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Abbreviations

AIMS	Afghanistan Information Management Service
IDP	Internally Displaced Person
IOM	International Organisation for Migration
ISAF	International Security Assistance Force
KHAD	Khidamat-i-Ittala'at-i-Dawlati (Ministry for State Security under the communist government in Afghanistan)
MSF	Médecins Sans Frontières
NGO	Non-Governmental Organisation
PDPA	People's Democratic Party of Afghanistan (the former Afghan communist party)
SCA	Swedish Committee for Afghanistan
UN	United Nations
UNAMA	United Nations Assistance Mission to Afghanistan
UNHCR	United Nations High Commissioner for Refugees

1 Introduction

Afghanistan has had a very turbulent history and more than two decades of war. Afghan refugees have for an extended period in time been the largest refugee group in the world. Most of the refugees are situated in Pakistan and Iran. Since the 11 September 2001 terrorist attack in the United States, the world has closely followed the situation in Afghanistan. Today, the Taliban are no longer in power and the country is trying to reconstruct a functioning state. During 2002 an estimated two million Afghans returned to Afghanistan. Due to these changes the Swedish Migration Board decided to undertake a fact finding mission to Afghanistan and Pakistan.

A comprehensive and definite description of the current situation in Afghanistan is impossible due to the constantly changing political and security environment in Afghanistan. Therefore, the scope of this report is to give a general picture of the country through the people interviewed, in areas such as security, human rights and the humanitarian situation. The majority of the information presented in this document is information gathered during the mission. However, some of the information has been collected from United Nation documents and reports from non-governmental organisations.

The fact finding mission took place from 22 to 30 November 2002. In Afghanistan the United Nations High Commissioner for Refugees (UNHCR) hosted the visit¹. The interviews conducted by the delegation were partly arranged through UNHCR and partly by the delegation itself. During the mission the delegation visited Islamabad (Pakistan), Kabul, Shomali Plains, Kandahar, Spin Boldak and Quetta (Pakistan). Because most government agencies and organization of interest are situated in Kabul, the delegation spent most time there. The delegation also visited the south; Kandahar and Spin Boldak, which is a border point between Afghanistan and Pakistan. Many IDP (Internally Displaced Persons) camps are situated in the south. The delegation visited different representatives of the United Nations Assistance Mission to Afghanistan (UNAMA), different sub-offices and head-offices of UNHCR in Afghanistan and Pakistan, the Kabul Regional Director of the Swedish Committee for Afghanistan (SCA), representatives of the International Organization for Migration (IOM), representatives of different branches of the Afghan government and representatives of the Danish and British Embassies. Due to the lack of time during the mission, the delegation prioritised interviews with United Nation organisations. The delegation also conducted several field trips to different IDP camps and the Shomali Plains north of Kabul.²

¹ The Swedish Migration Board would like to thank UNHCR Afghanistan for their great support and hospitality during the delegation's visit to Afghanistan, special thanks to their Assistant Chief of Mission Philippe Leclerc.

² See References for more thorough description of the people interviewed

1.1 A Brief Political Background

In July 1973 King Zaher Shahs cousin, Daoud Khan, staged a coup ousting the king. On April 27, 1978, Daoud was overthrown in a coup d'état by the Peoples Democratic Party of Afghanistan (PDPA)³. The PDPA regime launched a campaign of radical agrarian reform and mass repression that resulted in arrest and execution of thousands which provoked a number of uprisings in the country. Alarmed by the disintegration of the Afghan army and the uprising, the Soviet Union intervened on December 24, 1979. The Soviet invasion greatly expanded the resistance. At the end of the 1980s the ten year Soviet invention was put to an end by anti-Communist Mujaheddin fighters. An estimated one million Afghan lives were lost during the conflict. The Soviet withdrawal gave rise to a state of warlordism and fighting between Mujaheddin factions. In reaction to warlordism and the under representation of Pashtuns in the Kabul government, the Taliban progressed in mid 1990s. The Taliban occupied about 90 percent of the country by 1998. Parts of the northeast and the Panjshir valley were controlled by the opposition. Later the opposition was called the Northern Alliance. Following the 11 September 2001 terrorist attacks in the US, a military action in support of the opposition in Afghanistan, caused the Taliban to disintegrate and they lost Kabul on November 13, 2001. At the end of November, under the leadership of United Nations, the largest opposition groups met in Bonn, Germany. They agreed on a political process to restore stability and governance to Afghanistan, which is called the Bonn Agreement.⁴ In the first step, an interim government, Afghan Interim Authority (AIA), was appointed. On 22 December 2001 Hamid Karzai was inaugurated as the Chairman of the AIA. The most important task of the AIA was to prepare an emergency Loya Jirga.⁵ A Military Technical Agreement was signed by the AIA, on 4 January 2002, on the deployment of an international security force for Afghanistan, International Security Assistance Force (ISAF), whose main purpose was to work alongside Afghan Security Forces maintaining security in and around Kabul. When the Loya Jirga ended on 18 June 2002, a Head of State had been elected and the structure and appointment of the Transitional Authority (TA) was approved. The TA has a two year mandate, after which elections are to be held.

1.2 The Current Political Situation

The government in Afghanistan is led by the Chairman of the Transitional Authority, Hamid Karzai. Different ethnic groupings in Afghanistan are

³ The Afghan Communist Party, The Peoples Democratic Party of Afghanistan (PDPA) was founded in 1965. In 1967 the PDPA split into two factions: Khalq (masses) and Parcham (flag). Under pressure from the Soviets the two factions of the PDPA reunited in 1977. Dissolved in 1992 when president Najibullahs government fell.

⁴ see appendix for the Bonn Agreement in whole.

⁵ A Loya Jirga (Grand Councils) is a traditional meeting of leaders of different tribes and groups in Afghanistan, at which far-reaching political decisions can be taken.

represented within the government. The United Nations is helping with the building of state institutions through UNAMA. With the help of ISAF, the Transitional Authority has control over Kabul but limited control outside the city, where various warlords and their forces continue to control the provinces. Margareta Wahlström, Director of Area Coordination of UNAMA, stated that it is important for the government to balance different groups in Afghanistan. This will take many years and Afghanistan will need a lot of help.⁶

Anders Fänge, who has long experience of working for different organizations in Afghanistan⁷, stated that a major problem is that the Taliban has been replaced by a mosaic of old leaders and warlords, for instance General Dostum who is a warlord in the north and at the same time the Deputy Minister of Defence. Some of the warlords have good relations with the government while others have not. The appointment of ministers and people working for the government is a complicated game between several different actors and the result is that within the Afghan government there are people who are only looking after their own interests and not at Afghanistan's best interests. Defence Minister Fahim is one of the ministers who is more interested in his own interests than in Afghanistan's best interests and Karzai has not yet dared or had the opportunity to challenge Fahim.⁸

Anders Fänge continued by mentioning another major problem, that the composition of the present government is dominated by the Panshjis⁹ and only very few Pashtuns. At the time of the fall of the Taliban, the Panshjis under command of Fahim were the only existing powerful military force. When the Taliban had deserted Kabul the Panshjis entered the city and according to Afghan tradition "the one who is in control of Kabul also controls Afghanistan".¹⁰ At the time of the Bonn-conference the Panshjis were in control of Kabul and hence the Panshjis control several of the most important ministries. The Loya Jirga in June 2002 was intended to correct this imbalance but the only thing that happened was the Panshjis had to leave the Ministry of Interior. A problem for the government is that it is not seen as a central institution governing the whole of Afghanistan. When the United States and United Nations give support to the government it is only seen as support for the Northern Alliance and the Panshjis. The government must have a politically and ethnically broader composition in order to get a broader support from the people.¹¹

⁶ Wahlström, Margareta, Director of Area Coordination, UNAMA, Pillar 2, interview, 24 November 2002.

⁷ Fänge, Anders, Director, Field Coordination Division, UNAMA, Pillar 1, interview, 25 November 2002. See References for a more thorough background on Anders Fänge.

⁸ Fänge, Anders

⁹ Panjshir is a great valley north of Kabul and was the stronghold of Jamiat-e-Islamia in their resistance against the Taliban. Jamiat-e-Islamia is often referred to, by Afghans, as "Panshjis". Ahmed Shah Massoud was their military leader until he was assassinated just before the eleventh of September terrorist attack.

¹⁰ Fänge, Anders

¹¹ Fänge, Anders

2 Law and Order

2.1 Legal Framework

There is no existing law apparatus in Afghanistan. There are hardly any judges and few trained lawyers.¹² During the period up to the Constitutional Loya Jirga, which is to decide on the adoption of a new constitution within 18 months of the establishment of the Transitional Authority, the structure of the state in Afghanistan is based on the 1964 Constitution. Existing laws and regulations apply to the extent that they are not inconsistent with the Bonn Agreement or international treaties to which Afghanistan is a party. The Bonn Agreement calls for a judicial commission to rebuild the justice system in accordance with Islamic principles, international standards, the rule of law, and Afghan legal traditions.¹³ Since the fall of the Taliban, there have been no known cases in which the death penalty has been imposed and carried out under the official legal system.¹⁴

2.2 The Police

UNHCR Afghanistan stated that a major problem is the absence of a national and trained police force in Afghanistan.¹⁵ According to Anders Fänge the Afghan government cannot protect anyone.¹⁶

Taj Mohammad Wardak, Minister of Interior, stated that the police force has 45 000 policemen within their ranks. They are mostly former Mujaheddin soldiers who are poorly trained and received their training 24 years ago. They are paid 45 USD per month. With such low wages the chance of policemen committing criminal acts are high. The Ministry of Interior is trying to educate the police force but they do not have enough money to educate all. There is a new Police Academy in Kabul. The Academy was established with the help of Germany. How long the training is depends on previous training. It can be three months/six months or one year. The force wants to have all Afghan ethnic groups within their ranks and today there are all kinds of ethnic groups within the force.¹⁷

¹² Fänge, Anders

¹³ See Appendix; Bonn Agreement

¹⁴ Human Rights Team at UNAMA: Fejic, Goran, Senior Human Rights Advisor, Pondaven, Eric, Political Affairs Officer and Guido Gali, Political Affairs Officer, UNAMA, Pillar 1, interview, 24 November 2002.

¹⁵ UNHCR Afghanistan: Philippe Leclerc, Assistant Chief of Mission and host of the fact finding mission, Mohammed Aziz Rahgo Senior Protection Officer, Zainab Sheikh-Ali, Protection Officer, interview 27 November 2002.

¹⁶ Fänge, Anders

¹⁷ Wardak, Taj Mohammad, Minister of Interior (at the time of the fact finding mission), interview, 27 November 2002.

3 Security Situation

3.1 In General

The security situation in Afghanistan has improved but remains insecure in many parts of the country. Several of the sources emphasized that one way to improve the situation would be to set up a national army and a national trained police but important it is also important to expand the mandate of ISAF outside Kabul.

