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Human Rights Annual Report 2009 - Countries of Concern: Afghanistan

Despite the difficult security situation, progress continued to be made across nearly all areas of human rights protection in Afghanistan in 2009. Eighty-five per cent of people now live in a district with access to basic healthcare, compared with nine per cent in 2003. Infant mortality rates are down, with 96,000 more under-fives surviving each year, including in 2009. To date, we have placed over 100,000 teachers in schools, which have contributed to the increase of pupils in school from one million in 2001 to 6.6 million today. New laws on media freedom have been brought into effect. Notwithstanding the progress made, significant challenges remain. Afghanistan is a conservative country with strong religious traditions and local customs, which are sometimes at odds with international human rights norms. Divisions continue to exist in Afghan society over issues such as women's rights, religious freedom and freedom of expression. Progress on these issues is likely to be slow and linked to progress in other areas, such as education, healthcare and the economy.

It is vital to immediate UK national security interests that Afghanistan becomes a stable and secure state that can suppress terrorism and violent extremism within its borders. Building a legitimate, stable and secure Afghan government is also critical to promoting and protecting human rights. Alongside our allies, we are working hard to build the capacity of the Afghan National Security Forces so that they can take the lead in providing security for the Afghan people. If international forces leave before this is achieved, there is a very real risk that Afghanistan could descend once again into the anarchy of the 1990s, when warring militias tore the country apart, killing tens of thousands of people. This would make ensuring respect for even the most basic human rights impossible. Making progress on security in Afghanistan goes hand in hand with improving the human rights situation. Security, along with development, governance and regional engagement, was one of the key themes of the London Conference on Afghanistan held on 28 January 2010.

The UK is represented in Afghanistan through the British Embassy in Kabul and the UK-led Provincial Reconstruction Team in Lashkar Gah, Helmand.

2009 Elections

Credible elections in Afghanistan, which allow the Afghan people to choose their own leaders, are vital to creating a stable, secure and democratic Afghanistan. The UK gave £16.5 million to an international fund to support the Afghan authorities to run their own elections in 2009–10, the first Afghan-run elections in over 30 years. The Presidential election on 20 August was held under difficult circumstances and was by no means perfect. But it did allow the political will of the Afghan people to be clearly expressed. After fraudulent votes were investigated and removed by the Afghan Independent Election Commission (IEC) and Election Complaints Commission (ECC), the

final IEC figures showed that over 4.5 million votes across Afghanistan had been cast. Millions of Afghans across the country also voted in the Provincial Council elections, held the same day.

After the removal of fraudulent ballots, the results showed President Karzai with 49.67 per cent of the vote. Because he polled less than 50 per cent, a second-round, run-off election was scheduled to be held between President Karzai and Dr Abdullah Abdullah, the runner-up. But before the second round could go ahead, Dr Abdullah pulled out of the race, citing concerns about corruption, and the IEC declared President Karzai the winner on 2 November. The Prime Minister congratulated Karzai on his reappointment, and discussed with him the importance of moving quickly to set out a programme for the future of Afghanistan.

It is clear that millions of brave Afghans defied intimidation to vote and it was significant that the audit process conducted by the IEC and ECC was robust and transparent, and overseen by international and Afghan election observers (who had, for example, access to the national counting centre). The IEC and ECC proved that they were able to tackle fraud effectively.

Corruption

Rebuilding the Afghan state to protect its citizens is hampered by the effects of endemic corruption. It impacts most on the poorest, and it is a barrier to accessing public services, including healthcare. Patronage and nepotism prevail. Furthermore, corruption permeates the state justice institutions, especially the police, so the public cannot always turn to the law for protection. The Afghan government has taken some steps towards fighting corruption in 2009, including registering the assets of 50 per cent of Cabinet Ministers and over 1,200 public officials, and announcing the Major Crimes Task Force to investigate corruption, including at the highest levels of government. However, this progress is marred by the high-level reach of the problem and a lack of independent and strong institutions that can tackle the problem. The FCO is working to strengthen these: UK specialists have been working closely with the government and Afghan law-enforcement bodies to develop a robust and transparent investigation, prosecution and trial system for corruption cases. The Afghan government announced at the London Conference in January 2010 a new effort to build institutions that can prevent and expose corruption and report to the parliament and people.

