s rights and the group consists of six people.... Recently the law group succeeded in getting twenty women out of jail. One of the women in the law group is also part of the Constitutional Commission.” [61] (p20)

6.219 The Swedish report stated that according to the Deputy Minister of Women Affairs,

“The Ministry of Women Affairs has tried to establish women councils in the different provinces. They have received varied responses in different provinces; in some they were welcomed but not in others. In Kunduz, for example, it worked without any major obstacles, but in Takhar they met hard resistance. The fundamentalists in Takhar said that if any woman tries to participate in the council, or even go outside at the time the representatives from the ministry were present, they would be shot. In Samangan the ministry was more welcomed... Presently, there are women councils in about fifteen of the largest provinces. The first council established was in Kandahar.” [61] (p20)

6.220 According to the US State Department Report 2003 (USSD), published 25 February 2004

“Women actively participated in the Drafting Committee of the Constitutional Commission set up prior to the CLJ and in the presidential elections. Seven out of the 35 members were women. During the year, Massouda Jalal voiced her intention to challenge President Karzai in the presidential elections scheduled for June 2004. Jalal had challenged and lost to Karzai for President during the ELJ in mid-2002. Women also actively participated in the December Constitutional Loya Jirga. Women were able to question leaders openly and discussed inter-gender issues during the CLJ. 89 women were elected or appointed as delegates to the CLJ, constituting approximately 20 percent of the 502 delegates. However, some officials attempted to intimidate female participants. For example, during the CLJ, a delegate from Farah Province, Malalai Joya, received death threats for speaking against mujahideen leaders who held positions in the CLJ. After she questioned why some CLJ delegates with jihadi affiliation were selected as committee chairman, dozens of angry delegates rushed the stage and demanded that she be expelled. She participated fully in the remainder of the Loya Jirga, was provided security protection by the CLJ organizers, and female police officers from the Ministry of Interior, and spoke freely with the local and international press after the incident. Further, some women delegates denounced their colleagues in the CLJ for attempting to shut them out of leadership positions. However, one woman served as Deputy Chairwoman of the CLJ and chaired several sessions of the CLJ, and others held positions of responsibility in the working groups.” [2e] (p13)

6.221 In January 2004, the Institute for War and Peace Reporting (IWPR) noted that the approved constitution requires that the Wolesi Jirga include two female representatives from each province, compared with one per province in the original draft. According to the IWPR, “This means that a minimum of 64 of the lower house’s [sic] 250 members will be female. At just over 25 per cent, this is higher than in most Western democracies. The final draft makes no mention of gender in the qualifications necessary to be president and, in places, makes it quite clear that in theory a woman can fill the role. Massouda Jalal, who stood for the presidency during the 2002 Emergency Loya Jirga, has said she intends to run again in the next round of presidential elections.” [73b] (p5)

6.222 The Workplan of the Afghan Government in the Berlin Declaration of April 2004, committed to ensuring that the government’s policies and programmes promote the participation of women in all sectors of the economy and society in accordance with their rights under the new Constitution. A commitment was made to promote increased recruitment and guarantee equal opportunities to women in the Civil Service and to ensure that gender is mainstreamed within all sectors, programmes and policies. [40t] (p7-8)

6.223 The US State Department (USSD) issued a fact sheet on 8 January 2004 which stated that the new constitution, (approved on 4 January 2004) reserves 25% of its seats in the lower house of Parliament for women. The USSD noted that “More than 200 women participated in the 2002 Constitutional Loya Jirga that establishes the current government. Two of the nine members of the Constitutional Drafting committee and seven of the 35 members of the Constitutional Review Commission are women.” [2d] (p1)

6.224 According to the USSD “The Cabinet includes two women ministers – the Minister of Women’s Affairs and the Minister of Health. A woman heads the Afghan Independent Human Rights Commission. Many more women serve in the public and private sectors....The Minister of Foreign Affairs has created an Office of Human Rights, Health and Women’s Affairs in the Ministry of Foreign Affairs to monitor women’s programs. The Ministry of Commerce set up a department to help women establish their own businesses.” [2d] (p1) According to a UNAMA spokesman on 27 May 2004, the Ministry of Women’s Affairs had offices in 30 provinces and employed 1,268 staff across the country. [40e] (p5)

6.225 The US State Department (USSD) also issued a report on Afghan women, children and refugees on 22 June 2004, which noted that “Afghan women still face many difficult challenges, which inhibit their ability to participate in economic life. Seclusion, widespread illiteracy, and lack of job skills make it difficult for women to be economically active.” [2a] (p9)

6.226 On 5 July 2004, Irin News reported that “The United Nations Development Fund (UNDP) has announced the launch of a new phase of a programme to expedite gender awareness training in Afghan government institutions. The programme, to be implemented by the Ministry of Women's Affairs (MoWA), aims to improve gender balance and women's priorities in government policies.” The report noted that the Institutional Capacity Building Programme began in 2003 and to date had trained some 500 people in five provinces. The programme put particular focus on issues such as gender and development, gender awareness and gender analysis. [36d]

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Marriage/Divorce/Child Custody/Domestic Violence

6.227 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)

6.228 A Swedish fact finding mission to Afghanistan in November 2002 reported that, according to a UNHCR Protection Officer in Kabul, if a woman is subjected to domestic violence there is nowhere for her to go for help and women cannot get any help from the few lawyers that exist because they cannot afford it. [61] (p19-20) The UNHCR reported in July 2003 that “In some instances, women have been imprisoned as the only means of protecting them from domestic violence inflicted for perceived transgressions of social mores. In addition to a lack of state protection, there are almost no services for the care of victims of sexual or domestic violence in Afghanistan.” [11i] (p23) According to UNHCR “Reports of early and forced marriages, domestic violence, harassment and intimidation of women continue.” [11i] (p23)

6.229 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)

6.230 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)

6.231 According to the same AI report,

“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)

6.232 A Danish fact finding report of June 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.” [8a] (section 6.2.4)

6.233 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”. [8a] (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. [8a] (section 6.2.4)

6.234 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. According to the source, “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 imprisonment they no longer are regarded as honourable.” [8a] (section 6.2.3)

6.235 The Danish fact finding report noted that, according to the EU Special Representative, women are still subjected to attacks and violence in the home. UNHCR said that they are setting up a women’s hostel in Kabul but, in the current situation, it is uncertain to what extent this hostel will be able to offer protection to women. [8a] (section 6.2.1)

6.236 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)

6.237 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)

6.238 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)

6.239 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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Situation of Women and Girls in Herat.

6.240 In December 2002 HRW issued a report on the situation of women and girls in Western Afghanistan. HRW reported that

"An area of special concern for women's rights is the province of Herat in the west

of Afghanistan, which has a liberal literary and cultural tradition and a history of educating girls. But under the rule of the local governor, Ismail Khan, women's and girls' freedom of expression, association, movement, and rights to equality, work, education, and bodily integrity steadily deteriorated throughout 2002. While conditions are undoubtedly better than under the Taliban-girls and women have better access to education and are not beaten by authorities in the streets-many Taliban-era restrictions remain in place. As this report demonstrates, virtually every aspect of women and girls' lives is still policed in Herat." [171] (p4) HRW reported that "According to a UN official working with women's groups throughout the country 'Herat is the worst province for women in Afghanistan.'" [171] (p6)

6.241 According to the same HRW report

"A Herati woman has little access to the public sphere, from employment to civic organizations or other forums where she can participate in public debate. In order to leave her home and reach what forums are available-such as school, work (in one of the few jobs open to women), a government-controlled civic organization, or simply to go to the market-she must overcome significant hurdles in the journey, traveling in a way that she will not be harassed, arrested, and taken off to the hospital to be subjected to an abusive "chastity" examination. Once she arrives at her destination, she must conform her speech, behavior, and appearance to Ismail Khan's restrictions and edicts, which she has no way to challenge. When she returns home, she can expect no protection against violent or abusive family members-indeed, as in most parts of the country, fleeing from her home may result in her arrest and prosecution. Nor does she have any way to contest male family members' decisions about whom she will marry or whether she can attend school or work. She is effectively marginalized-politically, economically, and socially." [171] (p4)

6.242 In July 2003, UNHCR reported that the Herat government discriminated against women and their right to work. According to UNHCR, "Few jobs are open to women, and those that are come with significant restrictions from the government. Ismail Khan [governor of Herat], has pressured women not to work for international NGOs or the UN." [111] (p23)

6.243 In March 2004, the UN Office for the Coordination of Humanitarian Affairs (OCHA) Integrated Regional Information Network (IRIN) reported that, according to a member of the Revolutionary Association of the Women of Afghanistan (RAWA), "An increasing number of women and even young girls have committed suicide in the Afghan province of Herat, ruled by local strongman Ismail Khan, because of oppressive social conditions that hark back to the time of the fundamentalist Taliban regime." According to the source, "The leader in power in Herat is just like the Taliban. He is not a democrat and has placed restrictions on women and girls, which is why many women have committed suicide." [40ao]

6.244 In a report to the Security Council on 19 March 2004, the UN Secretary-General reported that in certain areas of the country strong social and cultural norms continued to limit women's public role. According to the Secretary-General,"Such limitations are particularly evident in Herat, where in the past several months there have been reports of more cases of forced marriage and female suicide, a ban on

the participation of women in public service, and the denunciation of women activists as anti-national and foreign-supported.” [39o] (p14)

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Children

6.245 The US State Department Report 2003 (USSD), published on 25 February 2004, 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. Approximately 45 percent of the population was made up of children age 14 or under. One in 10 children suffered from acute malnutrition. The infant mortality rate was 250 out of 1,000 births; the mortality rate for children under the age of 5 was 25 percent. A Management Sciences for Health study also found that only about one-fourth of all health facilities offer basic services for children, including immunization, antenatal care, postpartum care, and treatment of childhood diseases.” [2e] (p15)

6.246 According to the USSD 2003,

“While most girls throughout the country were able to attend school, the U.N. reported that, in some areas, a climate of insecurity persisted. From August 2002 to June [2003], there were more than 30 attacks on girls and boys schools in Ghazni, Kabul, Kandahar, Logar, Sar-e-Pul, Wardak, Zabul, Jawzjan, and Laghman causing minor injuries and building damage. On September 28 [2003], two girls' schools in Balkh Province were set on fire. The school was badly damaged; however, no one was injured in the attack. [2e] (p15)

6.247 The USSD 2003 also noted that “There were credible reports that both the Taliban and the Northern Alliance used child soldiers. In previous years, Northern Alliance officials publicly said that their soldiers must be at least 18 years of age, but press sources reported that preteen soldiers were used in Northern Alliance forces. 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.” [2e] (p15)

6.248 In March 2003, Amnesty International (AI) reported that “Children in detention are entitled to specific protection according to international human rights standards.... Unfortunately in Afghanistan no attention is paid to their special needs by the police, whose treatment reflects the wider problems experienced by adults held by the police. Indeed, at least half of the children that Amnesty International interviewed told the delegation about torture and cruel, inhuman and degrading treatment that they received at the hands of the police.... Police officers are not aware of any of their special responsibilities towards children in detention and do not know that they are contravening international standards in this regard.” [7g] (p37-38)

6.249 In May 2003 UNICEF reported that President Karzai had designated 20 May 2003 as “National Day of Unity for Children”. The National Day of Unity for Children commemorated the work accomplished so far on immunization, education and other child rights and committed to several important initiatives for children. The initiatives included the government's decision to pioneer a collaboration between the polio

“National Immunization Days” campaign and the first ever national birth registration programme. Afghanistan is one of only seven countries in the world where polio remains endemic but it now stands on the verge of stopping transmission of the virus through the immunization initiative. However, the executive director of UNICEF reported that there was some way to go to ensure that access to basic rights and services were actually delivered for all Afghan children, especially for girls. [40a]

6.250 In July 2003, UNHCR reported that infant and under-five mortality rates remained among the highest in the world. A large proportion of illnesses and deaths were due to preventable communicable diseases such as measles, cholera, tuberculosis, malaria, meningitis, hepatitis, typhoid, childhood respiratory infections and diarrhoea. [11] (p29)

6.251 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)

6.252 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.” [39]

6.253 In a donor update report of February 2004, UNICEF reported that

“During 2003, every household in Afghanistan was reached using 30,000 volunteers for immunization, birth registration, vitamins A and C, and distribution of messages on nutrition, hygiene and mines. Schools were promoted as a center for change through increasing enrolment, provision of materials on mine risk, hygiene and nutrition, provision of safe water and sanitation and advocacy on the inclusion of girls in schools. The overall environment for children was also improved through advocacy

on child rights, media briefing, judicial review, prevention of child trafficking, and support to research.” [40az] (p2)

6.254 In February 2004, UNICEF also reported that a draft Juvenile Code was being reviewed by the Ministry of Justice. If approved, it would be the first revised law in the Transitional Government of Afghanistan concerning children.” [40az] (p5)

6.255 According to Radio Free Europe/Radio Liberty on 19 February 2004,

“The Afghan Labor and Social Affairs Ministry established a commission on 18 February [2004] to prevent the smuggling of children, Afghanistan Television reported. The move was prompted by an order from Afghan Transitional Chairman Hamid Karzai. The commission is tasked with identifying factors in and motives behind the recent increase in child-smuggling cases. Deputy Minister Mohammad Ghaws Bashiri reported that 198 Afghan children have been repatriated since being smuggled to Saudi Arabia, adding that the Labor and Social Affairs Ministry is in the process of returning those children to their families. In October [2003], some 40 Afghan children were returned from Saudi Arabia, and authorities in the northern Afghan province of Takhar in September [2003] rescued more than 50 boys who were abducted with the suspected intention of trafficking them to Iran or Pakistan for induction into religious schools or for sale as sex slaves.” [40n]

6.256 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. According to the report “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....UNICEF, along with the government, is drawing up a National Action Plan to combat child trafficking that would cover a range of issues from prevention, law enforcement and reintegration of children affected by trafficking. The plan is expected to go to the cabinet for final approval in June.” [40ac]

6.257 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]

6.258 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]

6.259 On 30 June 2004, IRIN reported that UNICEF was continuing its efforts to demobilise upwards of 8,000 child soldiers in Afghanistan. According to the report "Since the start of its programme in February 2004, 2,203 child soldiers between the ages of 14 and 18 years have been disarmed and demobilised in eight Afghan provinces including Kunduz, Badakhshan, Takhar, Baghlan, Bamyān, Laghman, Nangarhar and Nooristan." A UNICEF spokesman explained that many of the children were now benefiting from education, vocational skills training courses and income generation support in their home communities. [40ag]

6.260 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.