The Human Rights Team at UNAMA emphasized that the state building process in Afghanistan is fragile and slow and more time is needed as well as a national trained police.¹⁸ According to Anders Fänge, another important issue is to broaden the composition of the government. By appointing more Pashtuns the government would attract more support from the people.¹⁹

A UNHCR report, dated 31 July 2002, stated that although there has been an overall improvement of the security situation, insecurity remains a major concern in certain regions. The situation remains highly volatile, tense and unpredictable. Some of the main features of the security situation are factional clashes that repeatedly erupt between rival Afghan political and military actors seeking regional influence, reports of serious human rights abuses against members of the Pashtun ethnic communities in the northern and western region of Afghanistan, the absence of disarmament and lack of law enforcement have given raise to banditry and criminality. According to UNHCR Afghanistan, this is still how UNHCR define the general security situation in November 2002. However, UNHCR Afghanistan continued by saying that in some regions the security situation has improved during recent months, but the situation has worsened in other parts of the country due to conflicts between different factions. Apart from Kabul, different factions are in control of Afghanistan.²⁰

The Regional Director for SCA stated that the security situation in Afghanistan is problematic but has improved, especially in Kabul, even if some incidents still occur. The security situation has also improved in the countryside. However, civilians still have problem with commanders and warlords. Warlords harass civilians and people mistrust commanders, who have changed their loyalty several times. Local shuras²¹ could have some influence and act as mediators but many shuras have lost much of their authority.²² Anders Fänge pointed out that the commanders have shown an increase in their will to solve their conflicts by peaceful means and

¹⁸ Human Rights Team at UNAMA

¹⁹ Fänge, Anders

²⁰ UNHCR Afghanistan

²¹ Local Shura could be described as a council that deal with community conflicts. A Local Shura most often consist of respected elders.

²² Jan-Erik Wann, Regional Director for SCA (Eastern Regional Office, Kabul), interview 25 November 2002.

agreements. The most obvious outward signs of oppression which existed during the Taliban regime are now gone. The security situation in Afghanistan is still problematic, because of bad politicians. For example Defence Minister Fahim and his soldiers in north eastern Afghanistan act independently of the central government. Civilians are still being harassed all around Afghanistan.²³ According to the Human Rights Team at UNAMA, there are constant abuses by local commanders in more remote areas, "if people are quiet and poor they are not in danger".²⁴

The reasons behind the ongoing fighting varies. According to UNHCR Afghanistan the fighting is normally not politically motivated but a question of the fight for power. Some clashes are also tribal related and a matter of traditional disputes.²⁵ Anders Fänge emphasized that the harassments is rarely a question of ethnicity but mostly an ambition for power and warlords acting as bandits. Anyone who is harassed can avoid this by moving to another place and there is an internal flight alternative in Afghanistan.²⁶

The Minister of Interior and the Deputy Minister of Return and Repatriation were of the opinion that the security situation is satisfactory and is improving. The Minister of Interior stated that Afghanistan is up to 80 percent secure. 20 percent is not secure due to bad infrastructure, badly educated police, not enough police personnel and the lack of good equipment. However, the Minister also stated that the situation is improving every day and an example of this is the end of the curfew in Kabul.²⁷ The Deputy Minister for Return and Repatriation said that political security prevails in Afghanistan and that no one is persecuted in Afghanistan. The reason why people have applied for asylum in other countries is purely economic. The Minister also mentioned that because of the humanitarian situation it is difficult to return to Afghanistan.²⁸

The armed clashes and ongoing fighting causes displacement. The Director of Area Coordination of UNAMA mentioned that because of armed clashes people flee to the south of Afghanistan. This generates problems because the south is already overcrowded in relation to existing resources and the continuing drought.²⁹

²³ Fänge, Anders

²⁴ Human Rights Team at UNAMA

²⁵ UNHCR Afghanistan

²⁶ Fänge, Anders

²⁷ Minister of Interior

²⁸ Mohammed Naheem Ghiasi, Deputy Minister of Return and Repatriation, interview 27 November 2002.

²⁹ Director of Area Coordination of UNAMA

3.2 Taliban

UNHCR Afghanistan stated that, regarding possible threats from the Taliban, it is not known exactly where the Taliban are. Probably there are Taliban in Pakistan and also in the south of Afghanistan in camps like Spin Boldak and in the Waiting area. Recently there have been some attacks against schools and video stores that might be the work of the Taliban. Many Taliban are integrated into the Afghan society. Military action in the context of the "war on terrorism" by Coalition forces continue to take place in parts of Khost, Paktia, Paktika, Kunar and in Urozgan.³⁰

3.3 Disarmament

There are programs of demobilization and disarmament in Afghanistan. However, a successful disarmament has not yet been carried out. The Minister of Interior stated that there are problems with weapons in Afghanistan and weapons are especially common in the mountainous areas.³¹ UNHCR Afghanistan stated that in rural areas and even in Kabul young men are still carrying weapons which spreads fear among people. It is difficult to know what force the armed men belong to since they normally do not wear uniforms and the government cannot afford uniforms for their soldiers.³²

3.4 Land Mines

A general mine action campaign is going on in Afghanistan but people are still killed every day by mines, including in Kabul. People and organizations have knowledge about where most of the mine fields are. However, there are mines that have been put in the ground at random. Demining is difficult and dangerous work. Demining is a priority in areas people return to.³³

3.4 Regional Differences

3.4.1 Kabul and the surrounding area

Most of the sources stated that the security situation in Kabul is generally good and according to UNHCR Afghanistan the situation improved during

³⁰ UNHCR Afghanistan

³¹ Minister of Interior

³² UNHCR Afghanistan

³³ UNHCR Kabul: Field Officer, Monica Sandri, interview 24 November 2002, Field Officer, Yumiko Takashima, interview 26 November 2002, Protection Officer, Ann Maymann, interview 24 November 2002, Associate Protection Officer, Margaret Atieno, interview 24 November 2002.

the autumn of 2002. A sign of the improved situation in the capital was that the curfew was lifted at this time.³⁴ Most sources also agree on the importance of ISAF for future security in Kabul.

During the delegation's visit to Kabul there was a rocket attack on the city, carried out by unknown people. The rockets were probably directed towards the airport and were most likely fired from a location near the Mikroyan area in Kabul. To the delegation's knowledge nobody was hurt in the attack.

UNHCR Kabul stated that in the province of Kapisa there are difficulties with an armed local militia and commanders on a local level. They use their power to harass and steal from people. The militia is a problem since they do not allow returnees to come back to the area. They steal land that belongs to other people and they also prevent NGOs from giving assistance.³⁵

3.4.2 North

After the fall of the Taliban, Mazar-i-Sharif and surrounding areas have been in command of three rival commanders, General Abdul Rashid Dostum (Uzbek), Ustad Atta Mohammed (Tajik) and Haji Mohammad Mohaqiq (Hazara). The ethnic Pashtun minority has been identified with the Pashtun-dominated Taliban and has therefore faced widespread abuses. Grave human rights crimes have been committed there.³⁶ Many Pashtun have fled to the south of Afghanistan but many are also internally displaced in the north. Lately these abuses have decreased. Many Pashtuns left the north before Christmas 2001, but not so many have left since then. There are intense rivalries between commanders, primarily General Dostum and Mohammed Atta, which lead to armed clashes in the north.³⁷ UNAMA, Dostum and Atta are trying, in a joint effort, to carry out disarmament and stop further disturbances. United Nations has also promised Dostum and Atta to investigate crimes carried out by other warlords and factions since more mass graves have been found from several different factions. Dostum is also involved in trafficking, women are sent to brothels in Kabul.³⁸

The Deputy Minister of Return and Repatriation said that political security is complete in the north of the country.³⁹

³⁴ UNHCR Afghanistan

³⁵ UNHCR Kabul

³⁶ Human Rights Watch, *Afghanistan: Paying for the Taliban's crimes*, April 2002 vol. 14, no.1 (c).

³⁷ Human Rights Team at UNAMA. Director of Area Coordination of UNAMA

³⁸ Director of Area Coordination of UNAMA

³⁹ Deputy Minister of Return and Repatriation

3.4.3 East

According to several sources there are armed clashes between different factions in the provinces of Paktia, Kunduz, and the cities in Gardez and Khost. The US military still conduct search operations for Al Quaida in eastern Afghanistan.

Anders Fänge stated that in the east of Afghanistan, in the Jalalabad area, there is an ethnic group called Pashai. The Pashai's consist of a about 100 000 people and they used to live in the mountains. In the past they were known as bandits, who occasionally come down from the mountains to rob people. Under the leadership of their leader, Hasrat Alia, they are now responsible for security in the city of Jalalabad and they use their power to systematically harass and rob people and no one dare to protest.⁴⁰ However, UNHCR Afghanistan claimed that the situation has recently improved in Jalalabad.⁴¹

3.4.4 South

UNHCR Kandahar stated that security is no major concern in the Kandahar area. However, the drought in the south leads to an increase in crime rates and there is a link between the worsening economic situation and the increase in crime.⁴² The Human Rights Team of UNAMA pointed out that in the south there is an absence of law and instead there is a tribal/customary way of solving problems.⁴³ UNHCR Afghanistan stated that there are reports of gang rapes of women and factional clashes in the province of Uruzgan.⁴⁴

The US military still conduct search operations for Al Quaida members in the south.

3.4.5 West

According to most sources the security situation in and around Herat is stable because Ismael Kahn has total control over the area. However, Ismael Kahn allows no opposition, which according to the Director of Area Coordination of UNAMA, has lead to dissatisfaction among people that could cause a revolt.⁴⁵ Ismael Khan is also trying to implement a very strict conduct for women, for example strict dress code and women cannot be seen in the presence of foreigners. There are also frequent abuses against women.⁴⁶

⁴⁰ Fänge, Anders

⁴¹ UNHCR Afghanistan

⁴² UNHCR Kandahar: Abdulkadir Haji Jama, Head of Sub-Office, interview 27 November 2002

⁴³ Human Rights Team of UNAMA

⁴⁴ UNHCR Afghanistan

⁴⁵ Director of Area Coordination of UNAMA

⁴⁶ UNHCR Afghanistan

The Deputy Minister for Return and Repatriation claimed that people have an interest in exaggerating the problems. In Herat people say they are politically persecuted but instead the problem is the drought.⁴⁷

3.4.6 The Central Region – Hazarajat

According to many sources consulted, the situation in Hazarajat is very difficult with factional clashes going on and of local commanders harassing the civilians. Anders Fänge said that even if the Hezb-e-Wahdat party has a strong position in Hazarajat, they do not fully control their commanders. There are a mix of local commanders who commit murder, rapes and lootings and forced marriages are common.⁴⁸ UNHCR Afghanistan confirmed information of band of soldiers harassing the civilians and added that there are reports of gang-rapes of women.⁴⁹

⁴⁷ Deputy Minister for Return and Repatriation

⁴⁸ Fänge, Anders

⁴⁹ UNHCR Afghanistan

4 Review of the Human Rights Situation

4.1 In General

During the past two decades the Afghan people have faced serious human rights violations. At the end of the 1990s the world could read about the human rights abuses, carried out by the Taliban, in the news media. With the Bonn Agreement, state sanctioned persecution and discrimination became illegal. According to the Bonn Agreement the Afghan government has to comply with international law. However, despite the changes in the government, major human rights abuses still continue. The continuation of violations is mainly due to the lack of national security. According to UNHCR Kabul, the only real power is with guns and the commanders often cooperate with the authorities.⁵⁰ According to Fejic, Senior Human Rights Advisor at UNAMA, "security is basic to human rights".⁵¹

Relatively few organisations work with human rights documentation in Afghanistan.⁵² The lack of infrastructure also limits information from various parts of the country.⁵³ The Bonn Agreement stated that the Afghan Independent Human Rights Commission (AIHRC) should be formed. The commission has eleven members and most of them come from civil society organisations. Their responsibility is human rights monitoring, investigation of human rights violations and development of human rights institutions within the country. UNAMA is providing support to the commission. UNAMA also has their own Human Rights Team working with monitoring and investigating human rights violations. Due to the lack of people working with human rights documentation within UNAMA, they have had to prioritise their work to documenting gross human rights violations and the effects on vulnerable groups such as IDPs, single women head of households and violations against the peace process. There have been problems with the investigations of human rights abuses, especially past crimes. The government has not yet decided how to handle past crimes. After the documentation of the abuses against Pashtuns in the north, witnesses have been in danger. This complicates the work with documentation of abuses. However, UNAMA will continue their investigations, but in order to do this they need a witness protection program and according to the Human Rights Team at UNAMA, the only effective protection is asylum.⁵⁴

The Human Rights Team at UNAMA stated that there is no division between local commanders and the government military. However, Fejic

⁵⁰ UNHCR Kabul

⁵¹ Fejic, Goran, Senior Human Rights Advisor, UNAMA, Pillar 1, interview, 24 November 2002 (part of the Human Rights Team at UNAMA).