Women's Rights

Many women in Afghanistan face a very difficult situation. British Embassy officials regularly discuss women's rights with members of the Afghan government, NGOs and Parliamentarians. It is important that we do all we can to consolidate the progress made on women's rights since the fall of the Taliban.

The UK continues to urge the Afghan government to uphold the Afghan Constitution, which demands equal treatment of men and women, and to adhere to Afghanistan's international legal obligations under the human rights conventions to which it is a signatory, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). We contribute to the UNIFEM's Elimination of Violence against Women fund and also support a five-year women's empowerment programme implemented by the NGO, Womankind.

Real progress has been made. Today, almost 36 per cent of the 6.6 million enrolled pupils are girls, up from virtually none under the Taliban when girls were not allowed to go to school, and 28 per cent of their teachers are women. Seventy per cent of health facilities provide some form of delivery care services. Women account for a quarter of all civil servants. And following the adoption of a quota system, women hold 68 out of 249 seats in the Lower House and 23 out of 102 seats in the Upper House of Parliament. This year, female Parliamentarians were active in efforts to address the problems with the Shia Family Law. Through their work with Parliament's Human Rights and Gender Committee, the progressive Elimination of Violence against Women law was passed.

The situation for women in Helmand province is particularly difficult. As one of the most conservative regions, women are almost entirely absent from public life outside the provincial capital; there are no prominent women politicians, community leaders, businesswomen and no female judges or lawyers. In Sangin district, no women registered to vote in the Presidential election. The transfer of daughters as a means of settling disputes is still prevalent in some districts and there is no provision for safety for women or girls fleeing violence. Harmful cultural practices, such as forced and early marriage, are endemic across the province.

Girls' education is minimal. In Nawa district, no girls go to school. Maternal mortality is amongst the highest in the world while women's literacy in Helmand stands at around five per cent. Health provision for women is minimal, with very few women doctors or nurses and no consistent, free, midwifery service. The absence of women from public life, including decision-making at provincial, district and community levels, means that women are not in a position to advocate change in areas that affect their lives, such as education, health, trade, land and housing. However, four places are reserved for women on the provincial council and in this year's elections seven women stood for these places.

We are attempting to address some of these issues by building the capacity of women's civil society, encouraging the development of a women's police cadre (see page 85), and working with justice providers to ensure women's rights are recognised as central to the development of Afghanistan. Helmand's only independent women's

organisation, The Independent Commission for Women and Children's Rights, is receiving paralegal training provided by Action Aid, in partnership with UNIFEM. This will create a primary, community-based, legal information and referral service to families in the Lashkar Gah area, with planned outreach to outlying districts. While their work will necessarily be focused on violence against women and their children, they will also provide this service to all members of the community.

Civilian Casualties

Despite strenuous efforts on the part of international forces to target only the insurgents, there are times when the ordinary people of Afghanistan are drawn into the conflict. We are saddened by any civilian deaths or injuries, but we particularly regret incidents where civilians are killed as a result of actions by international forces. As part of International Security Assistance Force (ISAF), the UK places great importance in minimising the risk of civilian casualties as a result of our operations. Following his appointment in May, the commander of the force, General Stanley McChrystal has continually emphasised the importance of protecting the Afghan population. On 6 July, General McChrystal publicly released a revised tactical directive aimed at minimising the risk to the civilian population as a result of the use of force. As he says: "we must avoid...causing civilian casualties or excessive damage and thus alienating the population". This tactical directive continues the long-standing ISAF focus on protecting civilians and operating in a manner that is respectful of Afghan culture.