Leading humanitarian and non-governmental organisations, NGOs, working in education and with children admit the problem is widespread but are reluctant to publicly criticise teachers, preferring instead to work with the government and in the schools to try to change abusive behaviour. A spokesman for one NGO, who refused to allow his name to be used, said, "Generally speaking, corporal punishment is widespread, due to the fact that teachers are not trained as teachers and not educated." This lack of training means that often, "the only way that they [feel they can] rule a class of 50 to 80 children – which is the national average – is to have a stick and to be quite hard on them," the spokesman said. Abdul Sami, child protection officer for the United Nations Children's Fund, UNICEF, concurred. He said that, according to a recent UNICEF assessment, physical punishment of children in schools is widespread." [73h]

6.261 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.... Afghan President Hamid Karzai has issued a decree ordering the death penalty for criminals who remove body parts from kidnapped children." [24d]

6.262 On 12 August 2004, the UN Secretary-General also reported that child kidnappings continued to increase. According to his report, "Some families in the provinces of Helmand and Kandahar and elsewhere have become reluctant to send their children to school because of fears they will be abducted. Evidence suggests that the kidnapped children are being trafficked for sexual purposes and forced labour. The Government, in cooperation with the Afghan Independent Human Rights Commission, is focusing on the problem and has recently formulated a national plan of action to combat trafficking in children." [39d] (p14)

See also Section 5 Education System paragraphs 5.269 – 5.282 and Medical Services paragraphs 5.244 – 5.256

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Child Care Arrangements

6.263 In February 2002 a BBC correspondent in Afghanistan reported that, prior to 1981 there were no state orphanages in Afghanistan and orphanages were a product of Sovietisation during the 1980s. Two decades of war created an abundance of genuine orphans. [25y]

6.264 In October 2002, UNICEF advised that information and data was limited and there was ongoing work to look at the “orphanages” issue in Afghanistan. UNICEF knew of hundreds of “orphanage” and similar projects, most of them catering to children from poor families rather than orphans but UNICEF did not support orphanages and institutionalisation in Afghanistan. UNICEF advised that UNICEF Afghanistan’s Child Protection team was working with the Afghan Ministry of Social Affairs and Labour and looking at state orphanages and NGO supported programmes to get a better sense of the real status of the children who were currently in the institutions. There was uncertainty as to whether the children were “real” orphans or just abandoned because their widowed mothers got married again or their parents sent them to the institutions because food and medical care was being provided. [44c]

6.265 In November 2002, a report by the UN Office for the Coordination of Humanitarian affairs stated that conditions in Kabul’s only state run orphanage, the 20 year old Tahir Maskan, were poor with poor hygiene, inadequate nutrition and lack of sanitation. According to the director of the orphanage, it housed some 2,000 children aged between 3 and seventeen, the vast majority of which were boys. [40k]

6.266 In June 2003, War Child reported that “War Child UK has carried out a survey of institutions for children deprived of parental care in western Afghanistan at the request of UNICEF. After two decades of war, the coping mechanisms of the extended family have weakened and an increasing number of children who have lost one or both parents have been placed in institutions. Primarily, children are placed in these institutions because of economic reasons, better education and food provision.” [40ap]

6.267 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. According to a UNICEF child protection project officer, some 8,000 children currently lived in 36 orphanages in Afghanistan. The source said 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]

6.268 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. IRIN noted that “UNICEF is supporting a range of measures to address the needs of children deprived of parental care, including new training programmes for social workers and a pilot initiative to help reintegrate up to 200 children currently living in institutions with their families.” [40ab]

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Homosexuals

6.269 In April 2002, The Washington Blade reported that although the Taliban had fled, “sharia” or Islamic law remained. The report stated that the chief of Afghanistan’s Supreme Court had said that homosexuals could still be punished by being hurled from a high place or having a wall toppled onto them. Such punishments, however, would only be implemented following a detailed legal process during which the accused could contest the charges and appeal for clemency through measures such as paying restitution to avoid harsh sentences. [60]

6.270 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)

6.271 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. [8a] (section 6.3)

(See also [Section 6A](#) paragraph 6.30 for ECRE guidelines)

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KhAD (former State Security Services)

Background

6.272 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. According to the report, 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 Amaniati-e Dowlati or "Ministry of State Security". According to the report "Although the official abbreviation was henceforth to be WAD, the secret service continued to be popularly referred to as the KhAD." [34] (p10-11)

6.273 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) According to the report, "There was precious little support for the Communist Party among the population." [34] (p31)

6.274 According to the Netherlands' report, 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

6.275 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] was partly manned by former KhAD and WAD agents. 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)

6.276 According to a Swedish Fact finding mission of November 2002, "UNHCR Islamabad assured that due to the recruitment methods used, no one in Khad [sic] can claim that they only had an innocent desk job." [61] (p 21)

6.277 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. [111] (p35)

6.278 In June 2004, 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 now in power.... The UNHCR did not know of any former members of the KHAD who have returned." [8a] (section 6.5.1)

6.279 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 KHAD member 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." [8a] (section 6.5.1)

6.280 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 KHAD officers. The report stated that "It has been necessary to introduce them into intelligence work because 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 positions in the KHAD.” [8a] (section 6.5.1)

(See also Section 6A paragraphs 6.11 and 6.30 for UNHCR and ECRE guidelines)

Former Members of the PDPA

6.281 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.

In this context, it is noteworthy that the Transitional Authority, as well as regional and local authorities, is dominated by former Mujahideen factions, some royalists from the pre-communist period, and reportedly only five former members of PDPA.” [11i] (p34)

6.282 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)

6.283 According to the Danish fact finding report of June 2004

“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 now in power.

The UNHCR explained that in the period from March to December 2003, the organization had not received reports on harassment or persecution of former PDPA members who have repatriated after the fall of the Taliban. The UNHCR pointed out however that the PDPA members, who are known by the organization to have 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 themselves 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 person's history." [8a] (section 6.5.1)

6.284 According to the Danish report of June 2004,

"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 PDPA 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 PDPA members 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." [8a] (section 6.5.1)

6.285 According to the same Danish report, "The CCA was of the opinion that former communists do not experience serious problems in Afghanistan today. A number of former PDPA members have organized themselves again, and there are many examples of former highly placed PDPA supporters who are 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." [8a] (section 6.5.1)

6.286 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 PDPA members have problems in registering their political parties and they have difficulty 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.” [8a] (section 6.5.1)

6.287 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.” [8a] (section 6.5.2)

(See also [Section 6A](#) paragraphs 6.11 and 6.30 for UNHCR and ECRE guidelines)

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6 C Human Rights Other Issues

Mines and Unexploded Ordnance

6.288 The Afghanistan Landmine Monitor Report 2003 recorded that

“Afghanistan remains one of the most heavily mined countries in the world. This is the result of more than two decades of mine use by many armies and factions. Landmines were used during the Soviet occupation (1979-1989); during the period of the pro-Soviet ruling government (1989-1992); during fighting between various factions (1992-1995); during the Taliban era, in fighting with resistance forces (1996-September 2001); and finally, during military operations by and against the international coalition (since October 2001).

Landmines and unexploded ordnance (UXO) are scattered throughout Afghanistan in urban and commercial areas, towns and villages, as well as in farmlands, grazing lands, and along transport roads. Mine and UXO contamination affects almost all regions—over 1,500 villages in 27 of the 29 provinces were mine-impacted during 2002, according to the UN—with heavier concentration and greater impact in the western, eastern, and southern regions....

In the military operations of coalition forces since October 2001, thousands of high explosive bombs, cluster munitions and missiles have been used, with a likely failure rate of five to ten percent or more. This new unexploded ordnance has made the

environment more dangerous for inhabitants, hindered the return of refugees, and contributed to food insecurity and other difficulties.” [14] (p3)

6.289 The US State Department Report 2003 (USSD), published on 25 February 2004, records that

“The U.N. estimated that there were 5 to 7 million landmines and more than 750,000 pieces of unexploded ordnance throughout the country, planted mainly during the Soviet occupation. However, some NGOs estimated that there may be fewer than 1 million mines. The most heavily mined areas were the provinces bordering Iran and Pakistan. The landmines and unexploded ordnance caused deaths and injuries, restricted areas available for cultivation, and impeded the return of refugees to mine-affected regions. The Red Cross estimated that 200,000 persons were killed or maimed by landmines over the last two decades of warfare. In 2002, the Red Cross recorded 1,286 landmine deaths and numerous other deaths were believed to have gone unreported. Injuries continued to occur during the year from landmines previously laid by Northern Alliance forces, Taliban fighters, and fighters during the Soviet occupation.” [2e] (p8)

6.290 The USSD 2003 also records that,

“With funding from international donors, the U.N. organized and trained mine detection and clearance teams, which operated throughout the country. Nearly all areas that were cleared were in productive use, and more than 1.5 million refugees and IDPs returned to areas cleared of mines and unexploded ordnance. Nonetheless, the mines and unexploded ordnance were expected to pose a threat for many years. U.N. agencies and NGOs instituted a number of educational programs and mine awareness campaigns for women and children in various parts of the country.” [2e] (p8)

6.291 In February 2004, the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that “Afghanistan became a party to the 1997 Ottawa Convention on banning the use, production, stockpiling and transfer of landmines in March 2003.” [40bh]

6.292 In May 2003, the International Committee of the Red Cross (ICRC) reported that its mine awareness programme aims to change people’s behaviour but economic necessity often forces people to return to dangerous areas. [42f]

6.293 The UNHCR reported in July 2003 that

“Afghanistan is the most mine- and unexploded ordnance (UXO)- affected country in the world with 732 square kilometres of known mined area... UN reports indicate that over 100 square kilometres were cleared during 2002 and that almost 40,000 mines and over 890,000 UXOs were destroyed, allowing Afghans to return home in relative safety. Mine awareness instruction has been provided to several thousand Afghan civilians. Nevertheless, an estimated 3,000 cases of injuries from landmines and UXOs are reported every year and approximately 4-5% of the Afghan population are disabled, many by mines and UXOs.” [11i] (p31)

6.294 In February 2004, the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that “As part of its commitment under the Mine Ban Treaty, Afghanistan completed a pilot phase of destroying stockpiled landmines, which started last May in the capital Kabul....It was reported that, according to the Ministry of Defence, the project is so far centralised in and around Kabul and there remains a need to identify and destroy hundreds of thousands of land mines stockpiled elsewhere in the country.” [40bh]

6.295 The February 2004 UNOCHA report noted that “Over the last year mine incidents have fallen from 600 to 100 per month, according to the UNMACA [United Nations Mine Action Centre for Afghanistan] and the International Committee of the Red Cross. The UNMACA is implemented by 15 national and international organisations and with 7,200 Afghans working in mine-clearance programmes, the campaign requires a budget of around US \$60 million per year to clear the country of mines in 10 years as required by the Ottawa treaty. One hundred mine-clearance operatives have been killed and 500 injured since operations started in Afghanistan 13 years ago.” [40bh]

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Humanitarian Situation

6.296 On 26 April 2004, the US Agency for International Development (USAID) recorded that “Two decades of war in Afghanistan, including a decade-long Soviet occupation and ensuing civil strife, left Afghanistan impoverished and mired in an extended humanitarian crisis. A devastating four-year regional drought compounded the crisis, drying up wells, parching agricultural land, killing livestock, collapsing rural economies, and eventually exhausting the coping mechanisms of many ordinary Afghans, forcing affected populations to leave their homes in search of food and water.” [40ai] (p1)

6.297 In August 2003, the Department for International Development (DFID) Transitional Country Assistance Plan for Afghanistan 2003-2004 noted that “Afghanistan is one of the world’s poorest countries.... An estimated 60-80% of the population (estimates vary from 20 to 26 million) lives below the \$1/day extreme poverty line or consumes less than the minimum daily calorific requirement.... Reducing poverty in Afghanistan is an urgent and complex challenge.” [4] (p4)

6.298 Europa Regional Surveys of the World: South Asia 2004 records that “International donors pledged a total of US \$4,500m. to Afghanistan at a conference held in Tokyo in January 2002. However, cash disbursements arising from these pledges were slow to arrive and in the early months the Government had almost no funds of its own and no material evidence of the widely publicized offers of international support to show the population.” [1a] (p68)

6.299 According to the Department for International Development (DFID) Transitional Country Assistance Plan for 2003-2004,

