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AFGHANISTAN (1)

UPDATE TO THE
BACKGROUND PAPER ON
REFUGEES AND ASYLUM SEEKERS FROM
AFGHANISTAN

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AFGHANISTAN (1)

PREFACE

Afghanistan has been an important source country of refugees and asylum-seekers over a number of years. This paper seeks to define the scope, destination, and causes of their flight.

In the first part, the paper provides a statistical overview of refugees and asylum-seekers from Afghanistan in the main European asylum countries, describing current trends in the number and origin of asylum requests as well as the results of their status determination. The data in annex are derived from government statistics made available to UNHCR and are compiled by its Statistical Unit.

The second part of the paper contains information regarding the conditions in the country of origin, which are often invoked by asylum-seekers when submitting their claim for refugee status. The Country Information Unit of UNHCR's Centre for Documentation and Research (CDR) conducts its work on the basis of publicly available information, analysis and comment, with all sources cited.

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1. ASYLUM APPLICATIONS AND REFUGEE STATUS DETERMINATION PERTAINING TO AFGHAN NATIONALS IN EUROPE

1.1 ASYLUM APPLICATIONS

In 1997, 16,100 Afghan nationals applied for asylum in the 19 European countries considered here, 31 per cent more than in 1996 (12,200) and the highest number since, at least, 1990. During 1990-1994, the annual number of Afghan asylum-seekers in Europe varied between 7,500 and 9,300 (page 1, first table). Based on the 1998 figures in Germany and the Netherlands, the two countries which received three out of every four Afghan asylum-seeker in 1997, the total number of Afghan asylum applications submitted in Europe in 1998 is likely to have stabilized (see box below).

In the past, Afghan asylum-seekers have shown a very strong preference for Germany: the country received 64 per cent of all Afghan asylum applications submitted in Europe during 1990-1997. During the eight years under consideration, Afghan asylum applications in Germany have remained quite stable, between 5,500 and 7,700 per annum. More recently, however, the Netherlands has become the major destination of Afghan asylum-seekers in Europe. Whereas the country received less than 600 Afghan asylum-seekers during 1990-1992, annual arrivals reached 6,000 or more during 1997 and 1998. If one considers only the number of "first" applications submitted in Germany, the number of Afghan asylum-seekers in the Netherlands was 25 per cent higher than in Germany in 1997 and even 88 per cent higher in 1998. This remarkable change in the inflow of Afghan asylum-seekers is illustrated in the table below (see also the graph on page 15).

Asylum applications in Germany ("first" applications) and the Netherlands, 1995-1998								
	1995	1996	1997	1998	1995	1996	1997	1998
	Absolute				Percentage			
Germany	7,500	5,700	4,700	3,800	79.8	65.5	43.9	34.9
Netherlands	1,900	3,000	6,000	7,100	20.2	34.5	56.1	65.1
Total	9,400	8,700	10,700	10,900	100.0	100.0	100.0	100.0

Consequently, Germany's share in receiving Afghan asylum-seekers in Europe fell from more than 80 per cent during 1990-1992 to less than 40 per cent in 1997. Together, Germany and the Netherlands received 84 per cent or more of all Afghan asylum applications submitted in Europe during 1990-1997 (see page 1 of the Annex).

Afghan asylum applications in Austria increased from less than 100 (or 1% of the European total) in 1990-1992 to more than 700 in 1996/7 (some 5% of the European total).

1.2 RECOGNITION UNDER THE 1951 UNITED NATIONS CONVENTION

During 1990-1997, some 17,000 Afghan asylum-seekers were recognized under the 1951 United Nations Convention relating to the Status of Refugees in the 19 European countries under consideration. The largest numbers were granted asylum in Germany (8,700 or 52 per cent of the European total) and the Netherlands (5,700 or 33%) (see page 2).

1.3 REJECTIONS

Some 46,000 Afghan asylum requests were rejected in Europe during 1990-1997 (page 3).

1.4 HUMANITARIAN STATUS

During 1990-1997, some 14,400 Afghan nationals were allowed to remain on humanitarian grounds, 43 per cent (6,200) of whom were allowed to stay in the Netherlands and some 31 per cent (4,500) in Germany (page 4).

1.5 RECOGNITION RATES

During 1990-1997, 22 per cent of all Afghan asylum-seekers were granted refugee status under the 1951 United Nations Convention. When the granting of humanitarian status is included, the recognition rate for Afghan nationals in Europe amounts up to 40 per cent (page 5).

1.6 AFGHAN ASYLUM APPLICATIONS AND DECISIONS COMPARED TO TOTAL APPLICATIONS AND DECISIONS

From the above, it can be concluded that recognition rates of Afghan asylum-seekers are relatively high as compared to all nationalities. This is confirmed by information presented on page 7 and 8: during 1990-1997, 2.4 per cent of all asylum applications concerned Afghan nationals, as compared to 5 per cent of all Convention recognitions and 18 per cent of all grants of humanitarian status.

The share of Afghan asylum-seekers in the total number of asylum-seekers in Europe increased from 1.1 per cent in 1992 to some 5 per cent in 1997.

2. COUNTRY BACKGROUND INFORMATION

2.1 GENERAL INFORMATION

Afghanistan, proclaimed by the purist Islamist *Taliban* government as the Islamic Emirate of Afghanistan since October 1997 (U.S. Department of State, January 1998), is located between the Indian subcontinent, Central Asia, and the nations of the Middle East (Afghanistan: Basic Facts, 1998). Although it has no access to the sea, its location central to wars, migration and the trade that dominated inner Asia until early modern times. It is bordered by Pakistan on the east and south, Tajikistan, Uzbekistan and Turkmenistan on the north, Iran on the west, and China in the extreme northeast (*ibid.*).

Population movements across the border of Afghanistan, and internal displacements make it difficult to obtain reliable population figures. One July, 1998 estimate of the population in Afghanistan was 24,792,375 (CIA World Factbook 1998, 1998). Considerable variation in the types of terrain, and obstacles imposed by high mountains and deserts, account for the country's marked ethnic and cultural differences (*ibid.*). Afghanistan is still largely a tribal society, divided into many tribes, clans and smaller groups (Minority Rights Group, 1992, 311-312).

The *Pashtuns* (also called *Pathans*) are the largest single ethnic group constituting some 40 % of the population (Facts on Afghanistan, 1998; Jawad, N., February 1992, 2). They are predominantly Sunni Muslims and live mainly in the centre, south and east of the country (Europa Publications Limited, 1996, 52). *Pashtuns* make up the great majority of the refugees in Pakistan. The *Pashtun* tribal population of Pakistan's North-West Frontier Province (NWFP) still has much in common in culture, language and traditions with their fellow Pashtu-speakers across the Duran Line in Afghanistan (Hyman, A., January 1987, 87). The British-drawn Duran Line of 1893 demarcated the border of modern-day Pakistan and Afghanistan with little or no thought to the *Pashtun* people who lived on either side (Mayotte, J., 1992, 132). There is a long tradition of mobility among the *Pashtuns* who live in the NWFP and those of Eastern Afghanistan. This is especially so among the *Pashtun* nomads - *kuchis* or *powindahs* as they are respectively known in Afghanistan and Pakistan - some 60,000 of whom were accustomed to moving annually with their herds between summer pastures in Afghanistan and winter pastures in Pakistan. Others were merchants or businessmen, with interests in Kabul, Kandahar and Jalalabad in Afghanistan and Peshawar in Pakistan, who moved regularly between the two countries (Male, B., 1981, 39).

The *Tajiks* are the second largest group, whose language is Persian (Facts on Afghanistan, 1998). Most of them are Sunni Muslims, but Shi'a Muslim *Tajiks* are also found in the West of the country (around and in the city of Herat), and in Kabul. The *Panjsheeris* are a sub-group of *Tajiks* who also practise Sunni Islam, and speak a language known as Panjeri, a dialect of Dari (Jawad, N., February 1992). The *Hazaras* are of Eastern Turkic origin and followers of the Shi'a Muslim confession using Farsi as their *lingua franca*. The *Uzbeks* and *Turkomans* are followers of the Sunni Muslim tradition and are ethnically and linguistically Turkic. Other Afghan Turkic groups include the *Kypchak*, *Kazakh*, *Aimaq*, *Wakhi* and *Kirghiz*. The *Nuristanis* live in the middle of the Hindu Kush mountain range in four valleys, with each valley having its own district language/dialect - *Kati*, *Waigali*, *Ashkun* and *Parsun* (Jawad, N., February 1992). The *Baluchis* and *Brahuis* practise Sunni Islam and their languages are Brahui and Baluchi (Jawad, N., February 1992).

The official religion of Afghanistan is Islam. Muslims comprise 99 per cent of the population, approximately 80 per cent of them Sunni and the remainder Shi'a followers (Europa Publications Limited, 1996, 74). The Shi'a minority is concentrated in central and western Afghanistan (Hyman, A., January 1987, 80). The role of Islam within Afghanistan differs according to the traditional culture of each ethnic group. The *Pashtuns*, for instance, believe they are 'more *Pashtun* than Muslim' and have their own code of conduct, *Pashtunwali* (or *Pukhtunwali*) (Jawad, N., February 1992). According to an estimate, the *Ismailis*, a Muslim minority group that split from the Shi'a in 765, consist of two percent of the total Muslim population in Afghanistan (Encyclopedia of the Third World, 1992, 2). Other minorities in Afghanistan include Hindus, Sikhs and Jews (Europa Publications Limited, 1996, 74). The country's Hindu and Sikh population, which once numbered about 50,000, has been reduced considerably in recent years as its members emigrated or take refuge abroad (Swiss Federal Office for Refugees, February 1996).