⁵² Human Rights Team at UNAMA

⁵³ Suraya Rahim, Deputy Minister of Women Affairs, interview 27 November 2002.

⁵⁴ Human Rights Team at UNAMA

points out that “you cannot say that the government is responsible for the abuses carried out by commanders”. He continues by saying that the government does not persecute anyone.⁵⁵

According to the Human Rights Team at UNAMA, it is difficult to speak of freedom of speech, freedom of association and so forth in Afghanistan. The current law allows freedom of speech, but in practice the situation is different. In Kabul, for instance, there is an ongoing conflict between fundamentalism and secularism, which pervade every state institution. The human rights situation is best in Kabul. However, Kabul is overcrowded.⁵⁶

4.2 Right to Life, Personal Security and Physical Integrity

According to Afghan law the death penalty is allowed. However, the Human Rights Team at UNAMA points out that the death penalty has been put on hold. There are reports of people being detained for a prolonged period since the police force does not have the capacity to investigate allegations against the detainees and a functioning judicial system has yet to be established.⁵⁷ There are hardly any lawyers and those who do exist are too expensive.⁵⁸ People are being detained because of crimes and for political reasons. There have also been reports of single women put in detention for their own protection.⁵⁹ Many commanders have private jails and detain whoever they like; they have the power to do so because of weapons. These private detentions can be found at all levels in society.⁶⁰ Anders Fänge stated that the National Security Department (NSD) can arrest anyone without trial and they act independently of the rule of law.⁶¹ The fact finding delegation did not investigate the conditions in the prisons.

4.3 Right to Freedom of Expression and Press

There are approximately 150 weekly publications in Kabul. According to the Press Act of 1965 freedom of expression is guaranteed in Afghanistan but this act also declares it is prohibited to criticize for instance the army, which means that it is not possible to criticize the Defence Minister Fahim.⁶² The conflict between fundamentalism and secularism is ongoing within the Ministry of Information. There are different opinions on how the media should be used and how much freedom the media should have. Many

⁵⁵ Fejic, Goran

⁵⁶ Human Rights Team at UNAMA

⁵⁷ Human Rights Team at UNAMA

⁵⁸ Deputy Minister of Women Affairs

⁵⁹ Human Rights Team at UNAMA. UNHCR Kabul

⁶⁰ UNHCR Kabul. Human Rights Team at UNAMA

⁶¹ Fänge, Anders

⁶² Fänge, Anders

journalists practise self-censorship and there have been cases of journalists being tortured.⁶³

4.4 Freedom of Movement

According to UNHCR Afghanistan all Afghans have the right to travel freely inside and outside Afghanistan. Travel is possible in almost the whole country but is limited by looting along the roads. The roads in western Afghanistan from Herat to the north and from Herat to Helmand are unsafe. The road between Kabul and Ghazni is also unsafe. However, the situation has improved greatly and is still improving. A sign of this is the decrease in the number of roadblocks.⁶⁴

4.5 Group Specific Conditions

4.5.1 Political Dissidents

The Human Rights Team at UNAMA stated that people that were in opposition at the Loya Jirga faced threats from local commanders afterwards. In a broader perspective, this pattern can be seen as an example on how opposition can be treated.⁶⁵ In the west, Ismael Khan does not tolerate opposition and neither does Daoud in the north east. Pashtun tradition can be some-what tolerated, however, there is no tradition of opposition in Pashtun areas.⁶⁶ Another example is the students who were recently jailed since they had protested against the bad conditions at the university. According to the Human Rights Team at UNAMA they should almost be seen as political prisoners. The team also said that in order to avoid danger you need to be quiet and poor.⁶⁷

4.5.2 Ethnic groups

Afghanistan is an ethnically diverse country. The largest ethnic group is the Pashtuns, followed by the Tajik and then the Hazara. The Human Rights Team at UNAMA stated that there is no ethnic persecution at present. However, the ethnic element is used as a tool in political activity. Minorities could face problems and at frontlines abuses of ethnic minorities often occur.⁶⁸ The people interviewed on the fact finding mission were asked if any ethnic group were more vulnerable. The ethnic group which most of the sources mentioned was Pashtuns. Kuchis and Hazaras were also mentioned.

⁶³ Human Rights Team at UNAMA

⁶⁴ UNHCR Afghanistan

⁶⁵ Human Rights Team at UNAMA

⁶⁶ Fänge, Anders

⁶⁷ Human Rights Team at UNAMA

⁶⁸ Human Rights Team at UNAMA

Pashtuns

Since the fall of the Taliban Pashtuns have been abused due to the fact that they are identified with the Taliban and are therefore faced with an element of vendetta. Human Rights Watch reported, in April 2002, abuses suffered by Pashtuns in northern Afghanistan since the fall of the Taliban. The abuses included killings, sexual violence, beatings, extortion and looting.⁶⁹ Since the spring of 2002 these violations have decreased. However, some still consider Pashtuns to be traitors, for example Ismael Khan in Herat.⁷⁰ According to Anders Fänge, Pashtuns with democratic ideas could face persecution and in Kabul the life of the Pashtuns are made difficult by the Panshjiris.⁷¹

The Deputy Minister of Return and Repatriation stated, with regard to Pashtuns in the north, that they have a lot of power there. A very small group could be at risk if for example they are Taliban but the problem is smaller than first believed.⁷²

UNHCR Kabul stated that in the village of Kalazai near Kabul, in a Tajik area, the Tajiks refuse the Pashtuns access to water. About 200 families are affected. Since the Pashtuns are farmers in this area, this causes problems for the Pashtuns. It is not yet clear why the Tajiks do not allow the Pashtuns access to the water. The Tajiks claim that they are short of water but traditionally water has always been shared between Tajiks and Pashtuns, even at time of shortage. UNHCR Kabul believes that it is a political issue and probably it should be seen as some sort of persecution. Attempts have been made to broker an agreement and in June the authorities promised to act but nothing happened, maybe because the authorities are Tajiks themselves.⁷³

Kuchis

The Kuchis are Pashto speaking nomads. Traditionally they have been isolated from Afghan society and are not liked by other groups. According to UNHCR Islamabad the Kuchis could face problems because they belong to the same tribe as Mullah Omar.⁷⁴ Due to many years of drought the Kuchis have lost their animals and are forced to seek refuge in camps, many are situated in IDP camps in the south.⁷⁵

⁶⁹ Human Rights Watch, *Afghanistan: Paying for the Taliban's crimes*, April 2002 vol. 14, no.1 (c).

⁷⁰ Human Rights Team at UNAMA

⁷¹ Fänge, Anders

⁷² Deputy Minister of Return and Repatriation

⁷³ UNHCR Kabul

⁷⁴ UNHCR Islamabad: Mr. Philip Karani, Assistant Representative, interview 22 November 2002.

⁷⁵ UNHCR Kandahar

Hazaras

Hazaras are Shia and they have always been seen as second class citizens and are often extra vulnerable in conflict situations.⁷⁶ During the Taliban there were reports of massacre of Hazaras. According to Anders Fänge, no Hazaras, in Kabul, will be at risk due to ethnicity. However, Hazaras in western Kabul could be at risk because the area is controlled by a Pashtun leader, Sayyaf. Hazaras who in any way have a high profile could be seen as a threat and could be at risk even from their own leaders.⁷⁷

4.5.3 Women and Children

The Deputy Minister of Women Affairs described the current situation for women as follows: "the situation for women is better now than under the communist, fundamentalists and the Taliban, but it is still not good".⁷⁸ The human rights situation for women is different than under the Taliban but women do not feel safe. The conservative traditions remain and the presence of armed factions poses a threat.⁷⁹ Many women are still wearing burqa because they are afraid of violations and they remember what happened during the Mujaheddin regime in the beginning of the 1990s.⁸⁰

Most of the sources interviewed confirmed that the security situation for women is difficult. Women that are single head of household without extended families to care for them, or if the extended family are not able to care for them, are vulnerable. Women who are single heads of households are at risk because they have no family protection, no money and no employment. If they have children, the risk is extended to the child.⁸¹ In Herat Ismael Khan is trying to implement really strict conduct for women for example strict dress code and they cannot be seen in the presence of foreigners.⁸² Honour killings are taking place but it is unclear to what extent.⁸³ There are frequent abuses against women such as mass rapes, kidnapping and forced marriages. The deeper the poverty the earlier/younger girls are forced to marry, these probably also take place in Kabul.⁸⁴ Commanders come and take any woman they want.⁸⁵ Ann Maymann, Protection Officer UNHCR Kabul, emphasized that if a woman is subjected to domestic violence "there is no where for her to go for

⁷⁶ Regional Director of SCA

⁷⁷ Fänge, Anders

⁷⁸ Deputy Minister of Women Affairs

⁷⁹ Fänge, Anders. UNHCR Afghanistan

⁸⁰ Deputy Minister of Women Affairs

⁸¹ Deputy Minister of Women Affairs. Human Rights Team at UNAMA

⁸² Human Rights Team at UNAMA

⁸³ UNHCR Kabul

⁸⁴ Human Rights Team at UNAMA

⁸⁵ UNHCR Kabul

help".⁸⁶ Women cannot get any help from the few lawyers that exist because they cannot afford it.⁸⁷

The Ministry of Women Affairs has tried to establish women councils in the different provinces. They have received varied responses in different provinces; in some they were welcomed but not in others. In Kunduz, for example, it worked without any major obstacles, but in Takhar they met hard resistance. The fundamentalists in Takhar said that if any woman tries to participate in the council, or even go outside at the time the representatives from the ministry were present, they would be shot. In Samangan the ministry was more welcomed. The governor invited women, who could be of interest to the council, to a meeting. Presently, there are women councils in about fifteen of the largest provinces. The first council established was in Kandahar.⁸⁸