“An early priority for the Transitional Administration was to prepare a National Development Framework (NDF), setting out policy commitments and priorities for reconstruction and poverty reduction. The NDF is country-driven, focused on a

limited number of priorities and looks to the long term. However, it is not a detailed or comprehensive Poverty Reduction Strategy, as one would expect from a HIPC [Heavily Indebted Poor Country] country. Detailed poverty data on Afghanistan is simply not available. So it does not set over-arching targets. It has had to be drawn up rapidly to respond to Afghanistan's urgent needs. So participation in producing the Framework has been limited. "Ownership" within individual ATA ministries therefore varies. But it is an appropriate and helpful framework for long-term development in Afghanistan." [4] (p5)

6.300 In June 2004, the World Bank Group recorded that

"The multilateral Afghanistan Reconstruction Trust Fund (ARTF) was set up in May 2002 to provide support to Afghanistan for three main areas of expenditure: recurrent costs of the government, such as the salaries of teachers, health workers, and police; investments, including capacity building, feasibility studies, and technical assistance; and financing the return of expatriate Afghans. Twenty-four donors have pledged \$524 million to the ARTF, and over \$410 million has been received. To date, over \$271 million has been disbursed to the Government of Afghanistan. The fund has emerged as one of the main instruments for financing the country's recurrent budget deficit and is set to evolve into a major source of technical assistance and investment support for Afghanistan. The ARTF is jointly managed by the Asia Development Bank, Islamic Development Bank, United Nations Development Programme, and the World Bank." [69a] (p8)

6.301 In July 2003, the World Bank Group reported that Afghanistan had become a member of the World Bank's Multilateral Investment Guarantee Agency (MIGA). It was reported that

"The membership allows MIGA to provide political risk insurance for investments going into and out of Afghanistan, as well as to help the country develop its ability to attract investment." The Afghan Finance Minister said that membership of MIGA would help the country to attract and retain more foreign investment, promote economic growth and ultimately benefit the Afghan people. The World Bank reported that "After 23 years of conflict, the Afghan people are working to restore peace and prosperity. But daunting challenges remain: 70 percent of the population is malnourished, and only 23 percent have access to safe water, 12 percent to adequate sanitation and just 6 percent to electricity. More than 70 percent of schools need repairs, as do most of the country's primary roads. Reconstruction alone is expected to cost about \$15 billion over the next decade, underscoring the need for private sector help in meeting the challenge." [40ay]

6.302 In July 2003 UNHCR reported that there was a dire need for wage-labour and cash as an increasing number of Afghans were indebted and unable to buy food even when it was available. According to UNHCR "Drought and poverty have contributed to further population movements during 2002. Food insecurity and lack of income have exacerbated existing land problems that have arisen due to destruction or illegal occupation of property. The presence of landmines in land surrounding villages has, in some areas, rendered farmland unusable." [11ij] (p29) In August 2003, UNHCR reported that, by the end of July 2003, they had contracted with NGOs to help Afghans construct more than 41,000 shelters, of which half were under

construction or completed. [11j] (p1)

6.303 Amnesty International reported in June 2003 that

“Most of the returnees interviewed by Amnesty International asserted that they had been unable to find jobs in an overcrowded job market...Others spoke of having been forced to take jobs that were not commensurate with their skills level...Sharecroppers returning to the land on which they had worked previously have found that the landlord had employed other labourers in their absence. Due to the fact that there is less land being cultivated in Afghanistan at the moment, on account of the drought as well as persistent insecurity, returnee sharecroppers have in many cases been forced to move to IDP camps or to urban centres in search of alternative employment.” [7f] (p24)

6.304 A Food and Agriculture Organisation of the UN (FAO) and World Food Programme (WFP) mission visited Afghanistan in June/July 2003. Their report noted that “Agricultural production in Afghanistan continued its strong recovery for the second consecutive year in 2003 due mainly to improved and well distributed precipitation in major agricultural areas... Aggregate 2003 cereal production, estimated at 5.37 million tonnes, is the largest harvest on record.” [65] (p1) The report noted, however, that “In conclusion, despite significant improvements in overall food security prospects in Afghanistan, a considerable part of the Afghan population will remain dependent on targeted food assistance in 2003/4.” Vulnerable groups included the unemployed, landless and near-landless rural poor. [65] (p21) It was also reported that “In the south, food insecurity is expected to improve only marginally due to continued conflict, slow recovery from drought and high cereal prices.” [65] (p20)

6.305 USAID 2003 noted that “Preliminary findings from the December 2003 National Risk and Vulnerability Assessment identified 3.86 million people as unable to meet 100 percent of minimum food needs. Of this number, 3.2 million people cannot meet 80 percent of minimum food needs. The countrywide assessment covered rural areas, and excluded the urban vulnerable population and areas that were inaccessible due to insecurity. The southern and eastern provinces had the highest percentage of food insecurity.” [40ai] (p4)

6.306 In January 2004, an overview of the human rights issues in Afghanistan by Human Rights Watch pointed out that attacks on humanitarian workers in 2003 and early 2004 in the south and southeast by suspected Taliban remnants and other anti-government forces had resulted in international agencies suspending many of their operations in the affected areas. As a result, development and humanitarian work had suffered. [17c] (p2)

6.307 In a Donor Update of February 2004, UNICEF also noted that

“The latter part of 2003 to January 2004 has seen increasing violence and targeting of UN and humanitarian workers severely hindering the UN and NGO partners' operation in some areas. In addition, insecurity, drought and economic hardship have been threatening the sustainability and coverage of interventions. Consequently, Afghan people, in particular children and women, are in many cases still caught in a vicious cycle of factional violence, disease and degrading poverty, despite the many achievements of the past two years.” [40az] (p1)

6.308 In January 2004, a report published by the British Agencies Afghanistan Group (BAAG) stated that

“Lack of clean and adequate water supplies in Afghanistan is one of the most pressing problems to tackle for the government. The Ministries of Agriculture and Animal Husbandry (MAAH), Irrigation, Water Resources and Environment (MIWRE) and Ministry of Rural Rehabilitation and Development (MRRD) are all involved in addressing the problems. UNICEF’s statistics for 2002 showed that only 35% of the urban population and 19% of the rural had access to potable water and only 23% of the urban and 8% of the rural populations had adequate sanitation.” [71] (p44)

6.309 The BAAG report also noted that NGOs are some of the major players in providing potable water and adequate sanitation for Afghanistan’s population. [71] (p45) Major programmes for urban regeneration in water supply and sanitation were being undertaken by UN agencies and NGOs and thousands of households had been connected to clean water supplies. [71] (p8)

6.310 According to a UNAMA spokesman in a press briefing on 21 March 2004, “In Afghanistan, approximately 65 percent of the population in urban areas and 81 percent of rural communities do not have access to safe water, according to UNICEF. Primary responsibility for water resource management in Afghanistan rests with the Ministry of Irrigation, Water Resources and Environment with support from UN agencies and non-governmental organizations.” [40p]

6.311 In March 2004 the World Bank congratulated the Government of Afghanistan on the release of a report called ‘Securing Afghanistan’s Future: Accomplishments and the Strategic Path Forward’ which outlined a comprehensive development agenda for the next seven years. The World Bank noted that the plan is designed to lift the living conditions of all citizens as their nation changes from conflict. According to the World Bank,

“The Government report, prepared in collaboration with the Asian Development Bank, the International Monetary Fund, the United Nations Development Program, the United Nations Assistance Mission for Afghanistan and the World Bank, sets out a comprehensive framework for the country’s development. The report goes beyond economic and human development issues such as health, education, infrastructure and private sector development, and also, for the first time, integrates issues related to security, justice, counter-narcotics efforts and human rights. The report outlines costs for 7 years to support a 12-year investment program. The costs of the seven-year program laid out in the report total US\$27.5 billion.” [40g]

6.312 The World Bank also noted that

‘While forward-looking, the report also notes the many achievements accomplished over the last two years in Afghanistan. “The Government should be commended for the impressive progress made in the reconstruction of Afghanistan,” said Wolfensohn [World Bank President]. “In a very short space of

time they have articulated a clear development framework, taken ownership of their development agenda with a profound conviction and rapidly brought about meaningful and visible change. This is testament to the very hard work of many in both Government and their partners in the international community. But a huge amount remains to be done and Afghanistan must continue to be a major focus of the international community.” [40g]

6.313 On 29 March 2004, BBC News reported that

“The UN Food and Agriculture Organisation is appealing for \$60m to help Afghanistan's farmers combat hunger and deter opium production...The Rome-based agency said despite a record harvest in 2003, millions of people still have no access to food. It said rehabilitating the agricultural sector was also essential to curbing the cultivation of opium...Eighty-five percent of the country's 25 million people depend on agriculture for their survival. Yet despite an excellent harvest last year, millions of refugees, displaced people and even farming families still have no access to food.” [25h]

6.314 On 1 April 2004, CARE International reported that the \$8.2bn pledged by international donors at a two day Berlin conference 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.” 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]

6.315 In the April 2004 Berlin Declaration, the Afghan Government committed to preparing a Poverty Reduction Strategy Paper. This will be a Government-led process in partnership with international organizations and donors, which will build on the National Development Framework and the recent report, "Securing Afghanistan's Future", to prepare a medium-term strategy for poverty reduction. The strategy will include an approach to asset-creation for the poor, especially the rural population who are dependent on agriculture for their livelihoods and the development and implementation of an affordable social policy that attends to the needs of vulnerable groups affected by war, which include refugees, internally displaced people (IDPs), the disabled, orphans and single-headed households. [40i] (p6)

6.316 In May 2004, the United Nations Development Programme (UNDP) reported that “The depth of poverty in Afghanistan is reflected in many human development indicators – none more telling than the estimate that Afghanistan’s malnutrition rate: 70% of the population, worse than any country in the world, bar Congo. At 13 %, the percentage of the Afghan population with “sustainable access to an improved water source” is the lowest in the world. The majority of the population – 56%, is below the poverty line.” [47a] (p1)

6.317 UNDP also reported that “The Recovery and Employment Afghanistan Programme (REAP) is a cash for work project which contributes to rehabilitation of the devastated infrastructure and generation of massive employment. In Kabul, Kandahar, and Jalalabad, REAP has employed more than 45,000 people, including

IDPs, returnees, and former combatants with support from Japan and the European Commission.” [47a] (p14)

6.318 According to a country update report by the World Bank Group in June 2004, “Since April 2002, the World Bank has committed \$281.8 million in grants and an additional \$221.4 million in no-interest loans, known as a “credits,” for development projects which are helping to meet urgent needs by providing jobs; improving roads; increasing the power supply in Kabul; cleaning up municipal waste; repairing schools, and improving health services. They are also building a foundation for the future, helping to mobilize communities; strengthen public administration, and develop the national highway and civil aviation programs.” [69a] (p2)

(See also [Refugees outside Afghanistan](#)/Returnees paragraphs 6.383 - 6.400)

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Humanitarian Situation Kabul

6.319 In January 2004, a report by the British Agencies Afghanistan Group (BAAG) stated that

“The Government is meeting the challenge of creating fully functioning and adequate urban services by tackling housing needs first and foremost. The large number of returnees have swollen urban populations and further overstretched inadequate services resulting from the consequences of war damage, lack of maintenance and drought. In May 2003, for example, the Ministry of Urban Development and Housing estimated that there was an average of 18 people per house in Kabul therefore preparation for housing, sanitation and water supply projects need urgent implementation. Lack of housing is not only the cause of human discomfort and misery but, coupled with the land rights issue, is also contributing to lack of security and instability in the country. One measure the Government has taken to address the problem is the development of a National Housing and Land Policy to assist in resolving land disputes. At the beginning of December 2003 more than 52,000 homes (i.e. more than 65% of the target) were completed with another 16,000 under construction and on schedule for completion by the end of the year (95% of their goal). The remaining 2,000 are expected to be finished early in 2004.” [71] (p34)

6.320 According to the BAAG report, “CARE’s water and sanitation project in Kabul has benefited over 500,000 people by rehabilitating the municipal water supply, improving street drainage and urban sanitation. This has been done by employing 4,000 local men on a food-for-work basis.” [71] (p45) The BAAG report noted that “SCA, UNICEF, German Agro Action (GAA), Solidarite, the ICRC and Norwegian Church Aid are some of the other major organisations that continue to play a significant role in provision of potable water supplies. [71] (p46)

6.321 In July 2003, UNHCR reported that “In Kabul, increased urbanisation has placed a burden on water and electricity resources. Many returnees and IDPs are squatting in tents and partially destroyed public buildings, while others are sharing apartments.” [111] (p29) In August 2003, UNHCR reported that the Minister of Urban Housing and Development had said that half of the 20,000 low-cost housing units

planned for Kabul would be set aside for returnees. [11j] (p1)

6.322 In September 2003, a BBC correspondent in Kabul reported that President Karzai had sacked Kabul's security chief, Basir Salangi. According to the report, Mr Salangi had ordered the partial bulldozing of more than a dozen homes belonging to the poor in order to clear the way for the construction of luxurious compounds for Kabul's new elite. Mr. Salangi was replaced by General Baba Jan and President Karzai set up an independent commission to investigate the scandal. [25n] In December 2003, the UN Secretary-General confirmed this account of events and added that the incident had involved the forced eviction of families in Shirpur village in Kabul. The land had been distributed by the Ministry of Defence and the municipality for the private use of government officials and their associates. The Secretary-General also noted that these events were subsequently highlighted by the Afghan Independent Human Rights Commission, the Special Rapporteur of the Commission on Human Rights on adequate housing and UNAMA in September 2003. "As a result, the President appointed a commission to inquire into the incident. The Chief of Police who was directly involved in the demolition of houses was removed from his post." [39k] (p 12)