The directive explicitly states that air-to-ground munitions and indirect fire against residential compounds are only authorised under extremely limited and prescribed conditions, and that entry to Afghan houses should always be accomplished by Afghan Security Forces, with the support of local authorities and respect particular cultural sensitivities regarding women. No ISAF forces will enter or fire upon or into a mosque or any religious or historical site except in self-defence. The full text of the directive is available at: <www.nato.int/isaf/docu/official_texts/Tactical_Directive_090706.pdf>.

ISAF's tactics are constantly being reviewed and updated in the light of experience. Any allegations of civilian casualties are investigated promptly and action is taken where necessary. The UK fully implements and supports all efforts to reduce the impact of the insurgency on the civilian population. Our troops adhere to ISAF's directives closely and undergo comprehensive individual and collective training before they go on operations. Significant resources and effort are put into properly understanding the operational environment, including details of the civilian population who, wherever possible, are warned of impending operations.

Insurgents frequently operate in populated areas in order to restrict the coalition's ability to respond and in the hope of causing civilian casualties, particularly through their use of indiscriminate attacks, such as suicide bombs and Improvised Explosive Devices (IEDs). Anti-Afghan government forces (including the Taliban) have been responsible for 78 per cent of casualties and continue to exploit innocent Afghans by using civilians as human shields, hiding inside Afghan civilian population centres and by using the infirm as unsuspecting suicide bombers.

In Helmand, there has been an increasing number of incidents where local civilians have disarmed IEDs themselves, and where insurgents have informed elders of IED locations to avoid local casualties. However, IEDs still remain a major threat around Helmand. We are clear that the campaign in Afghanistan can only succeed by securing the consensus of the population, and the UK and ISAF will continue to make every effort to reduce civilian casualties.

Human Rights Institutions

In 2009, Strategic Programme Fund (SPF) project provided £200,000 to support the Afghanistan Independent Human Rights Commission (AIHRC). This helped the country's key human rights institution to effect real change for the Afghan people, such as having human rights added to the school curriculum. This project has also enabled an important say for the UK over the Commission's reform. We have also helped to develop the capacity of the Commission, for example, through funding training for a Human Rights Commissioner at the University of Nottingham. On return to Afghanistan, the Commissioner played a lead role in joint-monitoring with the UN Assistance Mission in Afghanistan of the observance of political rights during the Presidential and Provincial Council elections. Our support for the Commission has helped them to monitor detention facilities and raise allegations of torture with the Afghan authorities. They report that on the whole the Afghan authorities are cooperative.

Freedom of Expression

2009 was a mixed year for freedom of expression. In a welcome step, the Afghan government published the Mass Media law and brought it into effect. This legislation is designed to ensure greater media freedom and was originally passed by the Afghan Parliament in 2008, overturning a veto from President Karzai. Before ratifying it, the Afghan government sent the legislation to the Supreme Court, where it awaits a ruling on one potentially unconstitutional clause. This clause would reduce government control over the state broadcaster, Republic Television of Afghanistan. While the court is likely to rule in favour of the government retaining control of the state broadcaster, the independent media is becoming increasingly vibrant. It reported relatively freely on the 2009 Presidential and Provincial Council elections, with Afghanistan's first-ever, live-televised debate between the three

leading presidential candidates.

Of significant concern, however, is the increasing intimidation and violence against journalists and media workers, particularly by insurgents. In response, we supported the joint EU–Norway declaration on freedom of expression made on 16 April. We welcome the huge growth in independent Afghan media since 2001. But, as the declaration stated, we remain concerned about evidence of a gradual deterioration of the situation regarding freedom of expression, including the growing intimidation and violence targeting Afghan journalists, and challenges to the independence of the media. The declaration calls on all parties in Afghanistan to ensure that freedom of expression is fully respected.