The Deputy Minister of Women Affairs stated that about 1500 work at the Ministry of Women Affairs in Kabul and 1500-1600 in the provinces. The role of the ministry is political; they are promoting women's rights, education, health, work and so forth. The opinion of the ministry is that Islamic rules, such as women need to be happy and need to be eighteen to get married, should be implemented. Women come directly to the ministry with their problems and they cannot help all the women that ask for help, because they do not have the funding. The ministry has a law group that are focusing on women's rights and the group consists of six people. The purpose of the group is to investigate the current problems and then assist. Recently the law group succeeded in getting twenty women out of jail. One of the women in the law group is also part of the Constitutional Commission.⁸⁹ There are several commissions that have been established in accordance with the Bonn Agreement. Women are systematically elected to these commissions.⁹⁰

There is no shelter for women to seek refuge in Afghanistan. Shelter for women would be a shock to the people due to tradition. However, the Ministry of Women Affairs will build a shelter but they cannot say it is a shelter, they have to give it another name.⁹¹

⁸⁶ Mayman, Ann, Protection Officer, Sub Office Kabul, UNHCR, interview, 24 November 2002

⁸⁷ Deputy Minister of Women Affairs

⁸⁸ Deputy Minister of Women Affairs

⁸⁹ Deputy Minister of Women Affairs

⁹⁰ UNHCR Afghanistan

⁹¹ Deputy Minister of Women Affairs

4.5.4 Persons Affiliated with the Former Communist Regime, especially Khad⁹²

UNHCR Islamabad stated that high ranking members of the former communist regime could be targeted. However, many members of the former communist regime have lived in Afghanistan ever since the 1980s, seemingly without persecution.⁹³ Anders Fänge said that high ranking members of the former communist regime who have been involved in decisions that meant life or death could be at risk but normally it is a matter of vendetta from individuals who have been affected by these decisions. Low or medium ranking former communist are not at risk.⁹⁴ The Human Rights Team at UNAMA stated that former communists could be targeted but they are not systematically targeted. Whether or not they are targeted has to do with the present political context, who they are affiliated to and so forth. Former Khad-members are still around in the national security apparatus. However, it is not possible to exclude the possibility that former Khad-members could be targeted.⁹⁵

The Deputy Minister for Return and Repatriation stated that no one is persecuted in Afghanistan. Afghanistan's biggest enemies were the communists but they are now living in the Afghan society.⁹⁶

UNHCR Islamabad assured that due to the recruitment methods used, no one in Khad can claim that they only had an innocent desk job. It is important that the exclusion clauses are looked into when someone says they have been working for Khad.⁹⁷

4.5.5 Taliban

Most sources stated that hardly anyone risks persecution because of being a former Taliban. Most of the Taliban have today been integrated into the Afghan society.

⁹² KHAD, Khademat-e Ittela'at Dowlati, State Information Services, the former communist regime secret police. Khad was created by the communist government on the model of the KGB. 1986 Khad became the ministry of national security. Khad and its personnel have a record of grave human rights abuses.

⁹³ UNHCR Islamabad

⁹⁴ Fänge, Anders

⁹⁵ Human Rights Team at UNAMA

⁹⁶ Deputy Minister for Return and Repatriation

⁹⁷ UNHCR Islamabad

5 Socio-economic situation

5.1 In General

Afghanistan is one of the poorest countries in the world. Two decades of war and several years of drought have severely effected the country, reduced many to the very margin of survival and rendered the economy flat. The Afghan economy is almost completely dependent on international aid and there is no functioning fiscal system. However, the recovery in Kabul has been strong and rapid and the financial situation in Kabul could be described as a bubble economy thanks to the extensive international presence and wealthy Afghan returnees.⁹⁸

A current difficulty in Afghanistan is the land- and property problem. This has been a problem for an extensive period of time, because there has been no land reform in Afghanistan. The problem is now increasing due to the number of returnees. Afghans that have left their land are not considered to have the right to the land, upon return. In many cases someone else has taken over the land and this person is normally reluctant to leave the land, at least before the next harvest.⁹⁹ Land issues are regulated on a provincial level. The recently established Property and Land Dispute Court is an attempt to solve this problem. The court has three judges, who have a national responsibility. In accordance with the Bonn Agreement there is also a land commission working with the issue. UNHCR is assisting with reviewing existing legislation. During 2003, the Norwegian Refugee Council are also going to place advisors in every province to advise and assist returnees facing this problem.¹⁰⁰

Major areas of concern for the returnees, pointed out by most of the sources interviewed, are security, access to natural resources such as water and land, and access to basic services such as health care. The Deputy Minister for Return and Repatriation stated that there are many problems, the largest problems are settlement, work and food (which he said are temporary problems), but also water and health. UNHCR Kabul also mentioned that a major problem for returnees in Kabul is high inflation, high prices and high rents.¹⁰¹

5.2 Health Care

The Afghan life expectancy is approximately 45 years. The infant mortality rate is high and the most common diseases in Afghanistan are diarrhoea and respiratory diseases, which are common causes of death. In general it is not

⁹⁸ Director of Area Coordination of UNAMA

⁹⁹ UNHCR Kabul

¹⁰⁰ UNHCR Afghanistan

¹⁰¹ Deputy Minister for Return and Repatriation

possible to treat serious diseases in Afghanistan, for example, dialysis is not available and kidney problems cannot be treated at all. The health sector has not been rebuilt. There are some hospitals in the cities but they have no equipment. The best hospital in Kabul is the German field hospital.¹⁰² Around six million Afghans have little or no access to healthcare.¹⁰³ The Director of Area Coordination of UNAMA said that the government wants to privatise the health sector because of ideological reasons. The government rely on NGOs and the United Nations to run the health sector and today they are responsible for 70 percent of the sector.¹⁰⁴ The Regional Director of SCA stated that SCA provides approx 30 percent of Afghanistan's health care and operates 138 clinics.¹⁰⁵

The Deputy Minister of Women Affairs emphasised that 35 percent of women are dying while giving birth or in other pregnancy related diseases. Women's health has not been prioritised and today the health care provided for women is extremely poor. The Ministry of Women Affairs would like to establish a mobile clinic for women that could reach remote areas.¹⁰⁶

5.3 Education

The illiteracy rate in Afghanistan is very high. Since the fall of the Taliban many girls have started school. The Director of Area Coordination of UNAMA informed that in urban areas around 50 percent of the girls are at school and in rural areas around 30 percent of the girls are at school. However, the educational system is in very bad condition, lacking educated teachers, teaching materials and even school buildings, some schools are just tents. The Ministry of Education is responsible for construction of new schools with the help of NGOs. The Ministry of Education is working with a three-year-strategy in order to improve the education system.¹⁰⁷

In parts of the Afghan society there is a reluctance to allow education for women, for example, some schools for girls were burned in Wardak. Many returnees have also left their children, especially older girls, in Pakistan to ensure their education. The best schools in Kabul are run by Turkey, France and Germany. SCA provides approx 60-70 percent of all education in the country.¹⁰⁸

¹⁰² Regional Director of SCA

¹⁰³ United Nations Report of the Secretary General, *The situation in Afghanistan and its implications for international peace and security*, 11 July 2002.

¹⁰⁴ Director of Area Coordination of UNAMA

¹⁰⁵ Regional Director of SCA

¹⁰⁶ Deputy Minister of Women Affairs

¹⁰⁷ Director of Area Coordination of UNAMA

¹⁰⁸ Regional Director of SCA

According to a UNHCR report in November 2002 there was a total of 10 universities, 3 medical faculties and one polytechnic institute in Afghanistan.¹⁰⁹

5.4 Housing and employment

UNHCR Kabul stated that with the arrival of millions of returnees, the need for house constructions is urgent. The Ministry of Return and Repatriation is working together with UNHCR in order to provide shelter to all the returnees. Many other NGOs are also involved in house construction.¹¹⁰ The Deputy Minister of Return and Repatriation said that in 2001 UNHCR was overwhelmed and could not assist all the returnees. The Ministry has asked donors and other countries for more help in this regard. Many people will need help since more returnees are expected. United Kingdom and France have promised assistance with building apartments.¹¹¹

Many Afghans have returned to Kabul. As a result the city is now overcrowded.¹¹² UNHCR Kabul stated that the rent in Kabul is about two to three times higher than it used to be, with the effect that many returnees to Kabul find that they cannot afford the rent. Many houses are being built without permits, outside the so-called city plan. There are also many squatters in Kabul. They live anywhere; in abandoned houses or factories, and often the houses are destroyed by war.¹¹³

It is very difficult to find employment and the unemployment rate is very high. At present the largest employers are international organisations, both governmental and non-governmental.¹¹⁴

5.5 Food supply and drought

Afghanistan has suffered the worst drought in 30 years. There has been about five years of drought, with the exception of some rainfall during the last year. The drought is a continuing problem in some provinces, especially in the south but also in provinces like Ghazni and Wardak.¹¹⁵ UNHCR Kandahar stated that the drought is the biggest problem in the south. The area used to be very fertile and fruits and grain used to be cultivated in the south. Most of the area is now arid due to the drought and a large part of the population has been forced to leave the area. All the people living in the south are victims of the drought and the drought will be the main concern

¹⁰⁹ UNHCR, *Return, Information Update*, November 1st 2002

¹¹⁰ UNHCR Kabul, interview and field trip, 26 November 2002.

¹¹¹ Deputy Minister of Return and Repatriation

¹¹² Human Rights Team at UNAMA

¹¹³ UNHCR Kabul, interview and field trip, 24 November 2002.