6.323 On 22 February 2004 Canoe World News, a Canadian internet network, reported the Afghan Minister for Irrigation and the Environment, Yusuf Nuristani, as saying that ensuring a stable and secure water supply was one of the biggest obstacles to economic development in Afghanistan. The report noted that estimates of Kabul's population were as high as 3.5 million and it was growing rapidly. The Minister was quoted as saying "We are just around the corner from disaster. Our system was designed for 300,000 residents, and that was before the wars. We have no ability to store water, to recharge our reserves." It was reported that, although the area around Kabul had suffered through a long-term drought, the country was rich in water resources but the problem was moving the water to more arid, populated areas like Kabul. Minister Nuristani was reported as saying he is confident that new projects will come about if the peace and security brought by international troops can be maintained. [77]

6.324 In a report on land issues published in September 2003, UNHCR noted that a substantial number of refugees had been displaced upon return as a result of land tenure problems in their areas of origin, calling into question the sustainability of return for many of them. According to UNHCR, "Though the majority of the people constituting the "squatters" in Kabul are urban poor, some of them are also returnees who have become displaced upon return because their land has been occupied while they were in exile, and who were unable to reclaim it." [11g] (p4)

6.325 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. ACF also noted that "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)

6.326 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]

6.327 On 16 March 2004, the Asian Development Bank (ADB) reported that it had opened a new resident mission office in Kabul, which renewed the bank’s commitment to work with Afghanistan in its rebuilding efforts. According to the ADB, “The rebuilding and reconstruction efforts will promote trade, growth, and poverty reduction, directly benefiting about 9 million people in seven provinces, including the capital, Kabul. Some 45% of the populations in these areas subsist on less than \$0.25 per day. ADB Country Director, Afghanistan Resident Mission, Mr. V.N. Gnanathurai said while the issue of achieving peace and stability is pivotal for Afghanistan, much progress had been made in the last two years in developing the country’s economy and the picture is improving.” [40au]

6.328 According to a report by the International Peace Research Institute in Oslo in early 2004,

“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. The population of Kabul province has grown to 2.8 million as compared to 1.78 million in 1999. 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)

6.329 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. According to the RI report

“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)

6.330 On 29 July 2004, the World Bank reported that

“The Kabul Urban Reconstruction Project will support reconstruction and rehabilitation in some of Kabul’s most vulnerable neighborhoods, and, in so doing, help mend the urban fabric of this important city now struggling to accommodate many thousands of returnees. Building capacity in both the Ministry of Urban Development and Housing (MUHD) and Kabul Municipality is an additional critical component of the project.

Housing across Afghanistan is important, but, as a capital city, Kabul faces special challenges. It has become a magnet for people returning from displacement both within Afghanistan and from other countries where they had sought refuge. They have come seeking the security, facilities and social services that the capital offers. And they have come, in many cases, to escape confrontation with the current occupants of their former rural homes. For 20 years there has been little recording of land transactions, no clear system of title transfer or inheritance, and, in Kabul, no investment to sustain conventional urban services.

“The efficient delivery of services is essential for the development of urban areas,” says Richard M. Beardmore, World Bank’s Senior Urban Specialist. “The huge and sudden increase in the urban population of Kabul has created entire neighborhoods outside the city’s already weak ability to deliver services. The majority of the urban poor live in informal settlements, often in bombed-out ruins. We are using this project as a pilot to help municipalities integrate these informal areas and deliver a minimal set of services to them rather than regard them as unauthorized developments to be removed.

A system of land tenure security will be worked out for residents. The costs of the project are estimated to be around US\$52 million, and, in addition to today’s approved IDA [International Development Association] credit of US\$25 million, further co-financing of about US\$27 million will be sought from other donors to scale up the project.” [69b]

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Taliban

6.331 In July 2003, UNHCR advised that “There are, reportedly, still pockets of resistance of al Qa’ida and Taliban forces and indications that some Taliban forces might be regrouping.” [11i] (p15-16)

6.332 In August 2003, Agence France-Presse reported that “The US-led military coalition said suspected Taliban and al-Qaeda fighters had stepped up attacks against Afghan forces in the southern and southeastern regions bordering Pakistan, although violence against US-led troops was stable...12,500 foreign combat troops, led by the US military, are hunting al-Qaeda and Taliban remnants mainly in the militia’s former stronghold in Afghanistan’s east and southeast.” [40av]

6.333 In October 2003, Reuters published a Pakistan-based Afghan news agency’s report stating that “In a pamphlet to authorities and residents of eastern Laghman

province, the Taliban said a jihad, or holy war, against American forces in Afghanistan was the duty of every Muslim. It also warned Afghan drivers against carrying foreigners and their belongings on highways.” The Taliban also warned that women found working with foreign NGOs would be killed, as would any foreigner travelling on roads in the province. The pamphlet was also reported to threaten severe punishment for Afghans who brought dancing girls to festivals or marriage celebrations. [40b1]

6.334 On 19 November 2003, the South Asia Correspondent of The Times newspaper reported that “A resurgent Taleban threatened to attack foreign aid workers and journalists in Afghanistan yesterday and admitted responsibility for the killing of a French United Nations employee.” [13a]

6.335 On 30 December 2003, the Secretary-General to the UN Security Council reported that

“The infiltration of elements hostile to the Afghan Government across the border from Pakistan to Afghanistan has remained a serious concern. To deter this infiltration Pakistan has deployed and maintained troops along its border with Afghanistan. Such operations along the border are an important part of the effort to deter Taliban and other anti-Afghan Government activity. However, there remain persistent reports of Taliban leaders operating inside Pakistan as well. The tripartite commission formed by Afghanistan, Pakistan and the United States of America is working to address the issue of cross-border security and other mutual security concerns, and it is hoped that through this mechanism and other, bilateral contacts, the problem of cross-border destabilizing activities will be effectively contained.” [39k] (p11)

6.336 In January 2004, an overview of the human rights issues in Afghanistan by Human Rights Watch (HRW) detailed problems caused by suspected Taliban remnants. The report stated that

“In the south and southeast of the country, Taliban remnants and other anti-government forces outside Afghanistan's political framework have further aggravated security conditions by attacking humanitarian workers and coalition and Afghan government forces. In 2003 and early 2004, numerous humanitarian workers in the south and southeast have been kidnapped, beaten up, shot at, and even killed. Over thirty-five schools in the south and southeast, mostly for girls, have been rocketed or burned since August 2002. As a result of attacks, international agencies have suspended many of their operations in the affected areas. As a result, development and humanitarian work has suffered.” [17c] (p2)

6.337 According to a HRW World Report 2004, the Pashtuns’ sense of marginalisation due to political developments in Afghanistan had led to the upsurge in activity in the Pashtun areas of southern and southeastern Afghanistan by the Taliban and forces under the command of Gulbuddin Hekmatyar. HRW reported that “The result of this upsurge has been an absolute breakdown in security in the Pashtun areas and increasing human rights violations. The United Nations and international non-governmental organizations now consider nearly two-thirds of the Pashtun-belt as no-go areas...The targeting of foreign and local humanitarian groups suggests a troubling change in tactics by the Taliban and other groups opposed to the central government in Afghanistan.” [17e] (p8)

6.338 The HRW report also noted that

“The Taliban has exhibited less interest in influencing the electoral process than in simply stopping it. It has declared the constitutional process invalid, instead offering their own limited version of religious law. Through “night letters” (surreptitiously distributed pamphlets) and, increasingly through public pronouncements, the Taliban has threatened to harm candidates as well as those who vote in the elections. The Taliban has reserved special venom for those Afghan women daring enough to stand as candidates, threatening not only them, but also their families. [17e] (p9)

6.339 Europa Regional Surveys of the World: South Asia 2004 records that

“Some Taliban members and supporters believed that there was a strong faction within the movement that was more moderate than Mullah Omar, and that this faction wanted to present candidates at Afghanistan’s national elections, scheduled for 2004. The possibility of Taliban participation in a new Afghan government thus re-emerged. As the Taliban regime disintegrated in late 2001, Pakistan had pressed the USA to include moderate leaders such as Wakil Ahmad Motawakkil (the former Taliban Minister of Foreign Affairs) in the post-war administration. Motawakkil surrendered to the US authorities in early 2002, and the next day angry protesters took to the streets of Kabul, demanding a universal denunciation of the Taliban. Ethnic Tajiks, Uzbeks and Hazaras, whose soldiers had helped win the war and who now dominated Karzai’s Government, refused to let the Taliban return in any form. It was believed by local Afghans, however, that no government could bring peace to Afghanistan, unless it included Taliban leaders and Muslim scholars. In July 2003 a Taliban cabinet meeting was reportedly held in Peshawar.” [1a] (p64)

6.340 On 8 January 2004 the Guardian newspaper reported that “A Taliban commander in Afghanistan yesterday apologised for a bomb attack in the southern city of Kandahar on Tuesday which killed 16 people, including many children, and said it had been a botched attempt to target US troops.” According to the source, a Taliban commander, Mullah Sabir Momin, told Reuters by satellite telephone that they wanted to target the Provincial Reconstruction Team [PRT] office in the city, but because of a mistake the plan had failed. Mr Momin had said that US and allied forces regularly passed along the route where the explosion occurred. [18b]

6.341 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. Afghan officials welcomed the arrest, saying Mr Khawajazai was connected to continuing violence in Afghanistan even if he had no direct links to terrorism.” [25e]

6.342 On 6 March 2004, the Daily Telegraph newspaper published a report from a reporter in Shah Joy, a village 180 miles south-west of Kabul. It was reported that the Taliban were regrouping in about a third of Afghanistan’s southern regions and waiting for the spring in order to launch attacks against the central government and its allies. According to the report, about 70% of Zabul province was either controlled by Taliban supporters or was completely lawless. The report states “It is estimated that about 700 armed Afghan Taliban who are ethnic Pathans have crossed the border from the

Pakistani cities of Peshawar and Quetta where they are trained and funded.” The report also stated that Taliban commanders were offering motorcycles, weapons and satellite telephones to anyone willing to rob or bomb a government target. Cash bonuses were reportedly paid for successful hits and killings of enemies. [78]

6.343 On 26 April 2004, the Associated Press reported that President Karzai had said he would welcome rank-and-file members of the Taliban back into society. The President also said that the top Taliban leaders who had links with Al-Qa’ida and who may number no more than 150 people, were unworthy of rehabilitation and could be prosecuted. However, those people doing jobs such as tilling the fields and working as shopkeepers were to be welcomed. According to the report, President Karzai said that the Afghan government had been in negotiations with less radical Taliban leaders for months. [32]

6.344 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]

6.345 In June 2004, a Danish fact finding mission to Kabul in March/April 2004 reported that “In the opinion of UNHCR, Taliban infiltration in southern, south eastern and eastern districts consists of small groups, which cross the border on motorcycles from Pakistan on motorcycles and carry out attacks in Afghanistan. UNHCR did not believe that [the] Taliban has a proper organizational head quarter in Afghanistan. They confirmed rumours that Taliban had taken over control of several districts, but pointed out that if it had been the case, it had been short-term operations.” [8a] (section 3.3)

6.346 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 happens can be attributed to activities carried out by bandits. 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 Taliban as a central power in Afghanistan.” [8a] (section 3.3)

6.347 According to the Danish report,

“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 Taliban for propaganda purposes. ICG was of the opinion that no parallel Taliban administration exists in Afghanistan.” [8a] (section 3.3)

6.348 In June 2004 a report by the Afghanistan Research and Evaluation Unit (AREU) stated that “The March 2003 murder of ICRC engineer Ricardo Munguia is widely viewed by UNAMA, the civilian assistance community, and other observers to have marked the beginning of a broadened offensive by the Taliban and other groups opposed to the Government of Afghanistan. This trend has since accelerated at some times and flagged at others, but seems consistently to have worsened.” [22a] (p19)

6.349 According to the AREU report, small-scale attacks by Anti-Coalition Forces (ACF), generally considered to comprise the Taliban, Al Qaeda and Hezb-I-Islami Gulbuddin (HIG), have replaced large-scale combat in Afghanistan and these attacks are designed to subvert the Karzai government. The report notes that “Operating in small numbers, they are able to shape the political environment through denial of access (by targeting NGOs and government officials), subversion of initiatives by the Government and international community (through night-drop letters and rumour), and deployment into local communities of teams that can rapidly coalesce for attacks and then withdraw, maintaining a “balance of fear” in villages.” [22a] (p7)

6.350 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. According to the report “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)

6.351 On 13 July 2004, BBC News reported that “Taleban rebels have killed a local police chief in an attack on government offices in the south of the country. At least three other security personnel were reported killed in the attack, one of a spate of fresh confrontations linked to the Taleban.” The report also noted “In other incidents reportedly involving the Taleban: Gunmen killed two security personnel protecting election workers in the province of Ghazni on Monday [12 July]; A man reportedly blew himself up with a grenade after being trapped by soldiers in the Khogyani district of the province of Nangarhar; A man was killed trying to detonate a bomb in the province of Helmand.” [25v]

6.352 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. According to the report “Amanullah was found with money that authorities believed he was planning to distribute to Taliban fighters, who have stepped up attacks in the run-up to a presidential election on October 9 [2004]...About 500 government troops, backed by U.S.-led forces, have launched an operation to root out Taliban fighters in Zabul province, to the southeast of Uruzgan, state media said.” [24c]

6.353 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)