Since 1936 Pashtu, an Indo-European language, spoken by the *Pashtuns*, and Dari, a dialect of Farsi/Persian, mainly spoken by the *Tajiks*, *Farsis*, *Hazaras* and *Aimaq*, have been the official languages of the country, using an augmented Arabic script (Swiss Federal Office for Refugees, February 1996). In addition to this, since 1978 a multitude of languages, used by the ethnic minorities such as the *Uzbeks*, *Turkomans*, *Baluchis*, *Nuristanis*, and *Pashai* have been officially recognized (*ibid.*).

Regional Dimensions

Afghanistan has long been a country in turmoil. For decades, Islamic movements, communists and tribal warriors have struggled for control of a nation that is geographically and ethnically fragmented. The conflict in Afghanistan has continued to have an international dimension, both from political and economic perspectives.

Pakistan saw the conflict as an opportunity to reverse its relations with Afghanistan, strategically important in its own worsening tensions with (Rubin, B., 1998, 15). Pakistan's policy change in 1994-95 towards its support for the *Taliban* resulted from economic and strategic considerations. As Iran started busily signing joint ventures with Central Asian countries, Pakistan hoped that the *Taliban* would restore order and reopen roads, and provide it with the opportunity to expand markets to Central Asia (The Economist, 5 October 1996, 20). Pakistan has also supported an U.S.-Saudi Arabian plan to build an oil-and-gas pipeline which brings oil from Turkmenistan and gas from Northern Afghanistan to Pakistan (*ibid.*). By mid-1997 it was widely believed that the *Taliban* was supported by Pakistan and also Saudi Arabia; on the opposing side, to various degrees, were Iran, India, the Central Asian states (which feared the encroachment of the *Taliban*'s fundamentalism) and Russia (Europa Publications Limited, 1998, 321). In 1998, Prime Minister Nawaz Sharif and Army Chief of Staff General Jehangir Karamat (both *Punjabis*) supported a more neutral policy and a negotiated settlement in Afghanistan while the foreign minister (a *Pashtun*) and the intelligence services (*Pashtun* dominated) wished to adopt a clear pro-*Taliban* line (Rubin, B., 1998, 16). With the official commencement of nuclear rivalries between Pakistan and India in the summer of 1998, support for the *Taliban* by Pakistan was no longer questioned (*ibid.*).

While Afghanistan's status in relation to the U.S. had long since changed after the Cold War, it continues to engage U.S. interest in such areas as containing terrorism, curbing illegal drug trafficking, and checking human rights violations (U.S. Institute of Peace, October 1998, 2). Unsubstantiated rumours that the U.S. had supported the *Taliban* in order to build pipelines and isolate Iran were put to rest when the U.S. attack on *Taliban*-controlled Afghanistan took place (Washington Post, 22 August, 1998). Negotiations that seemed to be heralding in a changed U.S. attitude towards Afghanistan were thwarted by the underlying reasons for the attack, the harbouring by the Taliban of Osama bin Laden, accused by the U.S. of involvement in the bombings of its embassies in East Africa in mid-1998 (Washington Post, 19 April, 1998). Furthermore, since the appointment of Madeleine Albright as the U.S. Secretary of State the U.S. condemnation of the *Taliban*'s gender policies has been consistent (Rubin, B., 20). The U.S. has in the past been keen to offset Iranian influence on the spread of terrorism and expansion of markets in the region (Far Eastern Economic Review, 10 October 1996, 17).

Iran considers itself the protector of the Shi'a *Hazaras* from the *Taliban* (ibid.). Iran, however, also suspects that support for the *Taliban* from Pakistan and Saudi Arabia is not merely an alliance in a struggle between Islamist factions but rather part of a U.S. plan to encircle and isolate Iran (Rubin, B., 1998, 19). The government of Iran reacted strongly to the *Taliban* take-over of north Afghanistan, especially the capture and slaying of 8 diplomats (BBC, 18 November 1998). Recent border skirmishes between Iran and Afghanistan highlight the real potential for an expansion of tensions to a wider, interstate war (U.S. Institute of Peace, October 1998, 2). The U.S. and Iran have, more recently, looked upon Afghanistan as a place where both countries have some common interests and can collaborate (Rubin, B., 1998, 21).

Russia had backed Burhanuddin Rabbani's government in Kabul and fearing that a Pakistani backed *Pashtun* movement such as the *Taliban* would be expansionist, threatening Russia's interests in Central-Asian countries. Uzbekistan's President Islam Karimov had clandestinely supported his fellow *Uzbek*, General Abdul Rashid Dostum, with tanks, aircraft and technical personnel, with an expectation that *Uzbek* dominated provinces in northern Afghanistan would provide a buffer against the spread of fundamentalism from Afghanistan. Tajikistan, racked by civil war and with a government backed by Russian troops, has been sympathetic to fellow *Tajiks* led by President B. Rabbani. Many Afghan *Tajiks* also support the idea of a greater Tajikistan - merging *Tajik* areas of Afghanistan with Tajikistan (The Economist, 17 May 1997, 70).

2.2 HISTORICAL BACKGROUND

2.2.1 The Rise of Communist and Islamic Movements

At the initial phase of the Cold War, King Zahir Shah of Afghanistan, and his Prime Minister, Lt-Gen. Muhammad Daoud chose to be willing beneficiaries from both East and West (Mayotte, J., 1992, 136). The Soviet Union built an international airport in Kabul and the United States did the same in Kandahar (Bowers, C., June/July 1994). Until the mid-1970, the U.S. and U.S.S.R competed for influence over a regime they both supported rather than backing political factions seeking to replace it. In 1973, however, Prime Minister Daoud

overthrew his cousin King Zahir Shah in a *coup d'état*, abolished the monarchy, and proclaimed himself President. Both superpowers and regional states feared that the abolition of the monarchy without the institutionalization of an alternative political system could provoke a future succession crisis. The tension between the U.S. and the U.S.S.R over Afghanistan increased, affecting foreign powers' attitudes toward domestic political forces in Afghanistan. Both the U.S.S.R and Pakistan, the latter with U.S. support, increased their aid to Communist and Islamic movements challenging the Afghan regime (Rubin, B., February 1996, 10).

The following overview of major political parties, movements and militias and their regional power structures is derived from B. Rubin's research as found in "Afghanistan: Persistent Crisis Challenges the UN System" (August 1998) and "Afghanistan: The Forgotten Crisis" (February 1996), *The Political Parties of Asia and the Pacific* (1992) unless otherwise noted. The description of parties, movements and militias includes subsequent developments following the withdrawal of Soviet troops from Afghanistan in February 1989:

- *The People's Democratic Party of Afghanistan (PDPA)*

The PDPA was founded in 1965. In 1967 the party split into two factions: *Khalq* (the People), led by Nur Muhammad Taraki and Hafizullah Amin, and *Parcham* (the Banner), led by Babrak Karmal. While *Parcham* was mostly supported by the middle and upper ranks of the urban elite, many of whom were Persian speakers, the group also included many *Pashtuns* mostly either urbanized or of relatively high social status, while *Khalq* recruited from the newly educated of rural background, mainly tribal *Pashtuns* from more humble backgrounds. Many of the leaders of both groups had studied or received military training in the U.S.S.R, and the Soviet Union put pressure on the factions to reunite in 1977.

- *The Watan (Homeland) Party*

The former PDPA changed its name in 1988. Under M. Najibullah who had been President from 1987 to 1992, the party continued to be riven by factional and increasingly, ethnic conflicts. President M. Najibullah balanced the *Pashtun*-dominated officer corps of the army with a Presidential Guard recruited from Kabul and largely non-*Pashtun* militias in northern Afghanistan. However, such balancing was possible only as long as he remained the conduit for Soviet aid flows. When these flows ceased during 1991 and 1992, the party and army dissolved.

- *Jamiat-i Islami (Islamic Society)*

After 1965, an Islamic movement gained influence among students and professors at Kabul University. In 1973, the movement formed a leadership *shura* (council). Burhanuddin Rabbani, a lecturer at the *sharia* (Islamic law) faculty of Kabul University, was chosen as chairman of the council, which selected the name for the movement. The deputy head was another lecturer,

Abdul Rabb al-Rasul Sayyaf and the main student leader was Gulbuddin Hikmatyar. These three men came to lead the three main Sunni Islamist parties.

The *Jamiat-i Islami* is a predominately *Tajik* Islamist party which developed a strong ethnic character as the dominant party in the Persian speaking areas of northeastern and western Afghanistan. After the withdrawal of the Soviet Union, some non-*Pashtun Parchamis* sought to secure their future by allying with this party. Several key government figures (notably *Tajik* army officers and intelligence officers) also joined them. At first B. Rabbani received some financial and material support from the Government of Saudi Arabia, but this appears to have ended in 1993.