In 2009, we have continued to support and fund the Afghan Government Media and Information Centre, which provides the independent media with access to government ministers and official information and helps develop working relationships between them. We are also encouraging the development of young Afghan radio and television producers and reporters by funding independent radio and television series, including Straight Talk, a current affairs radio programme aimed at a teens and twenties audience, and Face the Nation, a half-hour political documentary programme. We are funding the development of further infrastructure to enable these and more independent media programmes to reach more Afghans; and we continue to monitor the Afghan government's implementation of new media legislation, which enshrines media freedoms in law. In 2010 we plan to do even more through a collective trust fund to institutionalise international development of the independent media in Afghanistan.

Policing, Prisons and Rule of Law

Over the last year, the Afghan National Police has grown by 25,000 to 90,000 officers. This will continue to increase. But the police are widely criticised and have further to go in terms of professionalism and training to win the confidence of the Afghan people. In addition to a general lack of training and experience, the Afghan police face the challenge of low staff pay, lack of equipment and, in many areas, by high rates of drug addiction and exposure to conflict. A professional, well-trained police force is critical to ensuring that human rights are respected. An effective police force, alongside the other Afghan Security Forces, will also help ensure that communities are safe and secure, providing an environment where the human rights situation can improve.

The UK is a contributor to the EU Police Mission to Afghanistan. The Mission's objectives include implementing an Anti-Corruption Strategy, strengthening cooperation between the Afghan police and the judiciary, and building structures throughout the Afghan police to improve their understanding and respect for human rights and gender issues. An example is the Department for Human Rights and Gender Issues that was established recently within the National Police Academy. This is an encouraging development, and we hope that it will have a longterm positive impact in terms of upholding human rights norms in Afghanistan.

Prisons in Afghanistan remain one of the weakest and most under-resourced components of the criminal justice process. The vast majority of prisons are old and in poor condition, and the prison system lacks oversight and transparency. The number of prisoners in Afghanistan has increased more than 20 times since 2001, to 14,500 – a volume that the current infrastructure was not designed to cope with. Although there has been some progress since last year, conditions in some prisons and detention facilities remain a concern.

In 2009, the UK helped to improve one of the main detention facilities in Kabul, and supported the construction of a new prison in Lashkar Gah, Helmand province. The prison, which opened in September 2009 with capacity for 400 prisoners, has much improved conditions compared with its predecessor, and will conform to UN minimum standards on the treatment of prisoners. The project also includes a training programme aimed at providing staff with the basic skills they need to operate the prison. The UK undertakes monitoring visits to the National Directorate of Security facility in Lashkar Gah to visit and check conditions for UK-captured individuals.

The British Embassy is also supporting improvements in prison-officer standards by advising on the development of their prison infrastructure and operational management. Prisons advisers work with representatives of UN Assistance Mission in Afghanistan and other international donors to assist the Afghan Ministry of Justice's Central Prisons Directorate in developing policies and working practices. To build the capacity of the Afghan National Security Forces to handle detentions, the prison advisers also deliver five-week training courses. The course covers all aspects of prisoner and detainee management, including respect for human rights and more humane techniques for control and restraint. To date, over 220 Afghan detention officers have completed the course.

We are also working to support judicial reform at the national level through building the capacity of the Criminal Justice Task Force, a multidepartmental Afghan detention, investigation, prosecution and judicial team, to target the narcotics trade. In 2010, we expect a new criminal procedure code to be introduced into Afghan law. Its development, coordinated by the UN Development Programme (UNDP), is an effort to codify the existing layers of Afghan criminal law into a coherent, workable process, and to make Afghan criminal justice fairer and more uniformly applied.

Detentions

UK forces operate in Afghanistan as part of the International Security Assistance Force (ISAF), a multinational force mandated by United Nations Security Council resolutions 1386, 1523 and rendered in 1833, to assist the government of Afghanistan in the maintenance of security. A vital element of the fulfilment of this mission is the capture of persons who threaten the security of Afghanistan. In accordance with ISAF guidelines, UK forces release captured persons or transfer them to the Afghan authorities within 96 hours of detention. In exceptional circumstances and with ministerial approval, UK forces may detain beyond 96 hours where necessary.