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Former Taliban Members

6.354 According to a BBC World News report in January 2002, thousands of Taliban fighters were captured during the US led coalition military action against Al Qa'ida and their Taliban supporters, which started in October 2001. Many were believed to remain at large in isolated pockets throughout the country. The BBC report stated that in early January 2002 more than 260 Taliban prisoners had been freed from Kabul prison. President Karzai was reported as saying that he planned to release all prisoners who held no senior position in the Taliban. Moreover, the Taliban rank and file would not be punished, only their leadership, including Mullah Mohammad Omar. [25a] A later BBC report on 9 February 2002 stated that a further 300 captured Taliban soldiers were released in February 2002 and were described by Hamid Karzai as innocent, having been conscripted by the Taliban. The report also noted that the former Taliban foreign minister Wakil Ahmad Mutawakil had surrendered to the US in the southern city of Kandahar. [25am]

6.355 A Swedish Fact Finding Mission to Afghanistan in November 2002 reported in April 2003 that “Most sources stated that hardly anyone risks persecution because of being a former Taliban. Most of the Taliban have today been integrated into the Afghan society.” [61] (p21)

6.356 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.” [111] (p37) UNHCR 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)

6.357 On 19 January 2004, Afghan News Net reported that President Karzai had ordered the release on Sunday of more former Taliban fighters. According to the report, "Karzai issued a decree saying all Afghans detained at the northern Sheberghan prison and not considered dangerous should be set free immediately. It was unclear how many inmates were affected. Local officials said the jail holds more than 400 suspected Afghan Taliban." A Presidential spokesman was reported as telling the Associated Press, "They are Afghans. They have every right to a peaceful and respectable life in the new Afghanistan...The time for making people suffer and jailing them without reason is over." It was also reported that "Karzai has said repeatedly that only a handful of Taliban leaders were to be regarded as terrorists, appealing to rank-and-file supporters to throw their energy into reconstructing the impoverished country." [79]

6.358 On 30 January 2004, the internet edition of the Dawn newspaper, published in Pakistan, reported that "Afghan authorities on Thursday [29 January] freed 21 Pakistanis captured while fighting alongside the former Taliban regime and its Al Qaeda allies during the US-led war in Afghanistan in late 2001. The release, the second this month, is being portrayed as a gesture of goodwill on the occasion of Eidul Azha, and follows repeated appeals by family members." The report also noted that many of the hundreds of Taliban, Al Qaeda and allied militants captured following the ousting of the Taliban in late 2001 had already been freed. [20a]

6.359 A Danish fact finding mission to Kabul in March/April 2004 reported in June 2004 that, according to UNHCR, former members of the Taliban who are guilty of human rights abuses are 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." According to the Norwegian Chargé d'Affaires, not all Taliban supporters committed crimes. Many ordinary people chose to join the Taliban in order to get a job and are, therefore, not 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." [8a] (section 6.7)

6.360 The Danish report further noted

"The UNHCR explained that it is highly 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 south eastern 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.” [8a] (section 6.7)

6.361 According to the Danish report of June 2004, “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 among the people in power and whether the person is in a position to persuade them that he has changed side. 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.” [8a] (section 6.7)

(See also [Section 6A](#) paragraphs 6.11 and 6.30 for UNHCR and ECRE guidelines)

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Hisb-e-Islami

6.362 According to Peter Marsden in the 2002 edition of his book “The Taliban - war and religion in Afghanistan”,

“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, Gulbiddin 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)

6.363 According to the source, 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 same source also notes

“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)

6.364 On 28 January 2003 BBC News reported that Hekmatyar was more organised than the Taliban due to his long experience as a mujahideen leader fighting the Soviet

occupation troops in Afghanistan during the 1980s. The report notes “However, Hekmatyar lacks military muscle. Almost all his military commanders deserted him when he fled to Iran after suffering defeat at the hands of the Taleban in the mid-1990s.” [25aj]

6.365 According to another BBC News report of 28 January 2003,

“In February last year [2002], the Iranian authorities expelled Mr Hekmatyar and closed down the offices of his Hezb-e-Islami in Tehran.... He returned to an undisclosed location in Afghanistan following threats by the Afghan Government to arrest him and try him for war crimes.... A spokesman for Hezb-e-Islami in Pakistan said Mr Hekmatyar was now giving full support to the Karzai administration, although the warlord’s whereabouts remained a mystery. Soon after, however, the Afghan administration arrested 160 people in Kabul in a suspected anti-government plot. The government said the detainees had been conspiring to plant bombs in Kabul and that most were members of Hezb-e-Islami.” [25ak]

6.366 This BBC report also noted that, prior to the emergence of the Taliban, Hizb-e-Islami (Hekmatyar) was blamed for much of the death and destruction of that period when they clashed violently with other Mujahideen factions in the struggle for Kabul. [25ak]

6.367 On 19 February 2003, the US Department of State designated Hekmatyar a terrorist. A press statement advised that “The U.S. Government has information indicating that Gulbuddin Hekmatyar has participated in and supported terrorist acts committed by al-Qa’ida and the Taliban. Because of his terrorist activity, the United States is designating Hekmatyar as a Specially Designated Global Terrorist under the authority of Executive Order 13224.” [2c]

6.368 In July 2003, UNHCR advised that “Since August 2002, the extremist and Anti-Western mujahideen commander, Gulbuddin Hekmatyar, and his followers have become notably more active, being linked to sporadic bombings in Kabul city and insecurity in parts of the Eastern, Central and Northern regions.” [11i] (p15-16)

6.369 In March 2004 a Human Rights Watch report noted that “In Afghanistan, United States and coalition forces, allied with local Afghan forces, are fighting armed groups comprised of members of the Taliban, the mujahidin group Hezb-e Islami, and a relatively small number of non-Afghan fighters, some of whom are associated with al-Qaeda. For their part, these groups have shown little willingness to abide by international humanitarian law or human rights standards: they have carried out abductions and attacks against civilians and humanitarian aid workers and detonated bombs in bazaars and other civilian areas.” [17b] (p1)

6.370 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) 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.” According to ICG, “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)

6.371 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. The precise whereabouts of Hekmatyar, who rained rockets on Kabul during factional clashes in the 1990s and is believed to have teamed up with Osama bin Laden's Al-Qaeda network, have been a mystery since he was expelled from Iran in 2002.” [29b] (p1-2)

6.372 A Danish fact finding mission to Kabul in March/April 2004 reported in June 2004 that, according to UNHCR, there are small groups of Hizb-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.” [8a] (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.” [8a] (section 6.8)

6.374 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.” [48] (p6)

Former Hizb-e-Islami members

6.375 In June 2004, a Danish fact finding mission to Kabul in March/April 2004 reported the views of various sources on the position for people with connections to Hizb-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. According to UNHCR “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 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 or she risks being persecuted in Afghanistan.” [8a] (section 6.8)

6.376 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 which may be experienced by people who formerly worked for Hezb-i-Islami would depend on their connections to Hekmatyar and whether or not they were currently in conflict with people in power. [8a] (section 6.8)

6.377 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.” [8a] (section 6.8)

6.378 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.” [8a] (section 6.8)

Persons in conflict with present power brokers

6.379 A Danish fact finding mission to Kabul in March/April 2004 reported in June 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.” [8a] (section 6.6)

6.380 The Danish report also noted that, according to UNHCR and the CCA, the situation for people in conflict with the Uzbek dominated Junbish-i-Melli and the party’s leader General Dostum would depend on the region from which the person originated and where he or she wanted to return to, as well as how serious the conflict was for the parties involved. According to the report

“It would be difficult to return to an area which General Dostum controls if one is part of a serious conflict with him. Returning to Kabul can also be difficult, since even here there are people who have connections with Junbish-i-Melli. In this context the CCA mentioned that even if it was possible to turn to the police for help in some areas of Kabul, one cannot really say that the government in Kabul can offer protection in such conflicts.

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.” [8a] (section 6.6.3)

6.381 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 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 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.” [8a] (section 6.6.1)

6.382 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." [8a] (section 6.6.2)

(See also [Section 6A](#) paragraphs 6.11 and 6.30 for UNHCR and ECRE guidelines)

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Refugees Outside Afghanistan/Returnees

6.383 In a position paper dated July 2003, UNHCR reported that

"After a suspension of operations in September 2001, UNHCR has resumed the facilitation of voluntary repatriation of Afghan refugees from Pakistan (on 1 March 2002) and Iran (on 9 April 2002).... The largest groups of returnees go back to the Central region (Kabul province) and to the province of Nangarhar in the East. Some 40% of returnees are, regardless of their origins, moving into urban areas. Even though most returns have been based on purely voluntary decisions, more recent interviews of returnees from Pakistan and Iran have shown that many of them decided to leave because of the harsh and hostile behaviour of local authorities in urban areas. UNHCR and the Afghan Government have repeatedly stated that involuntary return could hamper the sustainability of return for such groups." [11i] (p31)

6.384 The UNHCR paper also stated that "By the end of 2002, Government and UNHCR sources reported the presence of Afghan refugees in some 50 non-industrialised countries." According to UNHCR, Afghan refugees were mostly residing in Iran (2.0 million) and Pakistan (1.8 million). Smaller groups of refugees were located in India (11,400), Uzbekistan (5,700), Tajikistan (3,400), Ukraine (1,600), Russian Federation (1,500) and Turkmenistan (1,300). The paper also noted that "At the end of 2002, UNHCR estimated the number of internally displaced Afghans at some 665,000 down from 1.3 million a year earlier." [11i] (p45)

6.385 In June 2003, Amnesty International published a report based on interviews conducted in April 2003 with over 100 returnees and internally displaced persons (IDPs) throughout Afghanistan. The report stated "Amnesty International is concerned that, under current conditions, the inability of many refugees and IDPs to sustain their return to their places of origin or preferred destination is leading to destitution and renewed cycles of displacement. This is being exacerbated by the fact that many instances of return, of both IDPs and refugees, are taking place in less than voluntary circumstances. The sustainability of return is further hindered by insufficient aid and reconstruction assistance from the international community." [7i] (p3)

6.386 The UNHCR position paper of July 2003 advised that

"UNHCR considers that persons finding themselves in particularly vulnerable

circumstances should not be required to return. Instead they should be allowed to prolong their stay on humanitarian grounds until special and co-ordinated arrangements can be put in place, on a case by case basis, to facilitate their safe and orderly return and appropriately receive them in Afghanistan. This includes individuals in the following categories:

- handicapped and ill individuals, or families with handicapped or ill members;
- unaccompanied elderly;
- unaccompanied minors; and
- landless, destitute Afghans, particularly those originating from food-insecure areas and drought-affected areas.” [11i] (p40-41)

6.387 In July 2003, Human Rights Watch (HRW) reported on human rights abuses in southeast Afghanistan. The report stated that some of the human rights abuses they had documented in the report had caused returning refugees to decide against returning to their places of origin. According to the report, “Human Rights Watch interviewed several refugees returning from Iran and Pakistan who had decided to stay in Kabul city and not return to their places of origin because of human rights abuses in their home provinces. In the southeast, the problems seemed to be especially serious for refugees seeking to return to Ghazni province, Paghman district in Kabul, and Nangarhar.” [17f] (p44)

6.388 In August 2003 UNHCR stated that “The UN Refugee Agency does not promote repatriation due to the lack of security in some areas of Afghanistan, as well as the country’s dependence on food and other humanitarian aid, but it aids those who wish to return.” UNHCR also emphasised the link between relief assistance and security and stated that “Afghanistan’s economic and social problems are very much linked to insecurity in some rural areas where needs are greatest, but also where aid workers face serious security problems.” UNHCR also pointed out that “The success of the massive repatriation has been marred by a spate of attacks that have killed aid workers and scores of other Afghans, hindering the delivery of relief aid to some areas of the country.” [11j] (p1-2)

6.389 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)

6.390 According to the UNHCR land report,

“The occupation of houses and property by commanders is one of the most widespread features country wide, affecting groups and individuals alike... Commanders have used their occupation of the land of returnees as a tool to pressurise their victim in order to reach a political end. Weaker members of the

society, such as female heads of households are particularly vulnerable to abuse [and] illegal confiscation of their property. In the Istilaf district of Kabul province, the house of a pashtoon widow was unlawfully occupied by a Tajik commander from another village. This is not to say that vulnerable individuals always lose out to the powerful. In some cases though few, the vulnerables' right to property was effectively protected. In Deh Yak district of Ghazni province; a returnee widow faced difficulties upon return to access her land. The local court investigated the merits and ruled in the widow's favour. The caretaker of her land accepted the decision, signed it in the presence of the villagers and the head of the village." According to UNHCR "Extortion and illegal levying of taxes are features that go hand in hand with overall abuse and control that local commanders practice on the village and district level. These abuses do not target necessarily any particular ethnic groups." [11g] (p6)

6.391 Commenting on the difficulties faced in recovering property, the UNHCR report of September 2003 notes that

"The process of recovery has been complicated by the fact that the illegal occupants have often sold the property that they had occupied to others... There are also more complicated cases of members of ethnic and religious minorities who forcibly sold their lands/property during the Mujahideen or Taliban regimes, and who now wish to recover their properties. Their only legal claim is that they had been coerced to sell their land at the time, which would be difficult to prove... Other complications concern the questionable way in which those who currently perceive themselves to be the victims of an unlawful act acquired this land in the first place. Many of these groups were given land by previous regimes, without possibly much consideration for legality." [11g] (p8)

6.392 The UNHCR report also notes that "Though exceptional, there have been cases where returnees have been able to recover their property without problems. Generally, this has been the case in those areas where returnees belong to the same ethnic or tribal group as the majority of the residents, or are supporters of the same political party or commander." [11g] (p8) UNHCR further noted, however, that disputes were also found among members of the same tribe or ethnic group. Other cases were noted in which returnees had to pay bribes to occupying commanders in order to secure their rights. [11g] (p9)

6.393 According to the UNHCR report,

"It is worth mentioning in this regard that military and political figures have sometimes assisted returnee groups to regain their land that had been unlawfully taken from them, which once again highlights the fact that the single determinant factor tipping the balance in these issues is sheer political and military power. In Guldara district of Kabul province for example, only a few houses belonging to Pashtoon returnees are still occupied by Tajiks. The issue has been resolved largely through the intervention of a prominent commander of Shomali, who has assisted the returnees in recovering their property." [11g] (p9)

6.394 On 17 November 2003 UNHCR announced that it had decided to temporarily close its voluntary repatriation centres for Afghan refugees in Peshawar and Quetta

in Pakistan following the murder of a staff member in Ghazni province, 100 km south of Kabul. [11k] On 9 March 2004 a UNHCR spokesman announced that UNHCR had resumed assisting refugees return from Pakistan on 1 March 2004. [11e] (p1)

6.395 The Amnesty International 2004 country report on Afghanistan, covering the period January to December 2003, noted that "Refugees continued to return from neighbouring states but in much reduced numbers, owing largely to concerns about the security situation, employment opportunities and housing. There were serious concerns about the voluntariness of returns from Iran and Pakistan." [71] (p1)

6.396 On 9 July 2004, Refugees International reported that

"The return of Afghan refugees from Pakistan and Iran has been one of the largest and fastest movements of people in history. From March 1, 2002, UNHCR has recorded more than 2.5 million refugee returnees: 2 million from Pakistan and 500,000 from Iran. Add to that a million or so of unrecorded returnees and internally displaced people and a grand total of 3.5 million Afghans may have come home in little more than 2 years. The return program has been successful thus far. Most of the returnees have blended into the cities and countryside and are now indistinguishable from the Afghans who remained in the country. However, the majority of Afghans, whether former refugees are not, are extremely poor and eke out a precarious existence as farmers or day laborers in the cities.