In the North-East, a mountainous area east of the Salang highway that links Kabul to the USSR, B. Rabbani's military commander Ahmad Shah Massoud built the most sophisticated military-political organization, the Supervisory Council of the North (*SCN-Shura-yi Nazar-i Shamali*). The SCN coordinated *Jamiat* commanders in about five provinces and also created region-wide forces which developed into Massoud's Islamic Army (*Urdu-yi Islami*). The SCN oversaw a regional administration from its base in Taloqan, centre of Takhar province, which Commander Massoud captured after the Soviet troops withdrew in mid-1988. The area includes sources of precious stones (emeralds and lapis lazuli) and the opium-growing area of Badakhshan. Some commanders in control of parts of Badakhshan support Rabbani, though a number defected to the *Taliban* in August 1998. Massoud's front line has been 25 km north of Kabul, and until the Taliban victories he controlled the Bagram air base, from which he could shell Kabul. He has since retreated into the Panjsher Valley.

- *Hizb-i Islami* (Islamic Party)

The *Hizb-i Islami* led by Gulbuddin Hikmatyar was founded in 1979, with the aim to create a strict Islamic state in Afghanistan. *Hizb* was the most radical, predominantly *Pashtun*, Islamist party, which had received direct support from Pakistan's military and intelligence services, as well as by the Pakistani Islamist Party, the *Jamaat-i Islami* before the *Taliban's* emergence. Despite little territory under their control, it had forces in all Sunni areas and had relatively well-organized militias based in the refugee areas in Pakistan. G. Hikmatyar also received support from other Arab countries. After its defeat at the hands of the *Taliban* in February 1995, this movement ceased to be a major military power and now controls few military or political resources.

- *Junbish-i Milli-yi Islami* (National Islamic Movement)

The *Junbish-i Milli-yi Islami* was founded by General Abdul Rashid Dostum. After the dissolution of the Soviet Union in 1991, the government's non-*Pashtun* militias in the north centred in the city of Mazar-i Sharif, constituted themselves into a new organization, the *Junbish-i Milli-yi Islami*. *Junbish* included many former *Parchamis*. A large number of fighters forming part of this organization (the numbers vary between 15,000 and 160,000) have had a reputation of being the best equipped of Afghanistan. General Dostum received support from Uzbekistan and from Russia. He had formed an alliance with G. Hikmatyar in 1994 and was part of the alliance formed against B. Rabbani, the 'Supreme Coordination

Council' (Swiss Federal Office for Refugees, February 1996). In May 1997, he was defeated by his own Commander, Abdul Malik Pahlawan who defected to the *Taliban*, and fled the country. Malik then turned on the *Taliban* and is accused of killing several thousand *Taliban* prisoners taken in Mazar at that time (Amnesty International, November 1997). Dostum, having fled to Turkey, returned to Afghanistan in September 1997 to oust Malik with the assistance of Uzbekistan and lead the successful relief of Mazar against another *Taliban* assault. While this force had been the strongest force in the north during 1992-1997, internal disputes have weakened it considerably.

- *Hizb-i Wahdat* (The Unity Party)

In 1988, Iran united eight Shi'a parties (all but *Harakat-i Islami*) into *Hizb-i Wahdat*. In 1993, *Wahdat* split into factions allied respectively with *Jamiat* and *Hizb*. In January 1996, Iran announced it had once again reunited the factions and reconciled them under President B. Rabbani. Commander Massoud took over Kabul in a February 1995 offensive after its ally, *Hizb-i Islam*, had been defeated by the *Taliban*. *Hizb-i Wahdat* effectively controls Central Afghanistan. Hazarajat remained under the control of *Hizb-i Wahdat*, though initially the *Jamiat* government and later the *Taliban* contested their power in the town of Bamiyan. In late August 1998, *Hizb-i Wahdat* continued to control the Hazarajat which was under *Taliban* blockade from both the north and south. *Wahdat* became the major military force in north Afghanistan and provided the backbone of resistance to the *Taliban's* attempts to capture Mazar-i Sharif.

- *Shura-yi Mashriqi* (Council of the East)

This faction regroups some former leaders of the *shura* of Jalalabad, notably Haji Abdul Qadir. Former Governor Abdul Qadir allegedly made a fortune smuggling consumer goods from Dubai to Pakistan and through the drug trade. Some small groups in the East are still said to be loyal to this group. Like Hikmatyar, he is *Pashtun*.

2.2.2 From the 1978 Revolution to the Fall of President M. Najibullah (1978-1992)

Political opposition to the government of M. Daoud culminated in leftist anti-Government demonstrations in Kabul in April 1978. In response, President Daoud arrested seven leaders of the PDPA, which had been reunited under the leadership of M. Taraki of the *Khalq* faction since 1977 (Amnesty International, 1995, 11; Mayotte, J., 1992, 135, 138). On 27 April 1978, the commanders of military and air force units in the Kabul area staged a *coup d'état*, which became known as the *Great Saur Revolution*, named for the month of the Afghan calendar in which it took place. President Daoud and his family were killed (Europa Publications Limited, 1996, 54).

After the Revolution, the Republic of Afghanistan was renamed the Democratic Republic of Afghanistan (DRA), and power was vested in a Revolutionary Council, with the PDPA allowed as the only political party. M. Taraki became President of the Revolutionary Council

and Prime Minister (Europa Publications Limited, 1996, 54). The DRA Government proclaimed socialist reform in favour of landless peasants, but these policies failed as the land reform and adult literacy campaigns caused widespread opposition. The opposition caused an armed insurrection in almost all provinces, and led to the flight of thousands of refugees to Pakistan and Iran, and to great economic dislocation. In 1979, President M. Taraki was overthrown and subsequently murdered by H. Amin, his Minister of Foreign Affairs, whose power had steadily increased over the preceding months (*ibid.*).

President H. Amin, who failed either to win the support of the opposition or to suppress them, and the flight of refugees from Afghanistan increased rapidly. The Government of Afghanistan accused Pakistan, Iran, the U.S., Egypt, the People's Republic of China, and other countries of aiding the opposition. The Soviet Union, who had continued to pressure for the adoption of more moderate policies and the formation of a broad-based government in Afghanistan, invaded Afghanistan in December 1979 and overthrew and killed *Khalqi* leader H. Amin (Europa Publications Limited, 1996, 54, 55). The Soviet Union installed the leader of the opposing (*Parcham*) faction, B. Karmal, as President of the country and General-Secretary of the PDPA. B. Karmal's disciple, M. Najibullah, became Director-General of the secret police, known as KHAD (*Khademat-e Ittela'at Dowlat* - State Information Services) (Rubin, B., January 1992, 2).

The major problem for the Karmal regime was the continuing civil war in Afghanistan. The anti-Government guerrilla forces, the *mujahedin*, despite being fragmented among local groups and many organizations operating from Afghan refugee communities in Pakistan and Iran, deprived the Government of authority over large areas of the countryside. The guerrilla groups were poorly armed at first, but in 1984-1985 they began to receive increased support from outside (Europa Publications Limited, 1996, 55). Significant financial and military supplies came primarily from Pakistan, Saudi Arabia, the U.S. and the People's Republic of China (Amnesty International, 1995, 11). The *mujahedin* movement called upon people to wage an Islamic struggle (*jihad*) against 'unbelieving' rulers, to form a national resistance against foreign invaders, and to defend personal and tribal honor (Rubin, B., January 1992, 2).

In May 1986, M. Najibullah, was appointed General-Secretary of the PDPA, in place of B. Karmal. In November 1986, M. Najibullah was elected President of Afghanistan and a new Constitution was adopted (Europa Publications Limited, 1996, 55). Some of the innovations incorporated into the Constitution were a multi-party political system, freedom of expression, and an Islamic legal system presided over by an independent judiciary. All of these measures, however, were largely outweighed by the broad powers of the president, who commanded a military and police apparatus under the complete control of the Homeland Party (*Hizb-i Watan*), as the PDPA became known in 1988 (Rubin, B., January 1992, 2).

Following the 14 April 1988 agreement between Afghanistan, Pakistan, the U.S.S.R. and the U.S., the departure of Soviet forces commenced in mid-1988 and was completed in 1989 (Palmer, R.R. & Colton, J., 1008). However, the supply of arms to both sides (the U.S. and Pakistan to the *mujahedin* and the Soviet Union to the regime in power) was not halted and violent conflict continued (Europa Publications Limited, 1996, 56). Under pressure from their U.S., Pakistani, and Saudi Arabian supporters, the Sunni groups chose an Afghanistan Interim Government-in-exile (AIG) at a *shura* (council) held in Pakistan in 1989 as the last Soviet troops were departing (Rubin, B., January 1992, 3). With the help of the U.S. Central

Intelligence Agency (CIA) and of the Pakistani military intelligence, new military campaigns were launched by the *mujahedin* in the latter half of 1990. As the civil war continued, ethnic divisions prevailed, within both the army and groups of the *mujahedin*, between the majority *Pashtuns* and minority ethnic groups such as the *Uzbeks* and the *Tajiks*. On 16 April 1992 President M. Najibullah was forced to resign by his own party following the capture of the strategically-important Bagram air-base and the nearby town of Charikar, by forces of *Jamiat-i Islami*, the most moderate and predominantly *Tajik* Islamist party (Europa Publications Limited, 1996, 56).