The UK and Afghan governments signed a memorandum of understanding on 23 April 2006 on the transfer of detainees. The memorandum includes undertakings about respect for the basic principles of international human rights laws, such as the right to life and prohibition of torture and cruel, inhuman and degrading treatment. It also provides for access to detainees by UK officials and human rights organisations, such as the International Committee of the Red Cross (ICRC) and the Red Crescent, the Afghan Independent Human Rights Commission (AIHRC) and UN human rights institutions.

There is no legal requirement to monitor UK-captured detainees who have been transferred to the custody of the host state. However, as a matter of policy, military personnel and UK officials undertake monitoring visits to those held in certain Afghan facilities to check on their welfare. This allows us to make informed decisions about the general conditions for future transfers.

The UK takes any allegation of mistreatment extremely seriously. Where a complaint of mistreatment by the Afghan authorities is made, with the consent of the detainee concerned, UK officials bring the allegation to the attention of the relevant Afghan authority for investigation. The UK also informs the ICRC and the AIHRC of complaints.

Death Penalty

There were no executions carried out in Afghanistan during 2009, although the courts handed out several death sentences and over 100 prisoners remain on death row. In concert with EU partners, we have made our opposition to the death penalty clear to the Afghan government, including in individual cases where we have concerns about lack of due process.

Local Governance

Improving local governance in Afghanistan is crucial for ensuring human rights are respected. The provision of basic services, such as healthcare, education and justice, depends on governance structures being in place at the local level. Establishing effective local governance is also key to overall stabilisation efforts and ending the insurgency in Afghanistan. But for most Afghans their encounters with the government locally are disappointing. A survey by the Afghan Independent Directorate of Local Government found that some district governors receive only \$6 a month for operational expenses, and many are semi-literate. Out of 364 governors, 184 do not have an office, 288 have no vehicle, and 318 have no electricity.

Making improvements to local governance in Afghanistan will be a long-term process, and one that presents considerable challenges for the Afghan government and international community. The Independent Directorate of Local Government is leading reform on this, and in June outlined a set of "priority programmes" to bring coherence to local government reform. These programmes address capacity-building and institutional development, social outreach, and infrastructure at provincial, district and municipal level. UK and international community support for local governance is coordinated around these priority programmes as a single framework for action.

One of the key priority programmes is the Afghan Social Outreach Programme, which has been piloted in Helmand Province since January. The programme establishes community councils in districts where there is little or no local governance in place to help connect communities to the Afghan government and enable the delivery of some basic services. Each community council appoints three sub-committees covering security, justice, and economic and social development. The sub-committees design plans to improve the local situation in their respective areas reflecting the needs of the local area. Examples of community council achievements to date include resolving local disputes over commercial property, land and irrigation issues, facilitating compensation claims for local people, and supporting wheat-seed distribution. The justice and security committee in Gereshk, the only council so far to have women members, has also successfully dealt with disputes involving domestic violence, divorce and forced marriage. Following the success of the Helmand pilot, nine other provinces including Kandahar are now planning to introduce the programme.

The Shia Family Law

The Afghan Parliament passed the law on the Personal Status of Followers of Shia Jurisprudence (the "Shia Family Law") on 22 February 2009. The law was designed to give legal recognition to the Afghan Shia minority's religion and it affords Shia women economic protections. But the UK, alongside other international partners and members of Afghan civil society, had serious concerns about some of its other provisions. We raised these

concerns with the Afghan government at the highest level and, with international support, Afghan civil society and female MPs worked together with the Afghan government to redress the law. On 29 April the Prime Minister spoke about his contact with President Karzai on this issue, saying, "I reiterated to him the concerns that we have, and the whole world has, over the Shia family law and I welcome his decision to review this draft bill."

President Karzai enacted an amended version of the law on 27 July. Some of the articles of greatest concern, such as that which restricted a wife's freedom of movement, have been removed. But we and Afghan civil society organisations have concerns over some of the law's remaining provisions. Further reform of the law will be a long-term process involving wide dialogue between Afghan civil and religious society, the Afghan government and Parliament. But the process so far has shown that Afghan civil society can influence change for the better.