There are still about three million Afghans living in Pakistan and Iran and they continue to return to Afghanistan in sizeable numbers.... The destination of most of the fifty returnees we spoke to randomly, whether from Iran or Pakistan, was Kabul. Only a few were returning to rural areas. Returnees from Pakistan said they had returned voluntarily, but many of those from Iran cited Iranian government pressure as a factor in their return.... Pressure by Iran on refugees is apparent also in the statistics. Recently, the number of returnees from Iran has begun to surpass those from Pakistan." [3] (p1-2)

6.397 On 20 July 2004, the International Organisation for Migration (IOM) reported that

"IOM Kabul and the Independent Administrative Reform and Civil Service Commission (IARCSC), will start implementing the Expatriate Services Programme of the ARTF (Afghanistan Reconstruction Trust Fund) on behalf of the Transitional Islamic State of Afghanistan.

Decades of conflict have resulted in the displacement of Afghanistan's professional work force and the collapse of critical services in a wide range of sectors. In order for the reconstruction efforts to succeed in a timely manner, the placement of highly skilled Afghan professionals with significant reconstruction and development experience is vital....

In the past 30 months, the IOM Return of Qualified Afghans (RQA) programme has recruited and assisted 540 Afghans from 26 countries to return to their country and help in the reconstruction efforts. These returnees are currently working in 25 ministries of the ATA (261 persons), governmental institutions (110

persons), and NGOs and International Organizations working in Afghanistan (167 persons). The RQA database currently holds 4,339 highly qualified candidates who have expressed their willingness to return to Afghanistan.” [40r]

6.398 On 23 July 2004, UNHCR reported that “Aid workers and Afghan officials are struggling to avert a looming humanitarian crisis as thousands of Afghan refugees living in Pakistan pour across the border fleeing Pakistani army operations to hunt Al-Qaeda-linked militants. Over 20,000 refugees have already crossed the border into Afghanistan's insurgency-hit southeastern provinces, many of them leaving Pakistan after decades with only hours to pack what little they can carry, aid workers said.” [11d]

6.399 On 1 August 2004 the UN Spokesman for the Special Representative of the Secretary-General announced that

“Returns to Afghanistan continue to be strong, with thousands of refugees going back daily. The number of Afghans who have returned this year home (sic) passed the half million mark this week. We have seen over 270,000 refugees repatriate back from Iran and some 230,000 from Pakistan.... Since the UN's facilitated return programme began in early 2002, more than 2.1 million refugees have repatriated from Pakistan, while some 920,000 have gone back from Iran.

Afghan refugees returning under the UN initiative receive a travel grant ranging from \$3 to \$30 per persons, plus a cash grant of \$8 each to provide for basic necessities on arrival. The money is paid at UNHCR offices inside Afghanistan....UNHCR together with its partners have also assisted another 443,000 internally displaced persons (IDPs) return to their home areas since 2002. There are still more than 180,000 displaced persons in Afghanistan, with many residing in camp-like situations in Kandahar and Herat [Herat] provinces in the south and west of the country where they receive assistance.

Southern Afghanistan where Zhare Dasht and Spin Boldak encampments are located shelters 145,000 IDPs, while there are 20,000 IDPs in western Afghanistan, 9,000 displaced people residing in the north and more than 5,000 each in both the east and southeastern provinces. UNHCR's programme to help returning refugees, provide shelter and water projects and implement other assistance programmes in Afghanistan has so far received \$106 million this year, or 87 percent of our \$122.5 million budget.” [39f] (p3-4)

6.400 On 23 August 2004, UNHCR reported that fighting in the western town of Herat had prompted UNHCR to temporarily suspend its daily repatriation convoys from Iran, leaving some 13,000 Afghan refugees stranded. They had since left the area and were able to return home again following a ceasefire between the warring factions. According to UNHCR, 3.6 million Afghans have returned to their homeland from Iran and Pakistan since 2002. [11c]

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Al Qaeda (Al-Qaeda)

6.401 The Europa World Year Book 2003 records that following the attacks on New York and Washington on 11 September 2001, Osama bin Laden and his Al Qa'ida organisation were publicly identified by the US as being principally responsible for the attacks. [1b] (p405) The Europa World Year Book records that "On 2 October [2001] NATO declared that it had received evidence from the USA that confirmed bin Laden's responsibility for the terrorist attacks. Some two days later the Pakistani Government announced that it had seen proof convincing enough to prosecute bin Laden in a court. The evidence also incriminated other members of al-Qa'ida." [1b] (p406) The Al Qa'ida organisation is proscribed in the UK under the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2001. [21]

6.402 In May 2004, BBC News released a round up of what is known about some of the key al-Qaeda suspects. According to the report, several of the suspects are still at large, including Osama bin Laden and Ayman al-Zawahri who is believed to be bin Laden's spiritual advisor and the architect of the al-Qaeda ideology. The BBC report notes the capture of the following key suspects: Mohammed Haydar Zammar (following 11 September 2001); Anas al-Liby (January 2002); Abu Zubaydah (March 2002); Omar al-Faruq (June 2002) Ramzi Binalshibh (September 2002); Abd al-Rahim al-Nashiri (November 2002); Mohsen F (November 2002); Ali Abdul Rahman al-Ghamdi (2003); Khalid Sheikh Mohammed (1 March 2003). [25u]

6.403 On 24 February 2004, BBC News reported that "Pakistani forces have begun a fresh operation along the Afghan border against al-Qaeda and Taleban suspects...US forces in Afghanistan have said they are stepping up the hunt for the al-Qaeda leader [bin Laden] who is believed to be in the border area...Last week the commander of the US-led coalition forces in Afghanistan said an operation was being launched on both sides of the border." [25m]

6.404 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)

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Documents

6.405 In September 2002 a Danish fact finding mission reported that "DACAAR [Danish Committee for Aid to Afghan Refugees] said about documentation in general, that the circulation of false documents is widespread." According to the Danish fact finding mission "The Minister of the Interior said that a normal birth certificate is issued by the hospital where the person is born." [8b] (p54)

6.406 A report by a Swedish fact finding mission in November 2002 stated that the German police were assisting the Afghan authorities in the development of a new kind of ID card. The current tazkara was one single paper, issued at a provincial level. [61] (p32)

6.407 The USSD 2003 noted that, according to Afghan law, women are required to obtain permission from a male family member before having an application for a

passport processed. [2e] (p13)

6.408 A Danish fact finding report of June 2004 noted that, according to the Ministry of Interior (Mol),

“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 it. However, pictures of the wife and children have to be submitted.” [8a] (section 8.1)

6.409 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. This has happened because it has not been possible to check the identity of the applicants.” [8a] (section 8.1)

6.410 The Danish report of June 2004 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 such a document. [8a] (section 8.2)

6.411 According to the same Danish report

“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 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.” [8a]
(section 8.2)

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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.

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.

Soviet intervention

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.

Mujahedin triumph

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.

Taleban under pressure

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 - President Hamid Karzai announces Afghanistan's first post-Taleban elections are postponed until September.

Afghanistan secures \$8.2bn (£4.5bn) in aid over the next 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.

ANNEX B: POLITICAL ORGANISATIONS AND OTHER GROUPS

Harakat-e-Islami (Islamic Movement of Afghanistan): Led by Ayatollah Muhammed Asif Muhsini; a Shi'a party with a mainly non-Hazara leadership; allied with Jamiat-i-Islami. This faction is represented in the ITAA by Mr. Said Hussain Anwari, Minister of Agriculture and Mr. Said Ali Jawid, Minister of Transportation. [111]

Hizb-e Islami (Hekmatyar)

Pashtun/Turkmen/Tajik; led by Gulbuddin Hekmatyar. [1b] In December 2002 Hekmatyar issued holy jihad against foreign troops. According to reports he returned to an undisclosed location in Afghanistan after he was expelled from Iran in February 2002. [25a] In January 2003 it was reported that the expelled Taliban regime had regrouped and allied itself to Hekmatyar [5a]. Reports of an alliance between Hizb-i-Islami and the Taliban were denied by Taliban officials and supporters of Hekmatyar. [25a] Hekmatyar was designated a terrorist by the US in February 2003. [2c] In August 2003 it was reported that Hizb-i-Islami were one of the groups believed to have been responsible for a spate of attacks on Afghan and Western government, military and humanitarian targets. [40a]

Hizb-e Islami (Khalis)

Pashtun; led by Maulvi Muhammed Yunus Khalis. [1b]

See also paragraphs 6.362 – 6.374 on Hizb-e Islami

Hizb-i Wahdat-e-Islami (Islamic Unity Party)

Principal Shi'a party in Afghanistan consisting mainly of Afghans of Hazara ethnic group. Founded under Iranian sponsorship in 1988 as a union of 9 Shi'a parties, led by Abdul Ali Mazari until his death in Taliban custody in February 1995. Split in 1993: Mohammad Karim Khalili led the Hezb-e-Wahdat based in Bamian/Yakawlong, while Mohammad Akbari closely affiliated with the government of Burhanuddin Rabbani, remained in Kabul until the arrival of the Taliban in 1996. In November 1998 Mohammad Akbari surrendered to the Taliban, while the other faction of the Hezb-e-Wahdat, led by Khalili and Haji Muhammed Mohaqeeq (representing the party in Mazar-i-Sharif) actively fought the Taliban in Hazarajat. Mr. Mohaqeeq was Minister of Planning and one of the five Vice-Chairmen in the Interim Administration of Afghanistan. [11] Mr. Mohaqeeq held the position of Minister of Planning in the ITAA until 7 March 2004 when he was removed from his post. He is standing as a presidential candidate in the forthcoming elections. [26a] (p9) Abdul Karim Khalili, one of the five Vice-Presidents, and Said Mustafa Kazemi, Minister of Commerce, represented this faction in the Interim Transitional Administration. [11]

Hizb-i Watan (Homeland Party)

Formerly PDPA (changed its name in 1988), party dissolved 1991/2. [11a]

Ittihad -i Islami Bara-yi Azadi (Islamic Unity)

Led by Abdul Rab al-Rasoul Sayyaf; previously reported to be supported by Saudi Arabia; Anti Shi'a; allied with Jamiat-e-Islami; played a major role in the early fighting

in Kabul in 1992-95, but has since faded as a military force; is reported to play an important role in financing the opposition. His faction is represented in the ITAA by Mr. Abdullah Wardak, Minister of Martyrs and Disabled. [111]

Jamiat-i Islami (Islamic Society)

Led by Burhanuddin Rabbani, 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, the pre-Taliban governor of Herat who became governor again following the fall of the Taliban in late 2001. This faction is represented in the Islamic Transitional Authority of Afghanistan (ITAA) by Marshal M. Q. Fahim, Vice President and Minister of Defence, Dr. Abdullah Abdullah, Minister of Foreign Affairs, Younus Qanooni, Special Advisor to the President on Internal Security and Minister of Education, Enayatullah Nazari, Minister of Repatriation. Mirwais Saddiq, the Minister of Civil Aviation and Tourism represented both Jamiat-e-Islami and his father, Ismail Khan. [111] Mirwais Saddiq was killed in Herat in March 2004. [25d]

Jonbesh-e Melli-Islami (National Islamic Movement)

Party of Northern Afghanistan's warlord, General Abdul Rashid Dostum - former leader of a militia allied with Najibullah; dominated by Uzbeks. The faction is represented in the ITAA by Mr. Mohammad Alem Razm, Minister of Light Industry, Noor Mohammad QarQin, Minister of Social Affairs, Mr. Ahmad Saker Kargar, Minister of Water and Power and General Helal, Deputy Minister of Interior. All of them are former PDPA members. [111]

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

The Northern Alliance (NA) was an anti-Taliban coalition, which comprised several rival groups, led by General Dostum of Uzbek origin [Jonbesh-e-Melli-e-Islami], Karim Khalili (Hazara) [Hizb-i-Wahdat], Ismail Khan (Herati) [Jamiat-i-Islami] and Masoud (Tajik) [allied to Jamiat-i-Islami]. Following the terrorist attacks on the US on 11 September 2001, US-led coalition forces provided support to the armies of the NA, resulting in the defeat of the Taliban. [1a] (p61)

(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. [111]

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 had been appointed as the Vice-President and Minister of Public Works in the ITAA. He was assassinated in Kabul on 6 July 2002. [111]

Shura-yi Nazar-i Shamali (Shura-e-Nazar)

The Shura-yi Nazar-i Shamali was a regional military and political structure founded by Ahmad Shah Massoud. Its core leaders were Panjshiris associated with the Jamiat-I Islami party of former President Burhanuddin Rabbani. Many key figures in the Shura-yi Nazar now support a political party known as Nizhat-i Milli that is distinct from, but maintains links with, Jamiat-i Islami. [26d] (p1)

Taliban

Islamist fundamentalist group, mainly Sunni Pashtuns. In power 1996 to 2001 until ousted by US led coalition in November/December 2001. Largely disbanded. Leader: (Mullah) Mohammad Omar. [1b] First appeared in Afghanistan in late 1994. 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. [111] Taliban is the plural of 'Talib', meaning 'seeker of religious knowledge'. [1b]

(See also section 6C, Taliban paragraphs 6.331 – 6.353)

United National Islamic Front for the Salvation of Afghanistan (UIFSA) - commonly known as the **United Front** (the military wing of the exiled government, the Islamic State of Afghanistan) and **Northern Alliance**.