¹¹⁴ Regional Director of SCA

¹¹⁵ UNHCR Afghanistan

for UNHCR Kandahar in 2003 as well.¹¹⁶ There are also other provinces badly affected by the drought like Kunar, which is nearly impossible to reach for the NGOs. Food supply is also difficult in some remote areas in Uruzgan and Hazarajat. The harvest in 2002 was much better than in 2001 because of the rain, but it is not sufficient to feed the whole country. Afghanistan is still dependant on international aid and 80 percent of all food needs to be imported.¹¹⁷ The Director of Area Coordination of UNAMA stated that many people have a hard time, they are jobless and it is difficult to find shelter but there are no reports of starvation. The drought has forced hundreds of thousands of people to become IDPs. The drought has forced and will continue to force people to change their lifestyle.¹¹⁸

5.6 Reconstruction

Afghanistan will be dependent on aid for a considerable time. The Afghan government has very few sources of income, which is a major obstacle to government to function. The Director of Area Coordination of UNAMA stated that approximately 80 percent of the government's income come from international aid and international presence. There is no fiscal or custom system that is operational. Some of the governors like Ismael Khan have considerable income from customs fees which are supposed to be delivered to the central government in Kabul but this is not done and Ismael Khan is only delivering a small percentage of the money he receives.¹¹⁹ One example of the small government budget is the low government salaries. The minimum salary for an employee in the administration is 28 USD and maximum salary is 46 USD, a Minister is earning approximately 38 USD per month.¹²⁰

Many well-educated Afghans have left the country and the government administration has difficulty finding well-educated people to employ. However, according to Anders Fänge, some progress has been made within the government. Some ministries, especially the Ministry of Finance, are working well and have been successful in finding well-educated employees.¹²¹

There is an ongoing banknote reform in Afghanistan. There have been many currencies in Afghanistan, with different warlords producing their own currency. The official currency has been the afghani. All of these currencies will now be replaced by the new afghani. A thousand old afghani will be worth one new afghani. The new afghani are only going to be printed notes and no coins will be produced. The banknote reform started on October 7, 2002 and will be concluded in mid-January 2003. With the support of

¹¹⁶ UNHCR Kandahar

¹¹⁷ UNHCR Kabul

¹¹⁸ Director of Area Coordination of UNAMA

¹¹⁹ Director of Area Coordination of UNAMA

¹²⁰ Israelsson, Maria, Programme Officer, Sida Afghanistan, interview, 24 November 2002

¹²¹ Fänge, Anders

SIDA the Afghan central bank is responsible for the banknote reform. Besides the Central bank, which is also functioning as a commercial bank, there are two other private banks in Afghanistan.¹²²

¹²² Programme Officer of Sida

6 Return and repatriation

6.1 Return 2002

More than 1.8 million refugees returned home in 2002, assisted by UNHCR and the Afghan Ministry of Refugees and Repatriation. More than 250 000 internally displaced persons went home with assistance and 200 000 Afghans returned on their own. Since October the number of returnees has declined. Some four million Afghans remain outside the country.¹²³ UNHCR Islamabad stated that numbers of returnees declined during the autumn of 2002 due to the coming winter and also due to Ramadan. Among the returnees approximately 82 percent had been living in urban areas in Pakistan in the North West Frontier Province, Islamabad and Karachi, and most of them return to urban areas in Afghanistan.¹²⁴

The Director of Area Coordination of UNAMA stated that more than half a million people have returned to Kabul and approximately 25 percent of them are extremely poor.¹²⁵ According to UNHCR Kabul some 600 000 individuals returned to Kabul between the beginning of 2002 and September 2002. About 90 percent of the returnees were living in Kabul before their exile. For the remaining 10 percent the decision to settle in Kabul has been based on better security, better education for children, better health services and better prospects for employment. More than 25 percent are jobless, while 45 percent are daily workers or sellers in the street; 10 percent are working for the government and the remaining 20 percent are businessmen, who run small or medium size businesses. UNHCR Kabul also mentioned that there is a mix of people and ethnic groups returning to Kabul.¹²⁶

In general, the majority of the returnees from Pakistan are Pashtuns and most of them have returned to Pashtun provinces in the East. The second largest group of returnees, the Tajiks, and the third largest group, the Hazaras, have gone to the Central Region and Kabul.¹²⁷

Concerning the likelihood of return from Pakistan, UNHCR Islamabad stated that the Afghans who return have primarily been living in the cities under difficult economic circumstances and have mostly been daily workers or people with no special skills. The refugees living in older Pakistan camps are more likely to stay because of the social services and good shelter provided. These refugees are also well established in Pakistan where they have a better life. In order to return to Afghanistan these refugees need to be convinced that they are guaranteed the same benefits in Afghanistan as in Pakistan, before return. The returnees normally return in families. Some

¹²³ UNHCR, *Afghanistan humanitarian update No. 67*, 3 January 2003

¹²⁴ UNHCR Islamabad

¹²⁵ Director of Area Coordination of UNAMA

¹²⁶ UNHCR Kabul, *Briefing Notes*, October 19 2002.

¹²⁷ UNHCR, *The voluntary repatriation of afghan refugees from Pakistan*, 1 March – 30 June 2002.

families have left their teenagers in Pakistan so that they can work and study. Pashtuns from the north are reluctant to return. Another group that are reluctant to return are Kuchis since they have been badly affected by the drought and are not very well seen by others in Afghanistan. Females who are single head of households are also reluctant to return.¹²⁸ UNHCR Kabul stated that only a very few single women return and on occasion the police put them in custody in order to protect them.¹²⁹

The Regional Director of SCA, stated that the hard living conditions in Afghanistan have resulted in Afghans beginning to return to Pakistan. However, this is most likely only for the winter.¹³⁰

6.2 Return 2003

During the fact finding mission, UNHCR were conducting a survey assessing how many people are willing to return in 2003. The UNHCR prognosis for returnees for 2003, is 600 000 people but it could be only 300 000. The figures are only very preliminary and UNHCR pointed out that they had been wrong before. The reason for the reduced numbers of returnees is that those who have returned have seen the difficulties in Afghanistan and the Afghan government has officially expressed it's limitations to provide help. The euphoria of return is over and many Afghan refugees now have a "wait and see" attitude.¹³¹ During the year 2002 the majority of the returnees have come from urban areas in Pakistan, but for 2003 there will be a focus on returnees from camps. In older camps minimal UNHCR assistance is given, but in new camps refugees are assisted with health, education and community services.¹³²

After the fact finding mission, the prognosis of returnees for 2003 has been changed and it is now estimated that a further 1.2 million refugees and 300 000 IDPs are expected to return home in 2003.¹³³

UNHCR Kandahar estimated that for 2003 approximately 130 000 people will return to the Kandahar area from Pakistan. However, the Kandahar region is not an area that receives many returnees, because of the drought. UNHCR Kandahar also expects an increase of deportations from Iran to the Kandahar area. For 2003, UNHCR Kandahar's main concern is to take the necessary emergency measures, to make a survey of the number of IDPs and to encourage the IDPs to return to their places of origin.¹³⁴

¹²⁸ UNHCR Islamabad

¹²⁹ UNHCR Kabul

¹³⁰ Regional Director of SCA

¹³¹ UNHCR Islamabad. UNHCR Kabul

¹³² UNHCR Kabul

¹³³ UN Office for the Coordination of Humanitarian Affairs, *Transitional Assistance Programme for Afghanistan 2003*, December 17 2002

¹³⁴ UNHCR Kandahar

6.3 Voluntary returns and failed asylum seekers

On 10 July 2002, UNHCR issued a recommendation on return of Afghans from non-neighbouring countries. In the document UNHCR advised governments hosting Afghan refugees to offer incentives and assistance to all who wish to repatriate, and to resume processing the applications of Afghans with pending asylum claims.¹³⁵ On 23 July 2003 Human Rights Watch said that "by advocating for repatriation, UNHCR is sending the message to governments that conditions in Afghanistan are sufficiently stable for a large scale return. This is misleading and contradicted by conditions on the ground".¹³⁶

UNHCR Afghanistan stated that return should be as voluntary as possible and preferably in co-operation with UNHCR. The situation in Afghanistan is improving but voluntary return from western countries could however be a difficult task. UNHCR Afghanistan asserted that there is an internal flight alternative in Afghanistan but this is not ideal and sometimes asylum is a better alternative. However, failed asylum seekers should be able to return and according to the Geneva Convention, even forcefully returned. It is necessary for the western countries to start with enforced returns in order to maintain the respect for the right of asylum. However, enforced returns should be combined with some sort of return package in order to accomplish a dignified return and it could also avoid security problems, which could occur if Afghanistan receives many dissatisfied returnees.¹³⁷

France and Great Britain have tripartite-agreements between the country of asylum, UNHCR and Afghanistan. UNHCR Afghanistan stated that the organisation prefers tripartite-agreements since the agreements involve common principles and a framework for the return. UNHCR Afghanistan would also prefer a larger co-operation within the sphere of the European Union, involving a common European Union repatriation plan.¹³⁸

IOM emphasized that Afghans should return but they should not be pushed to return. It is important for all Afghans to return and take part in the process of building a new state; both educated and non-educated people are needed. So far, all Afghan returnees from Europe have had some sort of packages and the returnees need money in order to resettle. Different countries have different arrangements or return packages. The Australian programme includes an Australian funded centre where returnees learn basic skills such as construction. It is a three months school with a capacity for up to 600 people. IOM assists return to UNHCR clear areas. IOM is responsible for the whole journey including transit. IOM distributes money and arranges onward transportation if the returnee is not staying in Kabul. If

¹³⁵ UNHCR, *Note on basic considerations regarding returns to Afghanistan from Non-Neighbouring states*, Geneva, 10 July 2002

¹³⁶ Human Rights Watch, *Afghanistan Unsafe for Refugee Returns*. U.N. Refugee Agency sending misleading message, July 23, 2002

¹³⁷ UNHCR Afghanistan

¹³⁸ UNHCR Afghanistan

the returnee has to stay one or two nights in Kabul IOM arrange accommodation. IOM charge for the operational cost and any extra cost and is responsible for the journey to Afghanistan. So far IOM has assisted 685 voluntary returns and also assisted 286 000 IDPs since December 2001. In 2003, the Ministry for Repatriation will take over the responsibility for IDPs in cooperation with UNHCR.¹³⁹

Fiona Morrison, First Secretary to the British Embassy in Afghanistan, stated that it is hard to argue that the situation is not safe enough for repatriation. Two million people have already returned and the numbers speak for themselves. The Afghan government also depends on the people in the Diaspora. However, enforced return is an extremely sensitive question for the Afghan government. The First Secretary also emphasized that the security situation is fluctuating widely from time to time, and there is no firm assessment about the security situation. To reach Western criteria of safety you could have to wait over twenty years.¹⁴⁰ The Deputy Minister for Return and Repatriation asserted that because of the hard economic situation in Afghanistan, he would prefer Afghans who are living abroad were allowed to stay there. Regarding the question of return programmes he strongly emphasized the need for such a programme to be combined with direct support from the country of asylum and an excellent example of such direct support is the Australian centre (see above). Direct assistance is preferred because otherwise too much money vanishes into administration.¹⁴¹

6.4 Internally Displaced Persons (IDP)

There are some 700 000 IDPs throughout Afghanistan. The displacement problem is particularly acute in the southern provinces. An estimated 400 000 people are scattered there, after leaving their communities mainly because of the severe drought and the ethnic tensions in the north.¹⁴² IOM stated that the vast majority of the IDPs are in the south of Afghanistan but there are also small pockets of IDPs in the north, for instance in the Kunduz province.¹⁴³ During 2002, UNHCR and IOM assisted some 22 000 IDPs back to their places of origin. About 90 000 IDPs are believed to be in the Kabul province and approximately 20 000 of them are estimated to be situated in Kabul city.¹⁴⁴ IDPs often live under very harsh conditions and they are considered vulnerable in many cases.¹⁴⁵

¹³⁹ IOM: Louis Hoffman, Reports officer, Khaled Qadir, Assisted Voluntary Return Programme Manager, interview 25 November 2002.

¹⁴⁰ Fiona Morrison, First Secretary, British Embassy in Kabul, interview 27 November 2002

¹⁴¹ Deputy Minister of Return and Repatriation

¹⁴² UNHCR, *Afghanistan humanitarian update No. 67*, 3 Jan 2003

¹⁴³ IOM

¹⁴⁴ UNHCR Kabul, *Briefing Notes*, October 19, 2002, and interview, 26 November 2002.