2.2.3 The Establishment of a Mujahedin Government and the Beginning of the New Phase of Civil War (1992-1994)

After the fall of President M. Najibullah, four main armed groups with different ethnic characteristics and foreign support initially fought for power in Kabul. The leader of the weakest party, Sebghatullah Mojaddedi, a conservative traditionalist religious leader, was chosen as president (Rubin, B., January 1992, 3). On 28 June 1992 S. Mojaddedi surrendered power to the so-called Leadership Council, which immediately offered B. Rabbani the presidency of the country and the concomitant responsibility of the Interim Council of Ministers for four months (Europa Publications Limited, 1996, 56). After the so-called Islamabad Accord of March 1993, Afghanistan was formally ruled by President B. Rabbani from *Jamiat-i Islami*. The post of Prime Minister went to the leader of *Hizb-i Islami*, G. Hikmatyar (Thomsen, T., & Winding, S., 9 November 1993, 3).

Renewed intense fighting broke out on 1 January 1994, when Prime Minister G. Hikmatyar, in a new alliance with *Uzbek* General Dostum (who headed his own National Islamic Movement in northern Afghanistan) attempted to force President B. Rabbani from office (Amnesty International, 11 April 1994, 1). The fighting over control of territory and political authority in Afghanistan intensified between the *Jamiat-i Islami*, led by President B. Rabbani and his Commander Massoud, and the alliance between the northern General Dostum and G. Hikmatyar referred to as the Supreme Coordination Council, with the backing of the *Hizb-i Wahdat* (Rubin, B., February 1996, 31).

In the meantime, the United Nations' efforts to promote a broad-based government acceptable to the various factions had continued and the U.N. peace envoy, former Tunisian Foreign Minister, Mahmoud Mestiri, finalized a proposal for transfer of power to a broad-based interim administration by the end of February 1994. However, this plan had to be postponed due to the absence of political will of major powers and political developments, particularly the emergence of a new political grouping, the *Taliban* (Rubin, B., 1996, 31). The term of office of President B. Rabbani, came to an end on 28 December 1994, but he remained president, pending the outcome of the U.N.-sponsored peace negotiations (U.S. Department of State, February 1996).

3. THE EMERGENCE OF THE TALIBAN AND THEIR CONSOLIDATION OF POWER

After 20 years of war against the former communist-led government in Kabul, the *Taliban* have emerged as the leading power in Afghanistan (US Institute of Peace, December 1998). While some Afghan nationalists have viewed the Islamically inspired *Taliban* as saviours of Afghan civilisation and sovereignty, persistent reports of human rights violations, especially against women, have been cause for widespread concern (*ibid.*). What follows is a brief account of the Taliban's rise from relative political obscurity to its current position of power.

The *Taliban* ("the Seekers") Movement was formed in 1994 by a group of graduates of Pakistani Islamic colleges (*madrassas*) on the border with Afghanistan, run by the *fundamentalist Jamiat-e-Ulema*. The *Taliban* are mostly *Pashtuns* from Kandahar in Southern Afghanistan and are led by a *mullah* (a village-level religious leader), whose name is Mohammad Omar (*The Economist*, 5 October 1996, 19). The *Taliban* advocated an 'Islamic Revolution' in Afghanistan, proclaiming that the unity of Afghanistan should be re-established in the framework of *Sharia* (Islamic law) and without the *mujahedin* (Swiss Committee for Support of the Afghan People, February 1995, 8). Their fighting ranks are mostly filled with former veterans of the war against Soviet forces. Encouraged by those Afghans who felt hostility to the local warlords, the *Taliban* induced armed men to desert their leaders and join them. They gained, at least to some extent, the support from the civilian population who had been frustrated by civil and ethnic strife in the country since 1992 (*ibid.*).

In November 1994 the *Taliban* captured the city of Kandahar in Southern Afghanistan from *mujahedin* commanders and moved north-eastwards to the provinces of Helmand, Khost and Wardak. Their most significant advance was the capture on 14 February 1995 of the headquarters of G. Hikmatyar's *Hizb-i Islami* in Charasyab, south of Kabul (*Amnesty International*, November 1996, 3). In early March 1995, *Taliban* forces entered the Karte Seh district in western Kabul and disarmed *Hezb-i Wahdat* militia who had been in control of the area. The *Taliban*'s presence there brought them face to face with President B. Rabbani's government forces. The attacks by Government troops led by Commander Massoud in Karte Seh on 10 March 1995 involved artillery, jet fighters and helicopter gunships and also fierce house-to-house fighting. The *Taliban* were pushed out of the area to Charasyab withdrawing further south to Maidan Shahr. Heavy fighting continued between government and *Taliban* forces over the control of the city which reportedly resulted in a high number of civilian casualties (*ibid.*). As of February 1995, the *Taliban* had taken control of nine of Afghanistan's 30 provinces (*The Economist*, October 1996, 20).

On 5 September 1995, the *Taliban* captured the city of Herat from the forces of the governor, Ismael Khan, who was allied to the government of President B. Rabbani. (Rubin, B., 1996, 27). Following a warning to diplomats, members of humanitarian organizations and all foreigners based in Kabul to leave by 15 September 1995, the *Taliban* forces threatened to bombard Kabul on 20 October if the forces of President B. Rabbani did not surrender within four days. As the *Hezb-i Islami* leader, G. Hikmatyar resumed the post of prime minister in a peace pact with President B. Rabbani, the fighting in Kabul broke out and the city became a target of indiscriminate bombing on almost a daily basis which caused the loss of countless civilian lives. Deadly rocket attacks on Kabul reached their peak in June 1996. On 11 September 1996 the *Taliban* captured Jalalabad, the eastern city bordering Pakistan and on 27 September 1996 they captured Kabul. Their first act was to execute and publicly hang former

President M. Najibullah, who since the fall of his Soviet-backed government in April 1992 had sought shelter in a UN compound (*ibid.*).

The capture of Kabul by the *Taliban* on 26 September 1996 quickly realigned political forces within Afghanistan and the region (Rubin, B., December 1996, 1). The non-*Pashtun* forces allied again as they did in the North Alliance of 1992. This time, however, after the defeat of the *Tajik* Commander Massoud, the Alliance was clearly under the leadership of the *Uzbek* General Dostum (*Far Eastern Economic Review*, 10 October 1996). The country was effectively partitioned between areas controlled by *Pashtun* and non-*Pashtun* forces, as the *Taliban* now controlled all the predominantly *Pashtun* areas of the country (as well as Herat and Kabul), while non-*Pashtun* organizations controlled the areas bordering on the Central Asian republics whose populations are ethnically non-*Pashtun*, such as *Uzbeks* and *Tajiks* (Rubin, B., December 1996, 1).

The principal areas of military contention have been the areas north of Kabul up to the Salang Pass, and the Northwest corner of the country near Qal-e-Naw. To the north of Kabul, the forces of the ousted government were pushed out of the towns of Charikar and Jebul Siraj and the front-line reached the village of Gulbahar at the mouth of Panjshir Valley, the stronghold of Commander A.S. Massoud. In the week of 14-20 October 1996 forces of General Dostum joined Commander Massoud's front line and fought their way to Kabul in a counter-attack. As a result of this counter-attack, the *Taliban* lost the strategic military air base at Bagram (*The Guardian*, 22 October 1996; *International Herald Tribune*, 25 October 1996). A second front line was opened in the North-West where the *Taliban* held territory bordering the area controlled by General Dostum (*Amnesty International*, November 1996, 4).

To the north of Kabul, the city of Charikar and Bagram military airbase were recaptured by the *Taliban* in early 1997 (*Reuters*, 17 January 1997). *Taliban* militias reportedly pushed further North and captured three districts in Kapisa Province in north-eastern Afghanistan, previously under the control of Commander Massoud's troops, pushing toward the Salang Pass to within 20 kilometres of the Soviet-built tunnel that leads through the Hindu Kush mountain range into provinces held by General Dostum (*International Herald Tribune*, 24 January 1997). The opposition reportedly gave up much of the territory without a fight (*International Herald Tribune*, 28 January 1997). In May 1997, however, the *Taliban* was reportedly pushed out of Jebul Siraj, a strategic town north of Kabul by forces of Commander A.S. Massoud (*International Herald Tribune*, 31 May-1 June 1997).

In the North-West, the fighting between the *Taliban* and the Northern Alliance intensified throughout late 1996 and early 1997 as the *Taliban* launched an offensive from Herat, which it had captured already in September 1995 (*International Herald Tribune*, 28 January 1997). The *Taliban* were pushed back but held the last pass before Herat. Fleeing intense fighting in Badghis province, as many as 50,000 people arrived in Herat and Qal'e-e-Naw, both under *Taliban* control. Most were from the Morghab region of Badghis Province and "virtually all" were ethnic *Pashtuns* (*Reuters*, 15 November 1996). At the peak of the displacement in late January 1997, the United Nations Office for the Coordination of Humanitarian Assistance to Afghanistan was quoted as saying that as many as four children were dying each day because of cold and hunger in the Sang-i-Atash area in the North-Western province of Badghis (*International Herald Tribune*, 28 January 1997).