An anti-Taliban coalition which superseded the Supreme Council for the Defence of Afghanistan in June 1997. Reported to include the groups of the Northern Alliance (see above) plus the forces of Gulbuddin Hekmatyar and the Mahaz-i-Melli-i-Islami, led by Pir Sayed Ahmad Gailani. [1b] (p403)

ANNEX C: PROMINENT PEOPLE

Dr ABDULLAH ABDULLAH

Northern Alliance Foreign Minister. Appointed Minister for Foreign Affairs in the Afghan Interim Administration, 22 December 2001. Tajik [25ab]

DOSTUM (General) Abdul Rashid

Leader of the National Islamic Movement (Jonbesh-e-Melli-e-Islami), Uzbek. [1b] Former communist. Dostum's Jonbesh militia [see above under Jonbesh-e Melli-Islami] was part of the Northern Alliance forces that helped the United States drive out the Taliban in late 2001. His supporters have controlled a swath of the north ever since. Dostum supported Karzai as interim leader, cultivated contacts with U.S. and other foreign officials, and currently holds the post of presidential security adviser for the north. He is running for President in the October 2004 presidential elections. [18c]

KHAN (General) Mohammed Fahim

Appointed successor of Ahmed Shah Masoud following Masoud's assassination in September 2001. [1b] Appointed Vice Chair and Minister for Defence in the Afghan Interim Administration 22 December 2001. Tajik [25ab] Reported to be backing Yunus Qanooni in the forthcoming Presidential elections after being dropped from President Karzai's ticket. [18d]

HEKMATYAR (Engineer) Gulbuddin

Leader of Hizb-i-Islami Gulbuddin. Prime Minister 1996. [1b] Hekmatyar was at one time supported by Pakistan and Saudi Arabia, but eventually Pakistan turned against him preferring to give support to the Taliban. Hekmatyar fled Kabul when the Taliban swept to power and was given refuge by the Iranians. His vocal opposition to the new president Karzai was an embarrassment to the Iranian government who expelled him in February 2002 and closed his offices in Tehran. A number of his supporters were detained in Kabul in April 2002 accused of conspiring to plant bombs. Hekmatyar himself remains elusive although there are reports that he is in Afghanistan. [25ak] Hekmatyar was designated as a terrorist by the US on 19 February 2003. [2c]

(See also Section 6C, Hizb-e-Islami paragraphs 6.362 – 6.374)

KARZAI Hamid

Pashtun leader of Interim Administration from 22 December 2001. [1b] Leader of Transitional Administration and President of the Islamic Transitional Administration from June 2002. [40s] Chief of Popalzai tribe. Describes himself as moderate Muslim. Initially supported Taliban but feared overt Pakistani influence over the regime. Returned from exile in Pakistan shortly after start of US led military action. [25an] President Karzai has announced he is standing as a candidate in the presidential elections on 9 October 2004. [25i]

KHALILI (General) Abdol Karim

Hazara; Represented the Hizb-i-Wahdat (anti-Taliban faction) in the ITAA (one of the Vice Presidents) [11i]. Resigned on 26 July 2004 in order to participate in the elections.

[83] President Karzai named Khalili as his second vice president for the October 2004 presidential elections. [18d]

KHAN Ismail

A major figure in Herat since 1978 when he led one of the largest uprisings against the new communist government. He came to power in Herat in 1992 as the formerly Soviet-backed government in Kabul collapsed. Fled to Iran when the Taliban took control of the area in 1995 and with aid from the Iranian government, his forces regrouped to fight the Taliban. In 1997 he spent two years in a Taliban prison from which he escaped in 2000. In November 2001 he regained his previous position as governor of Herat following the fall of the Taliban. [17i] (p14-15) He was relieved of his additional post as military commander of western Afghanistan by President Karzai in August 2003. [25r]

MALIK (General) Abdul

Former leader of the National Islamic Movement (Jonbesh-e-Melli-e-Islami).Uzbek. [1b]

MASOUD (General) Ahmed Shah

Commander allied to the Jamiat-i-Islami. Tajik. Assassinated in September 2001. [1b]

MOHAQEQ Haji Mohammad

Former planning minister in the Karzai administration. Hazara commander and a key leader of Hizb-e Wahdat. [73d] Presidential candidate in the October 2004 elections. [26a]

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] The US-led coalition is continuing its search for him [25g]

QANOONI Yunus

Tajik; Represented Jamiat-i-Islami in the Transitional Administration. Special Advisor to the President on Internal Security and Minister of Education. [11i] Resigned on 26 July 2004. [83] Has announced that he will be running for President in the elections scheduled for October 2004. [18d]

RABBANI Burhanuddin

Leader of Jamiat-i-Islami. Held the position of President from 1992 to 1996. [1b]

SAMAR Sima

Vice Chair of Interim Administration and Minister for Women's Affairs from December 2001 to June 2002. [25ab] Hazara Doctor who runs an organisation in Quetta Pakistan providing health and education services for Afghan woman and children. [25ao] In June 2002 appointed Chair of the Independent Afghan Human Rights Commission. [40s]

SEDDIQI Suhaila

Health Minister in Interim Administration. Tajik doctor and army general; has remained in Afghanistan where she played a key role in keeping Kabul military hospital running. [25ap]

ANNEX D: The Cabinet Members and Vice Presidents and Advisors of Transitional Government of Afghanistan [67]

President:	H.E. Hamid Karzai
Vice Presidents:	Mareshal Mohammad Fahim [Khan] Karim Khalili (Resigned 26.07.04 [83]) Nematollah Shahrani Hedayat A. Arsala
Defence Minister	Mareshal Mohammad Fahim [Khan]
Foreign Minister	Dr. A. Abdullah
Interior Minister	Ali Ahmad Jalali
Planning Minister	Haji Mohammad Mohaqiq (until 7/03/04)[26a] Replaced by Ramazan Bashardost [38b]
Finance Minister	Dr. Ashraf Ghani
Education Minister	Yonus Qanooni (Resigned 26.07.04 [83]) Replaced by Ahmad Moshahed (from 31.08.04 [84a])
Borders & Tribal Affairs Minister	Arif Noorzai
Reconstruction Minister	Dr. M. Amin Farhang
Mines and Industries Minister	Hakeem Khan Tanaywal (from 13.04.04 [83])
Light Industries Minister	Mohammad Alem Razm
Women's Affairs Minister	Ms. Habiba Sorabi
Public Health Minister	Dr. Sohaila Siddiqi
Commerce Minister	Sayed Mustafa Kazemi
Agriculture Minister	Sayed Hussain Anwari
Justice Minister	A. Rahim Karimi
Communications Minister	Masoom Stanakzai
Refugees Affairs Minister	Enayatullah Nazari

Haj and Religious Affairs Minister	M. Amin Naziryar
Urban Affairs Minister	Eng. Yusuf Pashtun
Social Affairs Minister	Noor Mohammad Karkin
Water and Power Minister	A. Shaker Kargar
Irrigation and Environment Minister	Dr. A. Yusuf Nuristani
Martyrs and Disabled Minister	Abdullah Wardak
Higher Education Minister	Dr. Sharif Fayez
Civil Aviation and Tourism Minister	Mirwais Saddiq (killed 21/03/04) [25d] Replaced by Bismillah Besmil 13/04/04 [83]
Transportation Minister	S. Mohammad Ali Javed
Rural Development Minister	Hanif Atmar
National Security Advisor	Dr. Zalmai Rassoul
Supreme Court Chief Justice	Sheikh Hadi Shinwari
Special Advisor on Security	Yonus Qanooni
Advisor on Women's Affairs	Mahbouba Hoqooqmal

National Defence Commission:

Marshall M.Q. Fahim
 Gen. Abdul wali
 Mohammed karim khalili
 Gen. Ismail khan
 Gen. Abdurrashid Dostom
 Gen. Sayed Hosain Anwari
 Gen. Asef Delawar
 Gen. Abdurrahim Wardak
 Gov. Gulagha Sherzai
 Gen. Bismella khan
 Gen. Atiqulla Baryalai
 Gen. Golzarak Zadran
 Gov. Haji Din Mohammed
 Gen. Atta Mohammed

Constitution Review committee:

Prof. Nematollah Shahrani (Chairman)
 Prof. Abdussalam Azimi (Deputy Chairman)
 Prof. Mohammed Musa Marufi

Mohammed Musa Ashari
Dr. Mohammed Rahim Sherzoi
Mohammed Sarwar Danesh
Dr. Abdulhai Elahi
Mohammed Ashraf Rasuli
Abdulhagh Wala
Prof. Abdulaziz
Dr. Mohammed Tahir Burgi
Dr. Mohammed Yaqub Wahedi
Wakil Shamsoddin
Dr. Mohammed Alam Eshaqzai
Ghazi Mohammed Amin Weqad
Eng. Mohammed Ekram
Nadershah Nikyar
Likraj
Mrs. Parwin Mohmand
Mohammed Amin Ahmadi
Mir Mohammed Afzal Mirgazargah Sharif
Mrs. Fatima Gilani
Sulaiman Baloch
Mrs. Shokria Barekzai
Mrs. Sedigha Balkhi
Prof. Mohammed Hashem Kamali
Parwin ali Majruh
Eng. Merajuddin Hakema Mashal
Eng. Dawood Moosa
Naderali Mahdawi
Prof. Mohammed Tahir Hashimi
Mrs. Amena Afzali
Mohammed Siddigh Patman
Abdulhai khorasani
Dr. Mohammed Faruq (Secretary)

Afghan Assistance Coordination Authority Commission

Hamid Karzai, President
Hedayat Amin Arsala, Vice President
Dr. Abdullah Abdullah, Minister of Foreign Affairs
Ashraf Ghani Ahmadzai, Minister of Finance
Mir Mohammed Amin Farhang, Minister of Reconstruction
Hanif Atmar, Minister of Rural Dev.
Yusof Nooristani, Minister of Water Sources Environment
Abdullah Ali, Minister of Public Works
Mohammed Yusof Pashtoon, Minister of Urban Dev.
Massum Stanakzai, Minister of Telecommunication
Minister of Mines & Industry, TBA
Zalmai Rassoul, NSC Advisor
Anwarulhaq Ahadi, President Central Bank
Mohammed Yusof Etebar, Dir. State Admin. Affairs
Said Tayeb Jawad, Chief - of - Staff

ANNEX E: LIST OF DEPUTY MINISTERS IN THE TRANSITIONAL ADMINISTRATION

	MINISTRY	DEPUTY MINISTERS
1	Education	Zabihullah Esmati, Mohammad Moeen Marastyal + Said Eshraq
2	Reconstruction	Abdul Jabar Taqwa + Nazeer Ahmad Shaheedi
3	Information & Culture	Abdul Hameed Mubarez+ Rasool Yosufzai+Ms Sheela
4	Hajj	Mubarez+Moulaui Mohammad Qasim+ Ataurahman Saleem
5	City Reconstruction	Naseer Ahmad Sabiri
6	Public Works	Dr Wali Mohammad Rasooli
7	Social Works	Mohammad Ghous Bashiri+Zakiri
8	Power & Water	Eng Mohammad Amin Munsif+Eng Mohammad Yonus
9	Martyrs & Disabled	Wakil Baz Mohammad Zurmati
10	Women's Affairs	Tajwar Kakar+Shafiq Yarqeen
11	Higher Education	Mohaidin Dareez + Mohammad Sabir Khoshki
12	Aviation	Raz Mohammad Alami + Jahid Azimi
13	Rural Development	Mr Nazari+ Mr Nezami
14	Transport	Dr Abdull Hadi Musini
15	Agriculture	Eng Mohammad Sharif+Ghulam Mustafa Jawad
16	Defence	Abdul Rahim Wardak + General Mohibullah + Baz Mohammad Jouhari + Homayoon Fouzi + Gulzarak Khan
17	Interior	Fazel Ahmad Azimi+Ghulam Ghous Nasiri+ Hillaludin Hillal
18	Foreign Affairs	Mohammad Rahim Sherzoi+Mohammad Haidar Reza
19	Finance	Mr. Rahimi + Omar Sayed Jahish
20	Justice	Ashraf Rasooli + Dr Hashimzai
21	Planning	Ali Asghar Paiman+Haji Abdul Salam
22	Commerce	Ziauddin Zia + Nabi Farahi
23	Communication	Eng Mohammad Alim+Eng Baryalai
24	Borders Affairs	Alhaj Mirza Ali+Babrak Zoi+Abdul Qadir Emami
25	Refugees Return	Abdul Qadir+Moalim Naeem
26	Mines & Industries	Nazar Mohammad Mangal
27	Light Industries	Eng Mohammad Hashim Toufiqi+Mirza Khan Dalili
28	Public Health	Ferozudin Feroz+Dr Mehraban

Information supplied by the Afghan Ministry of Foreign Affairs September 2003.