¹⁴⁵ UNHCR Afghanistan

UNHCR Kandahar stated that there are approximately 400 000 IDPs situated in the camps in the south. About 25 percent of the IDPs in the camps are Pashtuns from the north, who were forced to flee their areas of origin. In the north a return commission has been established with involvement of warlords from the north and representatives of the IDPs. However, the Pashtuns from the north are reluctant to return because of the lack of guarantees. The IDPs from the north could return to their areas of origin once the situation there has improved. Many of the IDPs in the south are Kuchis. The Kuchis will probably be depending on aid for an extended period of time. The best way of helping them is to give them animals since they never had land.¹⁴⁶

The delegation visited the Zahr-i-Dahst IDP camp located in the desert near Kandahar. The camp was established in August 2002 after an agreement between UNHCR, and the Afghan and Pakistani governments. In the camp there are around 4000 families, Pashtuns from the north and Kuchis. They have been voluntarily relocated from camps at the Waiting area (at the border between Pakistan and Afghanistan). The relocation started after concerns about security in the camps in the Waiting area. The Zahr e-Dahst camp has capacity for about 12 000 families (60 000 individuals). The displaced persons are, at least initially, housed in tents. World Food Programme (WFP) and Medicines Sans Frontiers (MSF) provide food and medical facilities. The mission noted that the facilities provided were very basic. Many of the IDPs suffered from various diseases. Because of strong exposure to sand many children suffered from skin and eye diseases and the elderly from respiratory diseases.¹⁴⁷

On the way from Kandahar to Quetta the delegation visited IDP and refugee camps in the Waiting area and Spin Boldak, at the border between Afghanistan and Pakistan. The camps are populated by Pashtuns from the north, Kuchis, and others from the south. In the Waiting area there are four camps. The people in the camps wanted to cross the border to Pakistan but were refused to do so by the Pakistan authorities. The people in the Waiting area live under very harsh conditions and many of them have been offered relocation to the Zahr-i-Dahst camp in order to enable the aid agencies to help them. The majority of the people in Spin Boldak and the Waiting area insist on staying at the border because of job opportunities that occur with cross border business, and the lack of opportunities elsewhere. They get money from daily work at the border crossing and construction works. Some have family members in Pakistan that provide the main income to the family. However, some families have left to go to Zahr-i-Dahst and some are about to leave.¹⁴⁸

¹⁴⁶ UNHCR Kandahar

¹⁴⁷ Field trip organized by UNHCR Kandahar, 28 November 2002.

¹⁴⁸ Field trip organized by UNHCR Kandahar, 29 November 2002.

6.5 Passports and id-cards, exit/entry conditions

On the question concerning identifying Afghans in Europe, the Ministry of Interior stated that they accept passports or other acceptable identification papers. If identification papers cannot be provided, the Afghan embassies in different European countries are required to identify returnees through face to face interviews. If this interview does not verify the identity the embassy can refer to the Ministry of Interior in Afghanistan in order to verify the individuals' identity. If the country of asylum has decided that the person in question already has proven his/hers identity, the Afghan authority normally accepts that.¹⁴⁹

UNHCR Afghanistan stated that passports issued by the Taliban were immediately declared invalid at the time of the installation of the Afghan Interim Authority (AIA). Also passports issued by different warlords are now invalid and will be confiscated if found. Anyone who tries to make a forged passport will risk imprisonment between 3-6 months. UNHCR Afghanistan further stated that it is the Central Police Department in Kabul that issues passports for Kabul residents and Afghans from other parts of the country will be issued passports by the Ministry of Interior in Kabul and at the ministry's offices in other cities like Jalalabad, Mazar-e-Sharif and Herat.¹⁵⁰ The Minister of Interior informed that in general you do not need any specific papers in order to receive a passport. There are no fixed rules on what is required in order to get a passport or an id-card. However, the German police are assisting the Afghan authorities in the development of a new kind of id-card. Presently, there are no documents verifying Afghan's identities, the existing documents only show that you are an Afghan citizen. The tazkira is now one single paper and it is issued on a provincial level.¹⁵¹

UNHCR Afghanistan and IOM mentioned that the national airline, Ariana, have direct flight from Frankfurt to Kabul. Several international airlines, among them the Pakistan airline, PIA, have flights to Afghanistan and not only to Kabul but also to Mazar-e Sharif and Herat.¹⁵²

The Regional Director of SCA, stated that there is no problem crossing the border between Afghanistan and Pakistan illegally.¹⁵³ The people living in Spin Boldak and the Waiting area told the delegation that the border guards asked for ID when they tried to cross the border. However, if they do not have any means of identification they just pay the border guards 100 Pakistan rupees and then they can pass.¹⁵⁴

¹⁴⁹ IOM. Deputy Minister of Return and Repatriation. Minister of Interior.

¹⁵⁰ UNHCR Afghanistan

¹⁵¹ Minister of Interior

¹⁵² UNHCR Afghanistan

¹⁵³ Regional Director of SCA

¹⁵⁴ People in the Spin Boldak camps, Field trip arranged by UNHCR Kandahar, 29 November 2002.

7 References

7.1 Description of organizations

The United Nations High Commissioner for Refugees (UNHCR)

The Office of the United Nations High Commissioner for Refugees was established on December 14, 1950 by the United Nations General Assembly. The agency is mandated to lead and co-ordinate international action to protect refugees and resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another state, with the option to return home voluntarily, integrate locally or to resettle in a third country. The agency has a long story of commitment in Afghanistan which dates back to the Soviet invasion in 1979. In co-operation with other agencies the agency in Afghanistan is strongly involved in different matters such as repatriation, reintegration and humanitarian assistance. The agency in Afghanistan lead has a head office located in Kabul and sub offices located in different regions.

United Nations Assistance Mission to Afghanistan (UNAMA)

UNAMA was created by Security Council Resolution 1401 (2002) in March 2002 for an initial period of 12 months: 1. to promote national reconciliation and rapprochement throughout the country. 2. to manage, plan and conduct, all UN humanitarian relief, recovery and reconstruction activities in Afghanistan. 3. to fulfill the tasks and responsibilities entrusted to the UN in the Bonn Agreement. These duties includes to assist in the establishment of a Constitutional Commission, assist in the establishment of a Judicial Commission, to assist in the establishment of an independent Human Rights Commission, whose responsibilities includes human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions, monitor and assist in the implementation of all aspects of the Bonn agreement etc. UNAMA is headed by a special representative of the Secretary General (SRSG), on 3 October 2001 Lakhdar Brahimi of Algeria was appointed as SRSG. The UNAMA structure consists of the office of the SRSG, an administrative and logistical support component and two pillars each headed by a deputy special representative of the Secretary-General (DSRSG). Pillar 1 is the political affairs body of UNAMA and Pillar 2 is responsible for Relief, Recovery and Reconstruction. Apart from the office in Kabul UNAMA offices exists or are planned in Bamiyan, Gardez, Heart, Jalalabad, Kandahar, Mazar-I-Sharif and Kunduz.

International Organisation of Migration (IOM)

Established in 1951 as an intergovernmental organisation, IOM is supported by 93 member states and 37 observer states. IOM operates through 110 offices globally in a range of migration-related programming based on the principle that humane and orderly migration benefits migrants and society.

While not a part of the United Nations System, IOM maintains close working relations with UN bodies and operational agencies. The IOM mission in Afghanistan is based in Kabul and includes programme offices in Herat, Mazar-e-Sharif, Bamyan, Kandahar, Kunduz, Maimana and Gardez. In Afghanistan IOM has provided assistance to IDPs, refugees and qualified returnees. In co-operation with UNHCR, IOM utilizes its transport capacity for the return of displaced persons. From December 2001 the Return of Qualified Afghans (RQA) programme has assisted experts to return home to work in government ministries and local and humanitarian organizations operating in Afghanistan. IOM's Assisted Voluntary Returns (AVR) programme has worked with the Administration and has helped governments globally to assist the return of hundreds of Afghans.

The Swedish Committee for Afghanistan, SCA

SCA is a non-governmental organisation which has been working with development programmes in Afghanistan since 1982. The activities are funded by the Swedish governmental aid agency, Sida, by EU, UN, company sponsoring and by SCA's own fund raising. SCA has development support programmes within education, health, agriculture and emergency aid. SCA's headquarters are located in Peshawar, in Pakistan (in March 2003 SCA will move its headquarter to Kabul). SCA has three regional offices in Afghanistan, in Kabul, Gardez and Pul-i-Khumri, and also a number of small liaison offices in different parts of Afghanistan.

Swedish International Development Cooperation Agency (SIDA),

SIDA is the Swedish government agency for bilateral international development cooperation. SIDA's task is to create conditions conducive to change and to socially, economically and environmentally sustainable development. The current strategy development co-operation between Sweden and Afghanistan extends up until 2004. Swedish support will continue to be directed towards education, health, food safety, mine clearance and support for returning refugees. In order to follow developments closely and participate in dialogue locally, SIDA has opened an office in Kabul. As previously most of the support will be channelled through the UN, the Red Cross and independent Swedish organisations such as the SCA.

7.2 Interviews

7.2.2 Kabul

UNHCR-Afghanistan (Head-office), interview 27 November 2002:
Assistant Chief of Mission, Philippe Leclerc, host of the fact finding
Protection Officer, Mohammed Aziz Rahgo
Senior Protection Officer, Zainab Sheikh-Ali

UNHCR- Kabul (Sub-office):

Field Officer, Monica Sandri, interview 24 November 2002
Field Officer, Yumiko Takashima, interview 26 November 2002
Protection Officer, Ann Maymann, interview 24 November 2002
Associate Protection Officer, Margaret Atieno, interview 24 November 2002

UNAMA, Pillar 1, Human Rights Team, interview 24 November 2002:
Political Affairs Officer (pillar 1), Guido Galli
Political Affairs Officer (pillar 1), Eric Pondaven
Senior Human Rights Advisor (pillar 1), Goran Fejic

UNAMA, Pillar 2, interview 24 November 2002:
Director Area Coordination, Margareta Wahlström.

IOM, interview 25 November 2002:
Reports officer, Louis Hoffman
Assisted Voluntary Return Programme Manager, Khaled Qadir

SIDA, interview 23 November 2002:
Swedish International Development Cooperation Agency (SIDA), Kabul
Office, Programme Officer, Maria Israelsson

SCA, interview 25 November 2002:
Regional Director (Eastern Regional Office), Jan-Erik Wann

British Embassy, interview 27 November 2002:
First Secretary (Political), Fiona M. Morrison

DHM Danish Embassy, interview 26 November 2002;
Anders Tang Friborg

Anders Fänge, interview 25 November 2002:
Anders Fänge has a long experience of working and living in Afghanistan and he is a well-known authority on Afghanistan. Since 1982 he has worked for the Swedish Committee for Afghanistan (SCA) for two periods. During 2001 – to the spring of 2003 worked for UNAMA as Director, Field Coordination Division, (Pillar 1). Since the spring of 2003 he is again working for the SCA where he currently (March 2003) holds a position as acting branch manager.