In central Afghanistan, reports indicate that the *Taliban* had captured the *Hazara*-inhabited districts of Shekali and Sorkhi Parsa in Parwan province from the *Hizb-i Wahdat* (Reuters, 2 February 1997). In May 1997, the *Taliban* captured the Shiber Pass in central Afghanistan that leads to the opposition-held city of Bamyān and commands a strategic route to the north, although a spokesman for the opposition *Hezb-i-Wahdat* group denied the claim (Voice of America, 20 May 1997).

In the North, residents of Mazar-i Sharif, the northern Afghan capital controlled by General Dostum, were threatened in January 1997 when the *Taliban* opened its offensive north of Kabul, but three months later the city had withstood any attacks. Forces loyal to General Dostum destroyed parts of the Salang highway (the Salang tunnel north of Kabul, nearly three kilometres long, is the main route to the northern provinces and beyond to Central Asia), blocking direct access north of Kabul, and his Shi'a Muslim allies managed to block a *Taliban* attempt to bypass the crucial road link (International Herald Tribune, 9 May 1997). Mazar-i Sharif provided a potent symbol of defiance for the *Taliban* movement. General Dostum's spokesman, Mohammed Yousif, was quoted as saying that "General Dostum's fiefdom was the last refuge for intellectual Afghans, hundreds of whom fled here from Kabul when the capital was seized by the *Taliban* in September 1996" (Ibid.). In contrast to the areas under *Taliban* control, women here were unfettered by the veil and could mix with men at offices and schools. The city boasted more foreign diplomatic missions than Kabul, and alcohol, films, music, pictures of living creatures and even gambling are permitted (ibid.).

However, in late May 1997, the situation swiftly changed as the fragile coalition linking General Dostum with former government forces of President B. Rabbani, G. Hikmatyar's *Hezb-i-Islam* and the mainly Shi'a *Hizb-i-Wahdat* fell apart following the defection on 19 May 1997 of General Dostum's senior commander, Abdul Malik. On 24 May 1997, Mazar-i Sharif was captured by the fighters loyal to Commander Malik and placed under the full control of ethnic *Uzbek* fighters who had until a week before been part of the northern alliance opposing the *Taliban*. The towns of Kunduz, Baghlan and Samangan east of Mazar were announced as under *Taliban* control. General Dostum fled to Turkey (Reuters, 25 May 1997). The *Taliban* gathered 2,500 of its soldiers in Mazar-i Sharif a day after their new allies took the city. General Dostum's army, estimated to be 40,000 to 60,000 strong was reported to have been integrated into the *Taliban* forces (International Herald Tribune, 26 May 1997).

The *Taliban*'s brief control of the North swiftly ended on 28 May 1997, when the *Taliban* was defeated in the city of Mazar-i Sharif by *Uzbek* soldiers who broke the new alliance with the *Taliban*, through an 18-hour battle which left more than 100 people dead (International Herald Tribune, 30 May 1997). At the same time, Commander Massoud's resistance continued in the North-East as he launched his surprise attack on the *Taliban* on 25 May 1997 after one of his senior commanders, General Bashir Salangi, defected to the *Taliban* and gave its troops permission to move up the mountain road. Commander Massoud who is fighting from north-eastern strongholds in Takhar and Badakhshan provinces, apparently had moved reinforcements into the area the same day (The Washington Post, 26 May 1997).

By June 1997, the *Taliban* effectively controlled two-thirds of the country (International Herald Tribune, 2 June 1997). At the national level, the *Taliban* established an interim six member ruling council and a Council of Ministers (Europa Publication Limited, 1996, 72). During their offensive, the *Taliban* set up a *shura* (assembly) in towns under their control, made up of the most senior *Taliban* members in the area plus any former enemies they have

reached agreement with and any religious or tribal figures important enough to warrant inclusion. Each *shura* makes laws and collects taxes locally (*The Economist*, 5 October 1996, 19-21). According to the Special Rapporteur on Afghanistan for the United Nations Commission on Human Rights, departments of a number of ministries exist in each province but the implementation of policies is generally characterized by inconsistency since there is no efficient administrative structure (United Nations, February 1997). Despite the fact that the *Taliban* control at least 90 percent of the territory of Afghanistan, only Pakistan, Saudi Arabia and the United Arab Emirates recognise the *Taliban* as the legitimate government of Afghanistan (US Institute of Peace, October 1998, 3).

The *Taliban* have applied a strict interpretation of *Sharia*, enforcement of which is administered by the "Department for Promoting Virtue and Preventing Vice" or "religious police" (Reuters, 10 May 1997). The *Taliban*'s edicts include banning women from working or going out of their home unaccompanied by male relatives, banning girls from going to school, ordering men to grow beards and pray in the mosque five times a day (Amnesty International, June 1997). They also banned music, photography, and children's games such as kite flying. In towns under *Taliban* control, the *shuras* are both the accuser and judge. Reports by the press and by human rights organizations indicate that the edicts imposed by the *Taliban* were arbitrarily enforced to different degrees in different parts of the country. Punishments included severe beating and possible execution (Amnesty International, November 1996, 4; *Far Eastern Economic Review*, 17 October 1996; *The Times*, 5 October 1996). The U.N. Special Rapporteur on Afghanistan also noted that the religious police is empowered to carry out beatings of offenders on the spot and house-to-house searches for forbidden items (United Nations, February 1997).

4. RECENT DEVELOPMENTS (JUNE 1997 - JANUARY 1999)

By all accounts, the *Taliban* has made dramatic advances to the north, strengthening their position as the most powerful group in the country (BBC, 2 January, 1999). By the end of 1998 they were able to defeat two of the three principal military groups opposing them and gained more territory and more resources, including the principal points of entry into Afghanistan (*ibid.*). However, no sooner had the *Taliban* won a series of victories in the north, than the United States of America launched an attack on camps in Afghanistan allegedly used by Saudi Arabian dissident Osama bin Laden, whom the U.S. government held responsible for the bombing of US embassies in East Africa on 7 August 1998 (*The Washington Post*, 22 August, 1998).

Military campaigns launched by the *Taliban* to finally capture the towns of Mazar-i-Sharif and Bamiyan resulted in gross violations in human rights which did little to improve the image of the *Taliban* internationally (BBC, 5 November, 1998). Furthermore, tensions between the *Taliban* and neighbouring Iran rose sharply from August 1998 onwards after eight Iranian diplomats and a reporter were killed when the *Taliban* captured Mazar-i-Sharif (Rubin, B., 1998, 18). Outlined briefly below are some of the events that led the *Taliban* to this juncture.

This regional aspect of the Afghan conflict had been emphasised repeatedly in the past. In early June 1997 by the *Taliban*'s decision to close down the Iranian Embassy in Kabul following suspicions of Iran's support to the anti-*Taliban* northern alliance. The alliance had reportedly been strengthened by the inclusion of the forces of Hekmatyar and of the *Mahaz-i-Melli-i-Islami*, led by Pir Sayed Ahmad Gailani (Europa Publications, 1998, 321). This new coalition superseded the Supreme Council for the Defence of Afghanistan and came to be known as the United Islamic Front for the Salvation of Afghanistan (UIFSA). Despite the arrival of thousands of reinforcements from training camps in Pakistan, the *Taliban* suffered a series of military defeats in northern Afghanistan, and by late July 1997 UIFSA forces were within firing range of Kabul, having recaptured Charikar and the air base at Bagram (*ibid.*). In the same month the UN Security Council demanded a cease-fire and an end to all foreign intervention in Afghanistan (United Nations, July 1997).

In mid-August 1997 it was reported that the UIFSA had appointed a new Government, based in Mazar-i-Sharif, with B. Rabbani continuing as President. The former prime minister in the anti-*Taliban* administration, Hekmatyar, refused to recognise the new government. Within days of its appointment, however, seven members of the new government, including Prime Minister Ghafurzai, were killed in a plane crash. Since then, the United Front was unable to agree on a prime minister (Rubin, B., 1998, 14).

In September 1997 the main battlefield moved from Kabul when the *Taliban* launched an offensive in an attempt to recapture Mazar-i-Sharif. Following fierce fighting the *Taliban* was compelled to lift the siege and retreat in early October. Meanwhile, in mid-September, General Dostum was reported to have returned to Mazar-i-Sharif from Turkey and was soon re-elected by member parties of the UIFSA as commander of the forces of the alliance and Vice-President of the anti-*Taliban* administration. However, rivalries developed between Dostum and Malik and skirmishes between their forces were reported. Dostum's battle for supremacy led him to make overtures to the *Taliban*, including offers of exchanges of prisoners of war. Dostum also accused Malik of having massacred about 3,000 *Taliban* prisoners earlier in the year (Rubin, B., 1998, 25). By end November 1997 Dostum had re-taken the leadership of the National Islamic Front, ousting Malik. Over six months later, after the *Taliban* capture of Mazar-i-Sharif, Amnesty International and other observers called for the deployment of international human rights monitors to prevent possible ethnic reprisals.

In late October 1997, the *Taliban* unilaterally decided to change the country's name to the Islamic Emirate of Afghanistan and altered the state flag, moves that were condemned by the opposition alliance and all of Afghanistan's neighbours (with the exception of Pakistan). In early December 1997 a three-day "peace conference" was held in Iran, and, although boycotted by the *Taliban*, was attended by representatives of all other parties (both religious and military) involved in the Afghan conflict (Europa Publications, 1998, 321). In mid-December 1997 the UN Security Council issued a communique expressing its concern at the alleged massacres of civilians and prisoners of war by various factions in Afghanistan (United Nations, December, 1997).