The Shia Family Law reflects the difficult situation many women in Afghanistan continue to face. However, some progress on women's rights is being made. The Afghan government, with support and encouragement from Afghan civil society and the international community, recently passed a law on the Elimination of Violence Against Women, which constitutes a major step forward for women's rights. This landmark bill was signed into law by President Karzai in July of this year.

This law applies to all communities in Afghanistan and includes a comprehensive definition of violence against women. The law has primacy over other laws and criminalises a range of violent acts against women, for the first time in Afghanistan. These include the offences of "baad" (the exchange of women and girls as a form of dispute resolution), stalking, polygamy and underage marriage.

The challenge for the Afghan government now is to ensure that the law is implemented. We are assisting with this through our wider efforts to help reform the criminal justice system and through support for local NGOs that are working to address violence against women. For example, we are supporting two of Afghanistan's first legal aid centres for female victims of violence. On 8 December, the British Ambassador opened one of the legal-aid centres, pledging long-term UK financial support for it. The centre is the initiative of the Afghan NGO, Humanitarian Affairs of the Women and Children of Afghanistan. Working in partnership with the Ministry of Women's Affairs, the Family Court, the Attorney-General's office and other NGOs, the centre's in-house lawyers and counsellors will provide pro bono legal assistance and psychological support to female victims of violence and discrimination.

The case of Sayed Pervez Kambakhsh

On 27 October 2007, while a student at Balkh University and a journalist for a local daily, Jahane- Naw (New World), police arrested Sayed Pervez Kambakhsh and charged him with "blasphemy and distribution of texts defamatory of Islam". The authorities claimed that Mr Kambakhsh distributed writing posted on the internet by Arash Bikhoda ("Arash the atheist"). Bikhoda's writing criticises the treatment of women under Islamic law. On 22 January 2008, the Primary Court in the northern city of Mazar-e-Sharif sentenced Mr Kambakhsh to death.

Mr Kambakhsh appealed and his case was heard in a Court of Appeals in Kabul. In October 2008, the court upheld the conviction but commuted the sentence to imprisonment for 20 years. Mr Kambakhsh then appealed to the Supreme Court, which, in February, upheld the Court of Appeals' decision.

Many people in Britain, Afghanistan and around the world wrote letters, signed petitions and campaigned to ensure he was not forgotten during his imprisonment. Following concerns over the lack of due process during his trial, we raised Mr Kambakhsh's case at a high level with the Afghan government. In late August, we welcomed President Karzai's decision to grant Mr Kambakhsh "amnesty", subsequent to which Mr Kambakhsh left Afghanistan.

Unfortunately, Mr Kambakhsh's case is not unique and is indicative of some of the wider challenges faced by the Afghan journalists and also by the judiciary.

Encouraging female police officers in Helmand province

Many women across Afghanistan suffer from unequal legal protection and poor access to justice. This is partly because of deeply held cultural views, which are reflected in the predominantly male make-up of Afghanistan's civil institutions, including the Afghan National Police. But in 2009 a group of female officers in Lashkar Gah have demonstrated that Afghan women can contribute to policing, even in one of the country's most conservative areas.

Sergeant Isabella McManus, a Ministry of Defence (MOD) police officer working in the UK-led Provincial Reconstruction Team, identified a small group of women working at the Police Headquarters who had great potential but were untrained, without uniforms and largely unnoticed. Sergeant McManus began mentoring the 13 women and took them onto a firing range for the first time, something which they had never previously been

permitted to do. She also helped them to design a uniform, which is culturally sensitive but allows them to wear their rank with pride. The women have now begun to take a more active role in the Afghan National Police and report that they feel much more valued and able to contribute. Four of the women have gone on to attend a training course at the National Police Academy in Kabul. The number of female recruits has almost doubled since Sergeant McManus's arrival.

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