Ministry of Interior, interview 27 November 2002:
Minister of Interior, Taj Mohammad Wardak

Ministry of Refugees and Repatriation, 27 November 2002:
Deputy Minister of Repatriation and Refugee Affairs, Mohammed Naheem Ghiasi

Ministry of Women Affairs, interview 27 November 2002:
Deputy Minister of Women Affairs, Suraya Rahim.

Returnees, IDPs and residents in Kabul and the Shomaliplain area..

7.2.3 Kandahar

UNHCR, interview 27 November 2002:
Head of Sub-Office, Abdulkadir Haji Jama

IDPs and refugees in Shar-I-Dasht camp and in the Waiting area.

7.2.4 Islamabad

UNHCR, interview 22 November 2002:
Assistant Representative, Mr. Philip Karani

7.2.5 Quetta

UNHCR, interview 28 November 2002:
Head of Sub-Office, Kwame Boafo
Protection Officer, Ms Svjetlana Pejda
Protection Officer, Ms Veronica Modey

7.3 Reports

Human Rights Watch, *Afghanistan: Paying for the Taliban's crimes*, April 2002 vol. 14, no.1 (c).

Human Rights Watch, *Afghanistan - Unsafe for Refugee Returns. U.N. Refugee Agency sending misleading message*, July 23, 2002.

UNHCR, *Afghanistan humanitarian update No. 67*, date 3 January 2003.

UNHCR, *Note on basic considerations regarding returns to Afghanistan from Non-Neighbouring states*, Geneva, 10 July 2002.

UNHCR, *The voluntary repatriation of Afghan refugees from Pakistan*, 1 March – 30 June 2002.

UNHCR, *Return, Information Update*, November 1, 2002.

UNHCR, Kabul, Sub Office, *Briefing Notes*, October 19, 2002.

UN Office for the Coordination of Humanitarian Affairs, *Transitional Assistance Programme for Afghanistan 2003*, December 17 2002.

United Nations Report of the Secretary General, *The situation in Afghanistan and its implications for international peace and security*, 11 July 2002.

8 Appendix

Programme for the fact finding

Friday 22 November 2002

- Early Friday morning, arrival in Islamabad
- Meeting with UNHCR Islamabad, Assistant Representative Philip Karani

Saturday 23 November 2002

- Early Saturday morning, the delegation left Islamabad and went to Kabul by UN flight.
- Meeting with UNHCR Afghanistan, Assistant Chief of Mission, Philippe Leclerc, Protection Officer, Mohammed Aziz Rahgo.
- Meeting with the Swedish International Cooperation Agency (SIDA), Maria Israelsson.

Sunday 24 November 2002

- Meeting with UNHCR – Kabul (Sub-office), Protection Officer Ann Maymann and Associate Protection Officer, Margaret Atieno.
- Field Visit in Kabul, arranged by UNHCR-Kabul, Field Officer Monica Sandri. The aim of the field trip was to meet with returnees in different areas in Kabul.
- Meeting with UNAMA (pillar 2) Director Area Coordination, Margareta Wahlström
- Meeting with UNAMA, Human Rights Team (pillar 1), Political Affairs Officer, Guido Galli, Political Affairs Officer, Eric Pondaven, Senior Human Rights Advisor, Goran Fejic.

Monday 25 November 2002

- Meeting with IOM, Reports Officer, Louise Hoffman and Assisted Voluntary Return Programme Manager, Khaled Qadir
- Meeting with Anders Fänge.
- Meeting with the Swedish Committee for Afghanistan (SCA), Regional Director (Eastern Regional Office), Jan-Erik Wann.

Tuesday 26 November 2002

- Field Visit to Shornalipain near Kabul, arranged by UNHCR-Kabul, Field Officer, Yumiko Takashima. During the field trip the delegation met with the District Chief in Istalif and talked to returnees in different villages.
- Meeting with DHM Danish Embassy, Anders Tang Friborg

Wednesday 27 November 2002

- Meeting with Deputy Minister of Repatriation and Refugee Affairs, Mohammed Naheem Ghiasi
- Meeting with Deputy Minister of Women Affairs, Suraya Rahim.
- Meeting with British Embassy, First Secretary (political), Fiona Morrisson.
- Meeting with Minister of Interior, Taj Mohammad Wardak.
- Meeting with UNHCR Afghanistan, Assistant Chief of Mission, Philippe Leclerc, Protection Officer, Mohammed Aziz Rahgo, Senior Protection Officer, Zainab Sheikh-Ali

Thursday 27 November 2002

- Travel by UN flight from Kabul to Kandahar
- Meeting with UNHCR-Kandahar, Head of Sub-Office, Abdulkadir Haji Jama
- Field Visit to the Shar-I-Dasht camp, arranged by UNHCR-Kandahar. The delegation talked to different families in the camp.

Friday 28 November 2002

- Journey by car from Kandahar to Quetta in Pakistan. This journey was arranged by UNHCR in Kandahar and Quetta.
- On the route from Kandahar to Quetta the delegation visited camps and talked to refugees in the Waiting area on the border between Afghanistan and Pakistan.
- Meeting with UNHCR – Quetta, Head of Sub Office, Kwame Boafo, Protection Officer, Svjetlana Pejda, Protection Officer, Veronica Modey

Saturday 29 November 2002

- Return to Islamabad from Quetta by commercial flight.

Sunday 30 November 2002

- The delegation left Islamabad and returned to Sweden.

Map No. 3958 Rev. 2 UNITED NATIONS
November 2002

The Bonn Agreement

Wednesday, December 5, 2001, Bonn, Germany

Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions

The participants in the UN Talks on Afghanistan,
In the presence of the Special Representative of the Secretary-General for Afghanistan,
Determined to end the tragic conflict in Afghanistan and promote national reconciliation, lasting
peace, stability and respect for human rights in the country,
Reaffirming the independence, national sovereignty and territorial integrity of Afghanistan,
Acknowledging the right of the people of Afghanistan to freely determine their own political future in
accordance with the principles of Islam, democracy, pluralism and social justice,
Expressing their appreciation to the Afghan mujahidin who, over the years, have defended the
independence, territorial integrity and national unity of the country and have played a major role in
the struggle against terrorism and oppression, and whose sacrifice has now made them both heroes of
jihad and champions of peace, stability and reconstruction of their beloved homeland, Afghanistan,
Aware that the unstable situation in Afghanistan requires the implementation of emergency interim
arrangements and expressing their deep appreciation to His Excellency Professor Burhanuddin
Rabbani for his readiness to transfer power to an interim authority which is to be established pursuant
to this agreement,
Recognizing the need to ensure broad representation in these interim arrangements of all segments of
the Afghan population, including groups that have not been adequately represented at the UN Talks
on Afghanistan,
Noting that these interim arrangements are intended as a first step toward the establishment of a
broad-based, gender-sensitive, multi-ethnic and fully representative government, and are not intended
to remain in place beyond the specified period of time,
Recognizing that some time may be required for a new Afghan security force to be fully constituted
and functional and that therefore other security provisions detailed in Annex I to this agreement must
meanwhile be put in place,
Considering that the United Nations, as the internationally recognized impartial institution, has a
particularly important role to play, detailed in Annex II to this agreement, in the period prior to the
establishment of permanent institutions in Afghanistan,
Have agreed as follows:

THE INTERIM AUTHORITY

I. General provisions

- 1) An Interim Authority shall be established upon the official transfer of power on 22 December 2001.
- 2) The Interim Authority shall consist of an Interim Administration presided over by a Chairman, a Special Independent Commission for the Convening of the Emergency Loya Jirga, and a Supreme Court of Afghanistan, as well as such other courts as may be established by the Interim Administration. The composition, functions and governing procedures for the Interim Administration and the Special Independent Commission are set forth in this agreement.
- 3) Upon the official transfer of power, the Interim Authority shall be the repository of Afghan sovereignty, with immediate effect. As such, it shall, throughout the interim period, represent Afghanistan in its external relations and shall occupy the seat of Afghanistan at the United Nations and in its specialized agencies, as well as in other international institutions and conferences.
- 4) An Emergency Loya Jirga shall be convened within six months of the establishment of the Interim Authority. The Emergency Loya Jirga will be opened by His Majesty Mohammed Zaher, the former King of Afghanistan. The Emergency Loya Jirga shall decide on a Transitional Authority, including a broad-based transitional administration, to lead Afghanistan until such time as a fully representative government can be elected through free and fair elections to be held no later than two years from the date of the convening of the Emergency Loya Jirga.
- 5) The Interim Authority shall cease to exist once the Transitional Authority has been established by the Emergency Loya Jirga.
- 6) A Constitutional Loya Jirga shall be convened within eighteen months of the establishment of the Transitional Authority, in order to adopt a new constitution for Afghanistan. In order to assist the Constitutional Loya Jirga prepare the proposed Constitution, the Transitional Administration shall, within two months of its commencement and with the assistance of the United Nations, establish a Constitutional Commission.

II. Legal framework and judicial system

1) The following legal framework shall be applicable on an interim basis until the adoption of the new Constitution referred to above:

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

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

2) The judicial power of Afghanistan shall be independent and shall be vested in a Supreme Court of Afghanistan, and such other courts as may be established by the Interim Administration. The Interim Administration shall establish, with the assistance of the United Nations, a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions.

III. Interim Administration

A. Composition

1) The Interim Administration shall be composed of a Chairman, five Vice Chairmen and 24 other members. Each member, except the Chairman, may head a department of the Interim Administration.

2) The participants in the UN Talks on Afghanistan have invited His Majesty Mohammed Zaher, the former King of Afghanistan, to chair the Interim Administration. His Majesty has indicated that he would prefer that a suitable candidate acceptable to the participants be selected as the Chair of the Interim Administration.

3) The Chairman, the Vice Chairmen and other members of the Interim Administration have been selected by the participants in the UN Talks on Afghanistan, as listed in Annex IV to this agreement. The selection has been made on the basis of professional competence and personal integrity from lists submitted by the participants in the UN Talks, with due regard to the ethnic, geographic and religious composition of Afghanistan and to the importance of the participation of women.

4) No person serving as a member of the Interim Administration may simultaneously hold membership of the Special Independent Commission for the Convening of the Emergency Loya Jirga.

B. Procedures

1) The Chairman of the Interim Administration, or in his/her absence one of the Vice Chairmen, shall call and chair meetings and propose the agenda for these meetings.

2) The Interim Administration shall endeavour to reach its decisions by consensus. In order for any decision to be taken, at least 22 members must be in attendance. If a vote becomes necessary, decisions shall be taken by a majority of the members present and voting, unless otherwise stipulated in this agreement. The Chairman shall cast the deciding vote in the event that the members are divided equally.

C. Functions

1) The Interim Administration shall be entrusted with the day-to-day conduct of the affairs of state, and shall have the right to issue decrees for the peace, order and good government of Afghanistan.

2) The Chairman of the Interim Administration or, in his/her absence, one of the Vice Chairmen, shall represent the Interim Administration as appropriate.

3) Those members responsible for the administration of individual departments shall also be responsible for implementing the policies of the Interim Administration within their areas of responsibility.

4) Upon the official transfer of power, the Interim Administration shall have full jurisdiction over the printing and delivery of the national currency and special drawing rights from international financial institutions. The Interim Administration shall establish, with the assistance of the United Nations, a Central Bank of Afghanistan that will regulate the money supply of the country through transparent and accountable procedures.