In April 1998, under pressure from Pakistan Prime Minister Nawaz Sharif, the *Taliban* agreed to negotiate in Islamabad with a delegation from the coalition of opposition parties or the 'United Front' (Reuters, 28 April, 1998). At the insistence of the *Taliban* these negotiations included the establishment of *ulama* (Islamic scholars) from all sides who would be responsible for resolving the conflict (*ibid.*) The talks led to a tentative agreement on a

nomination procedure and a cease-fire, and Bill Richardson, U.S. Permanent Representative to the UN, visited Afghanistan in order to affirm international support for the accord (Rubin, B., 1998, 25). Soon after Richardson's departure, the agreements, together with the talks, broke down (*ibid.*).

While the *Taliban* failed in its first two efforts to control the north, they were able to establish a long-term presence in the area gaining the support of many *Pashtuns* there. Despite intermittent activity, the lines of control remained relatively stable until the *Taliban's* new offensive in July 1998 (Rubin, B., 1998, 2).

Pakistan reportedly was again instrumental in supporting the *Taliban* offensive that began in July 1998 (Human Rights Watch, November 1998, 6). As the *Taliban* neared Mazar a number of opposition commanders reportedly abandoned the city with some Jamiat fighters even looting their own offices (The Washington Post, 16 September, 1998). These defectors together with *Pashtun* militia commanders from Balkh, disillusioned with Hekmatyar, agreed to join forces with *Taliban* and move in behind the main *Hizb-i Wahdat* stationed at Qala Zaini. Trapped in this position, nearly the entire *Hizb-i-Wahdat* force was killed (some 3,000 men) opening the way for *Taliban* into Mazar-i-Sharif (*ibid.*).

A report of the UN Security Council in June 1998, foresaw the implications of foreign intervention, just weeks before the *Taliban's* capture of Mazar-i-Sharif and the massacre that ensued (United Nations, 19 June, 1998). While preliminary reports of the *Taliban* take-over of this were difficult to obtain comprehensive reports now exist documented and compiled by Human Rights Watch, Amnesty International and, most recently, by the UN Special Rapporteur on Human Rights in Afghanistan, Mr. Choong-Hyun Paik.

The harbouring of Saudi Arabian dissident Osama bin Laden by the *Taliban*, widely believed to be involved in international terrorist activities, and the resulting U.S. airstrikes on targets in Afghanistan have further complicated Afghanistan's relations with the international community which will be explained below.

5. THE HUMAN RIGHTS SITUATION

5.1 THE INTERNATIONAL AND NATIONAL LEGAL FRAMEWORK

By August 1998, having seized Mazar-i-Sharif, the last city remaining outside its control, the *Taliban* prepared to turn its efforts towards a campaign for international recognition (Rubin, B., 1998, 1). The only countries recognising the Islamist movement's legitimacy as a government were Pakistan, Saudi Arabia and the United Arab Emirates (BBC, 5 November, 1998). Hopes of recognition were short-lived when on 20 August 1998 a US missile attack targeted camps in Afghanistan allegedly containing terrorist infrastructure of a movement led by Saudi Arabian dissident, Osama bin Laden (Washington Post, 21 August 1998). The U.S. government alleged that there was evidence implicating bin Laden in the bombing of U.S. embassies in Kenya and Tanzania on 7 August (*ibid.*). The *Taliban's* continued defence of bin Laden and their denunciation of the U.S. raid ruled out any dialogue with the U.S. which might have led to diplomatic recognition (Rubin, B., 1998, 1). Former President B. Rabbani, relocated to Takhar in the North, claims that he has remained the head of the legitimate

Government of Afghanistan. His delegation retained Afghanistan's seat at the United Nations after the General Assembly deferred a decision on Afghanistan's credentials (U.S. Department of State, January 1998 and January 1997).

There is no constitution, rule of law, or independent judiciary in Afghanistan today (CIA World Factbook 1998, 1998; Department of State, January 1998). A new legal system has not been adopted but all parties tacitly agree they will follow Shari'a or Islamic law (*ibid.*). The *Taliban* control all major cities, imposing its own strict interpretation of Islam (United Nations, October 1998). Nonetheless, the status of ratification by Afghanistan as a state party to the major universal instruments on human rights is as follows:

- the Convention on the Prevention and Punishment of the Crime of Genocide (PPCG), since 22 March 1956;
- the Convention on the Political Rights of Women (PRW); since 16 November 1966
- the International Convention on the Elimination of all Forms of Racial Discrimination (CERD), since 6 July 1983;
- the International Covenant on Economic, Social and Cultural Rights (ICESR), since 24 January 1983;
- the International Covenant on Civil and Political Rights (ICCPR), since 22 January 1983;
- the U.N. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), since 1 April 1987;

Afghanistan is not a state party to:

- the Convention Relating to the Status of Refugees (CSR);
- the Convention relating to the Status of Stateless Persons (CSP);
- the Convention on the Reduction of Statelessness (CSR);

In October 1998, the Special Rapporteur for the United Nations Commission on Human Rights reiterated that although Afghanistan over the years had signed a number of international human rights treaties, the *Taliban* regime recognizes only the validity of Islamic law. It does not accept the notion of secular law, nor binding international human rights norms (United Nations, 26 October 1998). On 4 March 1997, the United Nations General Assembly called on the *Taliban* leadership to ensure respect for women's rights, such as the right of women to work and the right of girls to attend school and repeated this request

following a report submitted by the Special Rapporteur on Afghanistan in 1998 (United Nations, 26 October 1998 and 4 March 1997).

Since May 1992 after the *mujahedin* took power, *Sharia* laws had been introduced in the entire country. Laws and decisions contrary to the *Sharia* have since been abrogated. As a result, jurisprudence is meagre, the execution of the law is rare and the country does not have an uniform judicial system (Swiss Federal Office for Refugees, February 1996). According to Human Rights Watch, the judicial system is virtually non-existent in most parts of the country and leaders of armed factions sentence prisoners to execution, stoning to death or whipping with no legal safeguards (January 1999). Jurisprudence is primarily influenced by tribal law or by judicial conceptions of local leaders (U.S. Department of State, January 1998).

Areas presently controlled by the *Taliban* apply a strict interpretation of *Shari'a* (ibid.). The *Taliban* have established the Ministry for the Enforcement of Virtue and the Suppression of Vice and any person acting against Islamic rules is reportedly given punishment frequently involving beatings by religious police (Human Rights Watch, January 1999; Amnesty International, 17 August 1998). General Dostum had previously established a form of administration in the North-Central provinces under his control, including customs collection at border points, but law and order in these areas had been generally enforced by local military commanders (Human Rights Watch, January 1999).

5.2 GENERAL RESPECT FOR HUMAN RIGHTS

Human Rights Watch made the following conclusion on the human rights situation in Afghanistan in its country report published in January 1999:

Afghanistan remained one of the world's most intractable human rights disasters in 1998. The war between the forces of the *Taliban*, an ultraconservative Islamist movement that has controlled the capital Kabul since 1996, and the coalition of opposition forces known as the United Front (UF) continued to wreak devastation in the north of the country. A bloody offensive that began in July left the *Taliban* in control of all but parts of central and northeast Afghanistan; during the battle for the city of Mazar-i-Sharif, the *Taliban* massacred civilians belonging principally to the ethnic Shi'a Hazara minority. Killings of civilians were also reported from Bamiyan, the main city in a predominantly Hazara region of central Afghanistan that fell to the *Taliban* in September. Afghans living in other *Taliban*-controlled areas continued to suffer under repressive policies that were particularly harsh on women and minorities. Those in areas controlled by the opposition were subject to abuses also, including extrajudicial killings, rape and arbitrary detention. Large numbers of civilians on both sides were killed in aerial bombardments. Refugees from the country who had fled the fighting and repression numbered between 1.5 and 2 million; the numbers of internally displaced were estimated in the millions. (Human Rights Developments, 1999).

Particularly affected after the take-over of Mazar-i-Sharif on 8 August, 1998 were the inherent right to life; the right to liberty and security of person; the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment ; the right to liberty of movement; the right to freedom of thought, conscience and religion; religious observance and worship; and the rights of ethnic, religious or linguistic minorities (United Nations, October 1998). In a report submitted in October 1998 by the UN Special Rapporteur on Afghanistan, it was alleged that the *Hazara* ethnic minority was principally, though not exclusively, targeted by the Taliban in its capture of Mazar-i-Sharif.

According to Amnesty International, thousands of women have been physically restricted to their homes under *Taliban* edicts which ban women from going to work or leaving home unaccompanied by a close male relative. Girls are restricted from going to school at the risk of physical assault by *Taliban* guards (or "religious police") if they leave home without a reason acceptable to them. Scores of women have been beaten in the streets for not wearing a *burqa* (a garment that includes a cloth mesh for the eyes), or exposing their ankles. In some areas, children have been brutally slapped for playing with their toys in the street. Hundreds of men, possibly over one thousand, have been taken prisoner and continue to be held in arbitrary detention, while dozens of men have been beaten in the streets to make them attend Friday prayers in the mosque (June 1997).