ANNEX F: LIST OF FORMER TALIBAN MINISTERS

1. **Mullah Mohammad Rabbani**, Chairman of the Ruling Council, Head of the Council of Ministers;
2. **Mullah Hadji Mohammad Hassan**, First Deputy, Council of Ministers; Governor of Kandahar;
3. **Maulavi Abdul Kabir**, Second Deputy, Council of Ministers; Governor of Nangahar
4. **Mullah Mohammed Omar**, Leader of the Faithful ('Amir ul-Mumineen'), Afghanistan
5. **Mullah Mohammad Tahre Anwari**, Administrative Affairs;
6. **Maulavi Sayyed Haqqan**, Minister of Administrative Affairs;
7. **Maulavi Abdul Latif Mansur**, Minister of Agriculture;
8. **Mullah Shams-ur-Rahman**, Deputy Minister of Agriculture;
9. **Maulavi Attiqullah Akhund**, Deputy Minister of Agriculture
10. **Maulavi Abdul Ghafoor**, Deputy Minister of Agriculture;

11. **Akhtar Mohammad Mansour**, Minister of Civil Aviation and Transportation;
12. **Hadji Tahis**, Deputy Minister of Civil Aviation;
13. **Mullah Mohammad Naim**, Deputy Minister of Civil Aviation;
14. **Hidayatullah Abu Turab**, Deputy Minister of Civil Aviation;
15. **Mullah Yar Mohammad Rahimi**, Minister of Communication;
16. **Mullah Haji Alla Dad Tayeb**, Deputy Minister of Communication;
17. **Maulavi Abdul Razaq**, Minister of Commerce;
18. **Maulavi Faiz Mohammad Faizan**, Deputy Minister of Commerce;
19. **Maulavi Nik Mohammad**, Deputy Minister of Commerce;
20. **Mullah Matiullah**, Kabul Custom House;
21. **Maulavi Dadullah Akhund**, Minister of Construction;
22. **Mullah Hadji Ubaidullah Akhund**, Minister of Defence;
23. **Mullah Fazel M. Mazloom**, Deputy Chief of Army Staff;
24. **Mullah Baradar**, Deputy, Minister of Defence;
25. **Mullah Abdul Rauf**, Commander of Central Corps;
26. **Mullah Amir Khan Motaqi**, Minister of Education;
27. **Mullah Mohammad Nasim Hanafi**, Deputy Minister of Education;
28. **Maulavi S. Ahmed Shahidkhel**, Deputy Minister of Education;
29. **Mullah Abdul Wasay Aghajan Motasem**, Minister of Finance;
30. **Mullah Arefullah Aref**, Deputy Minister of Finance;
31. **Mullah Haji M. Ahmadi**, President of Da Afghanistan Bank;
32. **Abdul Wakil Mutawakil**, Minister of Foreign Affairs;
33. **Abdul Rahman Zahed**, Deputy Minister of Foreign Affairs;
34. **Mullah Abdul Jalil**, Deputy Minister of Foreign Affairs
35. **Dr. Abdul Satar Paktis**, Protocol Dept., Ministry of Foreign Affairs;
36. **Maulavi Faiz**, Information Dept., Ministry of Foreign Affairs;
37. **Shams-us-Safa Aminzai**, Press-Centre, Ministry of Foreign Affairs;
38. **Maulavi Abdul Baqi**, Consulate Dept., Ministry of Foreign Affairs;
39. **M. Jawaz Waziri**, UN Dept., Ministry of Foreign Affairs;
40. **Maulavi Djallalouddine Haqani**, Minister of Frontier Affairs;
41. **Maulavi Abdul Hakim Monib**, Deputy Minister of Frontier Affairs;
42. **Alhaj M. Ibrahim Omari**, Deputy Minister of Frontier Affairs;
43. **Qari Din Mohammad**, Minister of Higher Education;
44. **Maulavi Hamidullah Nomani**, High Ranking Official in the Ministry of Higher Education;
45. **Zabihullah Hamidi**, Deputy Minister of Higher Education;
46. **Maulavi Arsalan Rahmani**, Deputy Minister of Higher Education;
47. **Maulavi Qudratullah Jamal**, Minister of Information;
48. **Mullah Abdul Baqi**, Vice-Minister of Information and Culture;
49. **Maulavi Abdul Rahman Ahmad Hottak**, Deputy (Cultural) Minister of Information and Culture;
50. Information and Culture;
51. **Maulavi Rahimullah Zurmati**, Deputy (Publication) Minister of Information and Culture;
52. **Abdulhai Motmaen**, Information and Culture Dept., Kandahar;
53. **Maulavi Mohammad Yaqoub**, Head of BIA;
54. **Mullah Abdul Razaq**, Minister of Interior Affairs;
55. **Mullah Abdul Samad Khaksar**, Deputy (Security) Minister of Interior Affairs;
56. **Mohammad Sharif**, Deputy Minister of Interior Affairs;
57. **Maulavi Noor Jalal**, Deputy (Administrative) Minister of Interior Affairs;
58. **Maulavi Saed M. Azim Agha**, Passport and Visa Dept;
59. **Mullah Nooruddin Turabi**, Minister of Justice;
60. **Maulavi Jalaluddine Shinwari**, Deputy Minister of Justice;
61. **Alhaj Mullah Mohammad Essa Akhund**, Minister of Mines and Industries;

62. **Maulavi Sayeedur Rahman Haqani**, Deputy Minister of Mines and Industries;
63. **Mullah Abdul Salam Zaief**, Deputy Minister of Mines and Industries;
64. **Maulavi Mohammad Azam Elmi**, Deputy Minister of Mines and Industries;
65. **Qari Din Mohammad Hanif**, Minister of Planning;
66. **Maulavi Ezatullah**, Deputy Minister of Planning;
67. **Maulavi M. Musa Hottak**, Deputy Minister of Planning;
68. **Mullah Mohammad Abbas Akhund**, Minister of Public Health;
69. **Sher Abbas Stanekzai**, Deputy Minister of Public Health;
70. **Maulavi Mohammadullah Mati**, Minister of Public Works;
71. **Maulavi Rostam Nuristani**, Deputy Minister of Public Works;
72. **Hadji Molla Atiqullah**, Deputy Minister of Public Works;
73. **Maulavi Najibullah Haqqani**, Deputy Minister of Public Works;
74. **Maulavi Sayyed Ghiassouddine Agha**, Minister of Haj and Religious Affairs
75. **Maulavi Moslim Haqqani**, Deputy Minister of Haj and Religious Affairs;
76. **Maulavi Qalamudin Momand**, Deputy Minister of Haj Affairs;
77. **Maulavi Abdul Raqib Takhari**, Minister of Repatriation;
78. **Ramatullah Wahidyar**, Deputy Minister for Martyrs and Repatriation;
79. **Mohammad Sediq Akhundzada**, Deputy Minister of Martyrs and Repatriation;
80. **Maulavi Mohammad Wali**, Minister of Department of Preventing Vice and Propagating Virtue;
81. **Maulavi Mohammad Salim Haqqani**, Deputy Minister of Preventing Vice and Propagating Virtue;
82. **Maulavi Sayed Esmatullah Asem**, Deputy Minister of Preventing Vice and Propagating Virtue;
83. **Qari Ahmadulla**, Minister of Security (Intelligence);
84. **Maulavi Abdul-Haq-Wasseq**, Deputy Minister of Security (Intelligence);
85. **Maulavi Ehsanullah**, Deputy Minister of Security (Intelligence);
86. **Mullah Habibullah Reshad**, Head of Investigation Dept.;
87. **Mullah Ahmed Jan Akhund**, Minister of Water and Electricity;
88. **Eng. Mohammad Homayoon**, Deputy Minister of Water and Electricity;
89. **Maulavi Saiduddine Sayyed**, Vice-Minister of Work and Social Affairs;
90. **Maulavi Abdul Jabbar**, Governor of Baghlan Province;
91. **Maulavi Nurullah Nuri**, Governor of Balkh Province; Head of Northern Zone;
92. **Muhammad Islam**, Governor of Bamiyan Province;
93. **Mullah Janan**, Governor of Fariab;
94. **Mullah Dost Mohammad**, Governor of Ghazni Province;
95. **Maulavi Khair Mohammad Khairkhwah**, Governor of Herat Province;
96. **Maulavi Abdul Bari**, Governor of Helmand Province;
97. **Maulavi Walijan**, Governor of Jawzjan Province;
98. **Mullah M. Hasan Rahmani**, Governor of Kandahar Province;
99. **Mullah Manan Nyazi**, Governor of Kabul Province;
100. **Maulavi A. Wahed Shafiq**, Deputy Governor of Kabul Province;
100. **Alhaj Mullah Sadudin Sayed**, Mayor of Kabul City;
101. **Maulavi Shafiqullah Mohammadi**, Governor of Khost Province;
102. **Maulavi Nazar Mohammad**, Governor of Kunduz Province;
103. **M. Eshaq**, Governor of Laghman Province;
104. **Maulavi Zia-ur-Rahman Madani**, Governor of Logar Province;
105. **Maulavi Hamsudin**, Governor of Wardak Province;
106. **Maulavi A. Kabir**, Governor of Nangarhar Province;
107. **Mullah M. Rasul**, Governor of Nimroz Province;
108. **Maulavi Tawana**, Governor of Paktia Province;
109. **Mullah M. Shafiq**, Governor of Samangan Province;
110. **Maulavi Aminullah Amin**, Governor of Saripul Province;

111. **Maulavi Abdulhai Salek**, Governor of Urouzgan Province;
112. **Maulavi Ahmad Jan**, Governor of Zabol Province;
113. **Noor Mohammad Saqib**, Chief Justice of Supreme Court;
114. **Maulavi Sanani**, Head of Dar-ul-Efta;
115. **Maulavi Samiullah Muazen**, Deputy of High Court;
116. **Maulavi Shahabuddin Delawar**, Deputy of High Court;
117. **Abdul Rahman Agha**, Chief Justice of Military Court;
118. **Mullah Mustasaed**, Head of Academy of Sciences;
119. **Maulavi Esmatullah Asem**, SG of Afghan Red Crescent Society (ARCS);
120. **Maulavi Qalamuddin**, Head of Olympic Committee;
121. **Abdul Salam Zaeef**, Taliban Ambassador to Pakistan;
122. **Abdul Hakim Mujahid**, Taliban envoy to the United Nations;
123. **General Rahmatullah Safi**, Taliban representative in Europe;
124. **Mullah Hamidullah**, Head of Ariana Afghan Airlines;
125. **Alhaj Mullah Sadruddin**, Mayor of Kabul City;
126. **Amir Khan Muttaqi**, Taliban representative in UN-led talks;
127. **Mr Jan Mohammad Madani**, Charge d'Affaires, Taliban Embassy, Abu Dhabi;
128. **Mr Shamsalah Kmalzada**, Second Secretary, Taliban Embassy, Abu Dhabi;
129. **Mr Azizirahman**, Third Secretary, Taliban Embassy, Abu Dhabi;
130. **Mr Mawlawi Abdul Manan**, Commercial Attache, Taliban Embassy, Abu Dhabi;
131. **Malawi Abdul Wahab**, Taliban Chargé d'Affaires in Riyadh,

Taliban "Embassy", Islamabad

132. **Mullah Abdul Salam Zaeef** (Ambassador Extraordinary & Plenipotentiary)
133. **Habibullah Fauzi** (First Secretary/Deputy Head of Mission)
134. **Mohammad Sohail Shaheen** (Second Secretary)
135. **Mohammad Sarwar Siddiqmal** (Third Secretary)
136. **Mullah Mohammad Zahid** (Third Secretary)
137. **General Abdul Qadeer** (Military Attache)
138. **Maulavi Nazirullah Anafi** (Commercial Attache)
139. **Maulavi Abdul Ghafar Qurishi** (Repatriation Attache)
140. **Mohammad Daud** (Administrative Attache)
Taliban "Consulate General", Peshawar
141. **Maulavi Najibullah** (Consul General)
142. **Qari Abdul Wali** (First Secretary)
143. **Syed Allamuddin** (Second Secretary)
144. **Maulavi Akhtar Mohammad** (Education Attache)
145. **Alhaj Maulavi Mohammad Saddiq** (Trade Representative)
Taliban "Consulate General", Karachi
146. **Maulavi Rahamatullah Kakazada** (Consul General)
147. **Mufti Mohammad Aleem Noorani** (First Secretary)
148. **Haji Abdul Ghafar Shenwary** (Third Secretary)
149. **Maulavi Gul Ahmad Hakimi** (Commercial Attache)

Taliban "Consulate General", Quetta

150. **Maulavi Abdullah Murad** (Consul General)
151. **Maulavi Abdul Haiy Aazem** (First Secretary)
152. **Maulavi Hamdullah** (Repatriation Attache)

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