5) The Interim Administration shall establish, with the assistance of the United Nations, an independent Civil Service Commission to provide the Interim Authority and the future Transitional Authority with shortlists of candidates for key posts in the administrative departments, as well as those of governors and uluswals, in order to ensure their competence and integrity.

6) The Interim Administration shall, with the assistance of the United Nations, establish an independent Human Rights Commission, whose responsibilities will include human rights monitoring, investigation of violations of human rights, and development of domestic human rights institutions. The Interim Administration may, with the assistance of the United Nations, also establish any other commissions to review matters not covered in this agreement.

7) The members of the Interim Administration shall abide by a Code of Conduct elaborated in accordance with international standards.

- 8) Failure by a member of the Interim Administration to abide by the provisions of the Code of Conduct shall lead to his/her suspension from that body. The decision to suspend a member shall be taken by a two-thirds majority of the membership of the Interim Administration on the proposal of its Chairman or any of its Vice Chairmen.
- 9) The functions and powers of members of the Interim Administration will be further elaborated, as appropriate, with the assistance of the United Nations.

IV. The Special Independent Commission for the Convening of the Emergency Loya Jirga

- 1) The Special Independent Commission for the Convening of the Emergency Loya Jirga shall be established within one month of the establishment of the Interim Authority. The Special Independent Commission will consist of twenty-one members, a number of whom should have expertise in constitutional or customary law. The members will be selected from lists of candidates submitted by participants in the UN Talks on Afghanistan as well as Afghan professional and civil society groups. The United Nations will assist with the establishment and functioning of the commission and of a substantial secretariat.
- 2) The Special Independent Commission will have the final authority for determining the procedures for and the number of people who will participate in the Emergency Loya Jirga. The Special Independent Commission will draft rules and procedures specifying (i) criteria for allocation of seats to the settled and nomadic population residing in the country; (ii) criteria for allocation of seats to the Afghan refugees living in Iran, Pakistan, and elsewhere, and Afghans from the diaspora; (iii) criteria for inclusion of civil society organizations and prominent individuals, including Islamic scholars, intellectuals, and traders, both within the country and in the diaspora. The Special Independent Commission will ensure that due attention is paid to the representation in the Emergency Loya Jirga of a significant number of women as well as all other segments of the Afghan population.
- 3) The Special Independent Commission will publish and disseminate the rules and procedures for the convening of the Emergency Loya Jirga at least ten weeks before the Emergency Loya Jirga convenes, together with the date for its commencement and its suggested location and duration.
- 4) The Special Independent Commission will adopt and implement procedures for monitoring the process of nomination of individuals to the Emergency Loya Jirga to ensure that the process of indirect election or selection is transparent and fair. To pre-empt conflict over nominations, the Special Independent Commission will specify mechanisms for filing of grievances and rules for arbitration of disputes.
- 5) The Emergency Loya Jirga will elect a Head of the State for the Transitional Administration and will approve proposals for the structure and key personnel of the Transitional Administration.

V. Final provisions

- 1) Upon the official transfer of power, all mujahidin, Afghan armed forces and armed groups in the country shall come under the command and control of the Interim Authority, and be reorganized according to the requirements of the new Afghan security and armed forces.
- 2) The Interim Authority and the Emergency Loya Jirga shall act in accordance with basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party.
- 3) The Interim Authority shall cooperate with the international community in the fight against terrorism, drugs and organized crime. It shall commit itself to respect international law and maintain peaceful and friendly relations with neighbouring countries and the rest of the international community.
- 4) The Interim Authority and the Special Independent Commission for the Convening of the Emergency Loya Jirga will ensure the participation of women as well as the equitable representation of all ethnic and religious communities in the Interim Administration and the Emergency Loya Jirga.
- 5) All actions taken by the Interim Authority shall be consistent with Security Council resolution 1378 (14 November 2001) and other relevant Security Council resolutions relating to Afghanistan.
- 6) Rules of procedure for the organs established under the Interim Authority will be elaborated as appropriate with the assistance of the United Nations.

This agreement, of which the annexes constitute an integral part, done in Bonn on this 5th day of December 2001 in the English language, shall be the authentic text, in a single copy which shall remain deposited in the archives of the United Nations. Official texts shall be provided in Dari and Pashto, and such other languages as the Special Representative of the Secretary-General may designate. The Special Representative of the Secretary-General shall send certified copies in English, Dari and Pashto to each of the participants.

For the participants in the UN Talks on Afghanistan:

Ms. Amena Afzali
Mr. S. Hussain Anwari
Mr. Hedayat Amin Arsala
Mr. Sayed Hamed Gailani

Mr. Rahmatullah Musa Ghazi
Eng. Abdul Hakim
Mr. Houmayoun Jareer
Mr. Abbas Karimi
Mr. Mustafa Kazimi
Dr. Azizullah Ludin
Mr. Ahmad Wali Massoud
Mr. Hafizullah Asif Mohseni
Prof. Mohammad Ishaq Nadiri
Mr. Mohammad Natiqi
Mr. Yunus Qanooni
Dr. Zalmai Rassoul
Mr. H. Mirwais Sadeq
Dr. Mohammad Jalil Shams
Prof. Abdul Sattar Sirat
Mr. Humayun Tandar
Mrs. Sema Wali
General Abdul Rahim Wardak
Mr. Pacha Khan Zadran

Witnessed for the United Nations by:

Mr. Lakhdar Brahimi
Special Representative of the Secretary-General for Afghanistan

ANNEX I
INTERNATIONAL SECURITY FORCE

1. The participants in the UN Talks on Afghanistan recognize that the responsibility for providing security and law and order throughout the country resides with the Afghans themselves. To this end, they pledge their commitment to do all within their means and influence to ensure such security, including for all United Nations and other personnel of international governmental and non-governmental organizations deployed in Afghanistan.
2. With this objective in mind, the participants request the assistance of the international community in helping the new Afghan authorities in the establishment and training of new Afghan security and armed forces.
3. Conscious that some time may be required for the new Afghan security and armed forces to be fully constituted and functioning, the participants in the UN Talks on Afghanistan request the United Nations Security Council to consider authorizing the early deployment to Afghanistan of a United Nations mandated force. This force will assist in the maintenance of security for Kabul and its surrounding areas. Such a force could, as appropriate, be progressively expanded to other urban centres and other areas.
4. The participants in the UN Talks on Afghanistan pledge to withdraw all military units from Kabul and other urban centers or other areas in which the UN mandated force is deployed. It would also be desirable if such a force were to assist in the rehabilitation of Afghanistan's infrastructure.

* * *

ANNEX II
ROLE OF THE UNITED NATIONS DURING THE INTERIM PERIOD

1. The Special Representative of the Secretary-General will be responsible for all aspects of the United Nations' work in Afghanistan.
2. The Special Representative shall monitor and assist in the implementation of all aspects of this agreement.
3. The United Nations shall advise the Interim Authority in establishing a politically neutral environment conducive to the holding of the Emergency Loya Jirga in free and fair conditions. The United Nations shall pay special attention to the conduct of those bodies and administrative departments which could directly influence the convening and outcome of the Emergency Loya Jirga.
4. The Special Representative of the Secretary-General or his/her delegate may be invited to attend the meetings of the Interim Administration and the Special Independent Commission on the Convening of the Emergency Loya Jirga.
5. If for whatever reason the Interim Administration or the Special Independent Commission were actively prevented from meeting or unable to reach a decision on a matter related to the convening of the Emergency Loya Jirga, the Special Representative of the Secretary-General shall, taking into

account the views expressed in the Interim Administration or in the Special Independent Commission, use his/her good offices with a view to facilitating a resolution to the impasse or a decision.

6. The United Nations shall have the right to investigate human rights violations and, where necessary, recommend corrective action. It will also be responsible for the development and implementation of a programme of human rights education to promote respect for and understanding of human rights.

* * *

ANNEX III

REQUEST TO THE UNITED NATIONS BY THE PARTICIPANTS AT THE UN TALKS ON AFGHANISTAN

The participants in the UN Talks on Afghanistan hereby

1. Request that the United Nations and the international community take the necessary measures to guarantee the national sovereignty, territorial integrity and unity of Afghanistan as well as the non-interference by foreign countries in Afghanistan's internal affairs;
2. Urge the United Nations, the international community, particularly donor countries and multilateral institutions, to reaffirm, strengthen and implement their commitment to assist with the rehabilitation, recovery and reconstruction of Afghanistan, in coordination with the Interim Authority;
3. Request the United Nations to conduct as soon as possible (i) a registration of voters in advance of the general elections that will be held upon the adoption of the new constitution by the constitutional Loya Jirga and (ii) a census of the population of Afghanistan.
4. Urge the United Nations and the international community, in recognition of the heroic role played by the mujahidin in protecting the independence of Afghanistan and the dignity of its people, to take the necessary measures, in coordination with the Interim Authority, to assist in the reintegration of the mujahidin into the new Afghan security and armed forces;
5. Invite the United Nations and the international community to create a fund to assist the families and other dependents of martyrs and victims of the war, as well as the war disabled;
6. Strongly urge that the United Nations, the international community and regional organizations cooperate with the Interim Authority to combat international terrorism, cultivation and trafficking of illicit drugs and provide Afghan farmers with financial, material and technical resources for alternative crop production.

* * *

ANNEX IV

COMPOSITION OF THE INTERIM ADMINISTRATION

Chairman: Hamid Karzai

Vice Chairmen:

Vice-Chair & Women's Affairs: Dr. Sema Samar
Vice-Chair & Defence: Muhammad Qassem Fahim
Vice-Chair & Planning: Haji Muhammad Mohaqqueq
Vice-Chair & Water and Electricity: Shaker Kargar
Vice-Chair & Finance: Hedayat Amin Arsala

Members:

Department of Foreign Affairs: Dr. Abdullah Abdullah
Department of the Interior: Muhammad Yunus Qanooni
Department of Commerce: Seyyed Mustafa Kazemi
Department of Mines & Industries: Muhammad Alem Razm
Department of Small Industries: Aref Noorzai
Department of Information & Culture: Dr. Raheen Makhdoom
Department of Communication: Ing. Abdul Rahim
Department of Labour & Social Affairs: Mir Wais Sadeq
Department of Hajj & Auqaf: Mohammad Hanif Hanif Balkhi
Department of Martyrs & Disabled: Abdullah Wardak
Department of Education: Abdul Rassoul Amin
Department of Higher Education: Dr. Sharif Faez
Department of Public Health: Dr. Suhaila Seddiqi
Department of Public Works: Abdul Khaliq Fazal
Department of Rural Development: Abdul Malik Anwar
Department of Urban Development: Haji Abdul Qadir
Department of Reconstruction: Amin Farhang

Department of Transport: Sultan Hamid Sultan
Department for the Return of Refugees: Enayatullah Nazeri
Department of Agriculture: Seyyed Hussein Anwari
Department of Irrigation: Haji Mangal Hussein
Department of Justice: Abdul Rahim Karimi
Department of Air Transport & Tourism: Abdul Rahman
Department of Border Affairs: Amanullah Zadran

* * *