The U.N. Special Rapporteur on Afghanistan, Mr. Choong-Hyun Paik reported that the *Taliban* instituted Islamic courts and enforced the application of Islamic punishments, such as beatings, public executions and amputations of one hand and one foot. The Special Rapporteur also indicated that those who violate *Taliban*'s edicts are often subjected to beatings on the spot (United Nations, October 1998). However, the imposition of *Taliban* control in rural areas resulted in reduced incidents of rape, kidnapping and forced marriage (U.S. Department of State, Country Reports for 1997, January 1998).

Summary or Arbitrary Execution

The United Nations has strongly condemned recent mass killings of civilians and prisoners of war citing in particular the killings in Mazar-i-Sharif and Bamiyan by the *Taliban* (United Nations, 16 November 1998). According to Amnesty International, scores of non-combatants have been deliberately and arbitrarily killed by *Taliban* guards. In September 1998, Amnesty International reported that upon capturing Mazar-i-Sharif on 8 August 1998, *Taliban* troops fired indiscriminately in streets and market areas as civilians attempted to flee. Shortly afterwards, the *Taliban* conducted house-to-house searches, detaining *Tajik*, *Uzbek* and *Hazara* men and teenage boys and often shot *Hazaras* in the street or in their houses.

Referring to the Taliban take-over of Mazar-i-Sharif in August 1998, the UN Special Rapporteur for Human Rights in Afghanistan reported that the *Taliban* carried out widespread and indiscriminate shootings in a killing frenzy that was directed mainly at the *Hazara Shi'ite* minority (BBC, 5 November 1998). The massacre that ensued is believed to have caused the deaths of up to 8,000 persons (ibid.). Some victims had their throats slit, or were bayoneted to death, *Taliban* forces shot anyone they saw moving on the streets including those who may have peered out their windows or doorways (United Nations, October 1998).

Earlier, the *Taliban* capture of Herat in September 1995 and their capture of Kabul in October 1996 had also been characterised by, according to *Amnesty International*, deliberate and arbitrary killings of non-combatants (November 1996). When the *Taliban* position in the north of Kabul came under attack on 10 October 1996 from surrounding villages, the *Taliban* reportedly took retaliatory measures against villagers, rounding them up, killing several of those whom they described as residents collaborating with *Taliban* rivals (November 1996, 16-19). The U.S. Department of State observed that political and other extrajudicial killings in which combatants sought to kill rival commanders and their sympathizers have also taken place in other areas of the country. However, the perpetrators of these killings and their motives were difficult to identify as political motives are often entwined with family and tribal feuds, battles over the drug trade, and personal vendettas (January 1998).

The Death Penalty

The *Taliban* used swift summary trials and implemented strict punishment according to Islamic law; the *Taliban* ordered public executions and death by stoning (U.S. State Department, January 1998). The summary execution of captured prisoners has also been reported (Human Rights Watch, January 1999). According to *Amnesty International*, dozens of prisoners have been executed, amputated and in several cases stoned to death since the *Taliban* takeover. The organization reported the arbitrariness of convictions, sentences and releases witnessed by several former prisoners from Kandahar. The *moulavi* (religious official) presiding over the court had often only a vague knowledge of *Sharia* and imposed sentences arbitrarily (November 1996, 24).

Dramatic public executions and amputations are increasingly being reported in Afghanistan (*Amnesty International*, 21 May 1998). Verdicts for executions and amputations have been passed by the *Taliban Shari'a* courts where defendants where many of the judges are reportedly untrained in law and base their judgment on a mixture of personal understanding of Islamic law and a tribal code of honour prevalent in *Pashtun* areas (*ibid.*). In October 1997, *Taliban* militia displayed the corpses of four former *Taliban* fighters at two intersections in Kabul, hanging from beams about 10 feet off the ground (Department of State, January 1998). In another case, people were ordered to congregate in Herat's football stadium, where a convicted person was killed after some 30 minutes of strangulation (*Amnesty International*, November 1996). The U.S. Department of State reported that a couple convicted of adultery by a *Taliban* court was stoned to death in a public place in Kandahar in July 1996 (January 1997).

Disappearances

Abductions, kidnappings, or hostage-taking for ransom or political reasons occurred in non-*Taliban* areas, but specific information is lacking (*ibid.*). The strict security enforced by the *Taliban* in areas under its control has resulted in a decrease in such crimes (*ibid.*). However, thousands of people have reportedly 'disappeared' after the capture of Mazar-i-Sharif and Bamiyan by the *Taliban* in August 1998 (Human Rights Watch, November 1998).

Earlier, in different parts of Afghanistan since April 1992, after they had been abducted by armed guards belonging to the various armed political groups (Amnesty International, Annual Report, 1998). There were unconfirmed reports of girls and young women being kidnapped by local commanders in the South-East, Jalalabad, Kabul and other areas before these areas came under *Taliban* control (*Ibid.*,).

Arbitrary Arrest and Detention

Amnesty International reports that following the *Taliban* capture of Mazar-i-Sharif in August 1998, thousands were detained in the city jail and an unknown number transported to jails in Herat and Qandahar (September, 1998). Scores of prisoners transported in large container trucks reportedly suffocated to death. With the absence of formal law enforcement institutions in both *Taliban* and non-*Taliban*-controlled areas, the practice related to arrest and detention varied depending on the locality, local commanders, and other authorities (U.S. Department of State, Country Reports for 1997, January 1998).

The problem of arbitrary arrests and detention had persisted earlier in 1996, following the *Taliban*'s capture of Kabul, the International Committee of the Red Cross confirmed that 2,000 detainees it had previously visited in the capital had all been released (U.S. Department of State, Country Reports for 1997, January 1998). However, the *Taliban* reportedly began to detain new prisoners. According to Amnesty International, the *Taliban* have not only taken prisoners of war but have detained hundreds of people, including children and women, on the basis of their ethnic origin, non-respect of religious decrees or because they sympathized or were suspected of sympathizing with opponents of the *Taliban* (November 1996, 19). Six men who were arrested by the *Taliban* in Charasyab when the area briefly came under their control in early 1995, were reportedly taken to Kandahar and held for about eight months in metal containers in despicable sanitary conditions. In early 1996, dozens of people were reportedly arrested in Herat and Farah provinces for their assumed sympathies for or support of former governor Ismael Khan. Also, in the first few days after the *Taliban* entered Kabul in September 1996, their armed militia detained hundreds, possibly over 1,000 civilians during house to house searches throughout the city. They were being held for allegedly sympathising with ousted President B. Rabbani (November 1996, 19-21).

Torture and Other Cruel, Inhuman or Degrading Treatment

A striking pattern of abuse institutionalised under the *Taliban* has been the public display of summary, corporal punishment (Human Rights Watch, January 1999). Every Friday, thousands have been pressured to witness public executions and punitive amputations in Kabul's stadium (*ibid.*,).

In one area of northern Afghanistan under *Taliban* control, one 10 year old and one 12 year old were killed by being hit on the head with rifle butts and then shot (United Nations, October 1998). Their mother, who pleaded with the attackers, was also killed in the same manner (*ibid.*). In the Mazar-i-Sharif massacre that took place in August 1998, it was

observed that the pattern of killings showed that men, women and children were shot, while baby girls were kicked or beaten to death (BBC, 5 November 1998).

Although torture as a form of interrogation does not appear to be a routine practice in most areas, it has reportedly been used by different groups against political opponents and prisoners of war. For example, some of Commander Massoud's officers in the north reportedly used torture routinely to extract information from and break the will of prisoners and political opponents (U.S. Department of State, Country Reports for 1996, January 1997).

Amnesty International observed that the *Taliban* authorities have been uncompromising in their response when confronted with the criticism that cruel, inhuman or degrading punishments imposed by them violate international humanitarian law (Amnesty International, 21 May 1998). In February and March 1998, a total of five men were convicted of sodomy and sentenced to death by crushing a wall on them, they were seriously injured but did not die immediately (*ibid.*). Yet another example of the *Taliban*'s penal system took place on 27 February 1998 when a woman was given 100 lashes for alleged adultery at the Kabul Sports Stadium in front of some 30,000 spectators (*ibid.*). Amnesty International, together with other human rights observers have repeatedly called on the *Taliban* authorities to forbid the imposition of the death penalty, amputations and other cruel, inhuman or degrading punishments by the Shari'a courts in areas they control (*ibid.*).

Freedom of Movement

The U.S. Department of State observed that although in principle citizens have the right to travel freely both inside and outside the country, their ability to travel within the country has been hampered by warfare, millions of land mines, a road network in a state of disrepair, and limited domestic air service, complicated by factional threats to air traffic. Despite these obstacles many people continued to travel relatively freely with buses plying routes in most parts of the country (Country Reports for 1997, January 1998). Furthermore, with the consolidation of territory by the *Taliban*, many roads have been reopened and security conditions have apparently improved (*ibid.*).

5.3 SPECIFIC GROUPS AT RISK

There are no constitutional provisions that prohibit discrimination based on race, sex, religion, disability, language, or social status and it is not known whether specific laws prohibit discrimination; local custom and practises prevail (*ibid.*). Certain groups of the population which were and are now likely to run a particular risk of attacks and persecution include members of specific ethnic, religious or political groups in areas controlled by warlords hostile to them, educated Afghan women, secular-minded individuals, Afghan academics and other professionals, officials of the former governments and journalists covering the political crisis. Unarmed civilians belonging to, or suspected of belonging to, rival political or ethnic groups have been a target of human rights violations (Amnesty International, September 1998).

At the same time, even though at the end of 1998 the *Taliban* is said to have conquered most of the country, the following account still seems to apply today:

It is not possible to give an exhaustive account of the groups that risk persecution, precisely because alliances and conflicts are changing and seem to arise across ethnic, political, social and clan barriers and are not perceived to follow any regular and predictable pattern (Thomsen, T., & Winding, S., 9 November 1993, 7).

Women

Afghan tradition has imposed limits on women's activities beyond the home, particularly in the *Pashtun* areas of the South. Under the Communist regime of the 1980s, a growing number of women, particularly in urban areas, worked outside the home in non-traditional roles. This trend was reversed when an Islamic government was installed in 1992. However, in Northern Afghanistan and pre-*Taliban* controlled Kabul, women were allowed to work and girls attended school (U.S. Department of State, Country Reports for 1996, January 1997).

The principal role of women in the past 18 years of war has been to function as symbols of legitimization for political groups led by men (Rubin, B., December 1996, 7). Women who assumed an extrovert, Western life-style, as well as educated women, were regarded as potential opponents of Islamic principles, especially by fundamentalist mujahedin parties, and they were therefore particularly exposed to attacks. These women often belonged to the well-educated middle and upper classes in Kabul (Thomsen, T., & Winding, S., 9 November 1993, 8). At times, however, women emerged in the public spheres at moments of crisis. Schoolgirls and teachers led some of the most militant demonstrations in Kabul against the Soviet occupation in 1980-1981 (Rubin, B., December 1996, 7). When G. Hikmatyar announced a series of measures to curb women's rights, women in Kabul demonstrated in the streets in July 1996. The extreme measures taken by the *Taliban* to curb women's rights led a few women to stage demonstrations against the *Taliban* in Kabul (ibid.; Reuters, 22 October 1996; 23 October 1996).

As described earlier, women have been subjected to strict controls particularly in *Taliban*-controlled areas. Representatives of the *Taliban* have stated that women are allowed to work in medical services, subject to certain restrictions. Cars carrying women to and from work have been stopped, the drivers harassed and the women ordered home. There is a significant difference between what is decreed officially and what happens in reality. In some occasions, women have been beaten by the *Taliban* in public on the spot (Amnesty International, March 1998; *The Economist*, 8 March 1997, 70). *Taliban* leaders have pronounced scant reasons for their restrictions other than stating that the bans would be lifted when security returns. However, even in South-Western Afghanistan where their control has been uncontested for nearly three years -such as in Kandahar- these restrictions have remained in place. In a few areas, young girls between the ages of four and nine are reportedly allowed to attend school (Amnesty International, November 1996, 12).

The impact of *Taliban* restrictions on women is most acutely felt in cities such as Herat and Kabul where there are significant numbers of educated and professional women, compared with the countryside where women have traditionally been excluded from public life. Kabul University, which has closed since the *Taliban* took over, reportedly had about 8,000 women

students while thousands of professional women worked in different capacities in the city. In Herat, about 3,000 women reportedly lost their jobs after the *Taliban* took control in September 1995 (Amnesty International, November 1996, 12). Following a report in October 1998 by the U.N. Special Rapporteur on Human Rights, Choong-Hyun Paik, the United Nations has strongly urged all Afghan parties to end without delay all violations of human rights against women and girls and take urgent measures to repeal legislation and measures that discriminate against women, ensure the effective participation of women in civil, cultural, economic, political and social life throughout the country, and to respect the rights of women and girls to education, health and freedom of movement (October, 1998).

Non-Pashtun Ethnic Minorities

B. Rubin has observed that despite the ethnic tone of the war, in which each major military force is drawn predominantly or exclusively from one ethnic group, there have been few if any cases of forced displacement on ethnic grounds in Afghanistan (February 1996, 3). The city of Kunduz continues to have a mixed *Tajik-Pashtun-Uzbek* population despite having been controlled by different ethnically-based militias. The largely ethnic-*Tajik Kabulis* fled to the mainly *Pashtun* province of Nangarhar (around Jalalabad). The same author points out that, in contrast to the situation in the Balkans, where ethnic and religious differences coincide, in Afghanistan the ethno-linguistic groups share a common religion which preaches the unity of all believers. The main exception seems to have been the fighting between various Sunni (*Tajik* and *Pashtun*) and Shi'a (mainly *Hazara*) militias in Kabul, where some neighbourhoods were ethnically cleansed (*ibid.*, 4).

According to Amnesty International, however, after the capture of the Persian-speaking region of Herat by the *Taliban* in September 1995, non-*Pashtun* army officers were detained and ill-treated in *Taliban* custody (November 1996, 23). The Far Eastern Economic Review also reported that a significant Turkoman population in Western Afghanistan has historically been victimised by the *Pashtuns* (10 October 1996, 18). According to Amnesty International, there have been persistent reports of persecution on *Panjsheris*, a sub-group of *Tajiks* (November 1996, 17).

As the *Taliban* captured Kabul and the fighting intensified in North-Western Afghanistan, the displacement increasingly led to ethnic separation with *Pashtun* nomads fleeing to *Taliban*-controlled Herat, and others fleeing in the opposite direction, including a movement of Afghan Turkmen to Turkmenistan (Rubin, B., December 1996, 2). When the *Taliban* captured the city of Charikar in January 1997, the city was evacuated by its soldiers because they believed that most of the 100,000 residents of the city were loyal to Commander A.S. Massoud and many in Charikar are ethnic *Tajiks* (International Herald Tribune, 18-19 January 1997).

Shi'a Muslims

In a report on the Mazar-i-Sharif massacre, it has been indicated that the Taliban leader, Amir Mohammed Omar, had issued a fatwa (religious ruling) stating that the killing of Shia Muslims is not a crime because they are non-believers (United Nations, October 1998). The Shi'a (about 15 % of the population), mostly belonging to the *Hazara* ethnic group, occupied the

bottom of the social hierarchy in Afghanistan (Rubin, B., February 1996, 9). Concentrated in Central and Western Afghanistan, the Shi'a have long maintained religious links with Iran, where their *ulema* studied at the famous seminaries in Qum and Mashad (Hyman, A., January 1987, 80).

The *Taliban*, predominantly Sunni *Pashtuns*, perceive the Shi'a *Hazaras* as a threat. One Shi'a leader, Abdul Ali Mazari, has already been executed by the *Taliban* in October 1996 (The Economist, 5 October 1996, 20). In early September 1995, following the capture of Nimruz province, *Taliban* militias ordered Shi'a residents to leave their homes within three days. Several residents were reportedly severely beaten, when forced to migrate to Hazarajat. Others were threatened and reportedly fled to Iran (Amnesty International, November 1996, 23). In 1998, *Hazaras* returning from Iran, where some 2 million had fled during the 1980s, were detained upon return, transported to Qandahar and jailed (Human Rights Watch, January 1999). At least 700 were reported to be jailed there in 1998 pending a prolonged screening process designed to identify supporters and members of *Hizb-i-Wahdat*, the *Hazara* party that is part of the United Front (ibid.). *Tajiks* and *Hazaras* featured prominently among the internally displaced (ibid.). In a report submitted by the UN Special Rapporteur for human Rights on Afghanistan to the Commission on Human Rights in 1998 it was stated that because of the growing division of the country along ethnic lines, persons belonging to the *Hazara* ethnic minority have difficulty moving freely and entering hospitals in Kabul (United Nations, October 1998).

The *Ismailis* are regarded as "non-Muslims" by the *Taliban* believe that their spiritual leader, Karim Agha Khan, is a direct descendant of the Prophet Mohammad (Immigration and Refugee Board of Canada, April 1994). The U.S. Department of State reported in 1996 that *Ismaili* women were not allowed to attend *Ismaili* religious services (Country Reports for 1996, January 1997).

6. PROSPECTS

While it may appear that the *Taliban's* total control of Afghanistan will effectuate a return of peace and stability to the country, it has already brought about a strong regional reaction and could well spark guerilla warfare (Rubin, B., 1998, 26). Furthermore the US attack, countered by attacks on UN personnel in Kabul and the ransacking of the UN office in Jalalabad, will more likely than not reduce the space within which the international community can manoeuvre in order to assist in efforts towards a lasting peace in Afghanistan (Ibid).

Despite the absence of a peaceful solution, the UN seems determined to persevere, Lakhdar Brahimi, the UN Special Envoy to Afghanistan observed that the UN hopes that in 1999 it will start a new peace mission for Afghanistan to avoid the vicious circle of hostilities (BBC, 2 January, 1999; The Economist Intelligence Unit, 3rd Quarter 1998).

The U.N. has also made several recent appointments with regard to Afghanistan reflecting the priority accorded to and continued importance placed on the region: a new Special Rapporteur, Mr. Kamal Hussein, to replace Mr. Paik; a new Senior Human Rights Officer has been appointed to UNOCHA, Ms. Norah Niland; and a Senior Gender Advisor is shortly to be appointed to Afghanistan.

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