



**AFGHANISTAN
COUNTRY REPORT**

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Country Information & Policy Unit

**IMMIGRATION AND NATIONALITY DIRECTORATE
HOME OFFICE, UNITED KINGDOM**

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1 Scope Of Document

1.1 This Country Report has been produced by the Country Information and Policy Unit, Immigration and Nationality Directorate, Home Office, for use by Home Office officials involved in the asylum/human rights determination process. The Report provides general background information about the issues most commonly raised in asylum/human rights claims made in the United Kingdom. It is not a detailed or comprehensive survey.

1.2 The Report is compiled from a wide range of recognised sources and does not contain any Home Office opinion or policy. All information in the Report is attributed, throughout the text, to original source material, which has been made available to those working in the asylum/human rights determination process. The Report aims to provide only a brief summary of the source material quoted. For a more detailed account, the relevant source documents should be examined directly.

1.3 The information contained in this Country Report is, by its nature, limited to information that we have been able to identify from various well-recognised sources. The contents of this Report are not exhaustive and the absence of information under any particular heading does not imply that any analysis or judgement has been exercised to exclude that information, but simply that relevant information on the subject has not been identified from the sources that have been consulted. Equally, the information included in the Reports should not be taken to imply anything beyond what is actually stated.

1.4 The great majority of the source material is readily available in the public domain. Copies of other source documents, such as those provided by government offices, may be provided upon request.

1.5 All sources have been checked for currency and, as far as can be ascertained, contain information, which remained relevant at the time, this Report was issued. Some source documents have been included because they contain relevant information not available in more recent documents.

1.6 This Country Report and the accompanying source material are publicly disclosable. Where sources identified in this Report are available in electronic form the relevant link has been included. The date that the relevant link was accessed in preparing the report is also included. Paper copies of the source documents have been distributed to nominated officers within IND.

1.7 It is intended to revise this Report on a six-monthly basis while the country remains within the top 35 asylum producing countries in the United Kingdom. Information contained in Country Reports is inevitably overtaken by events that occur between the

6 monthly publications. Caseworkers are informed of such changes in country conditions by means of Country Information Bulletins.

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2 Geography

General

2.1 The Transitional Islamic State of Afghanistan is a land-locked country in Southwest Asia. It is bordered by Turkmenistan, Uzbekistan and Tajikistan to the north, Iran to the west, China to the northeast, and Pakistan to the east and south. Covering an area of some 251,773 square miles, there are ~~31~~ 32 provinces. The five largest towns are Kabul (the capital), Kandahar, Herat, Mazar-i-Sharif and Jalalabad. [1] Population movements across the border and internal displacements make it difficult to obtain reliable population figures [11b] although a July ~~1999~~ 2002 estimate of the population was ~~25,824,822~~ 27,755,775. [23]

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

Languages

2.2 There are a variety of languages spoken in Afghanistan, the principal two being Pashtu and Dari. [1] These have been the official languages of the country since 1936, using an augmented Arabic script. Pashtu (spoken by the Pashtun ethnic group) is an Indo-European language, and Dari is a dialect of Farsi/Persian (spoken mainly by the Tajiks, Farsis, Hazaras and Aimaq). [11a]

2.3 Since 1978 a multitude of languages used by ethnic minorities such as the Uzbeks, Turkomans, Baluchis, Nuristanis and Pashai have been officially recognised. [11a] Article 16 of the new Constitution, approved and signed in January 2004, recognised six additional languages, besides Dari and Pashtu, as official languages in the regions where they are spoken by the majority of the population – Uzbek, Turkmen, Baluchi, Pashai, Nuristani and Pamiri. [15c]

2.4 Some 50% of the population are able to speak Pashtu, which is one of the two official languages taught in schools. [16] Pashtu is spoken by the Pashtuns living in Afghanistan and Pakistan. The Pashtu speaking area is defined as the south-eastern third of Afghanistan and the area of Pakistan between the Afghan border and the Indus. The language is equally understandable on both sides of the border. It is noted that within Pashtu there are dialectical variations in pronunciation, spelling, grammar and vocabulary. Using the test of pronunciation, the two principal dialects identified are western/Kandahari and eastern/Peshwarin; this division approximates to a division along the border. [15b]

2.5 Dari, which itself contains dialectical variations, is the Afghan variant of Farsi and differs from the national standard dialect of Iran. There are however Farsi dialects within Iran that have much in common with Dari. Dari speakers may not therefore be able to communicate easily in standard Farsi. Because of its literary and commercial importance, Dari generally serves as the means of communication between speakers

of different languages rather than Pashtu. [15b] The formal style of Dari is closer to Tehrani Persian (Farsi), and the informal style in some parts of Afghanistan is closer to Tajiki of Tajikistan. Phonological and lexical differences between Iran and Afghanistan cause little difficulty in comprehension. [16]

2.6 Afghan Sikhs retain the use of Punjabi amongst themselves, given their involvement in trade. Dari/Farsi is probably the most important additional language for them. [15b]

See also Sikhs and Hindus: paragraphs 6.77 - 6.92

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3 Economy

3.1 In 2002 the Interim, and later Transitional authorities began to address the problem of reviving the traditional economy which over the past 20 years had been largely replaced by a criminal economy based on drugs and smuggling. In January 2002 the international donor community agreed to provide financial assistance and strategic guidance and pledged US \$4,500m over 2.5 years towards the reconstruction of Afghanistan. By the end of 2002 \$2,000m had been donated. [1] At the Berlin Conference which concluded on 1 April 2004, financial commitments made by international donors for the reconstruction and development of Afghanistan totalled \$8.2 billion to be provided over three years. [40bq]

3.2 According to the International Monetary Fund (IMF), "A new currency was launched in late 2002 and monetary policy has been restrained since then. As a result, prices and the exchange rate have been broadly stable in 2003. New financial sector legislation was adopted in the summer of 2003, granting the central bank autonomy and paving the way for establishing a modern banking sector." [74] (p1) The New Afghani replaced the various currencies previously circulating in the country. A nationwide currency exchange commenced in October 2002. [39g]. This was successfully completed by early January 2003 and it was reported that the new currency was providing an important basis for improving economic stability and implementing financial and economic reforms. [39h] In February 2003, the UN reported that the average wage did not exceed \$2 per day. [68] April 2004 exchange rates indicated that one pound sterling was equal to 79.47 ~~over~~ Afghan Afghanis. [58]

3.3 In December 2003, the International Monetary Fund (IMF) reported that "The economy shows strong signs of recovery, albeit from very low levels of activity, reflecting not only the end of major hostilities, but also the end of a prolonged drought and the impact of sizeable donor assistance and sound economic policies." According to the IMF, real GDP, excluding opium production, was estimated to have grown by almost 30 per cent in 2002/03. The report noted, however, that per capita, GDP remained one of the lowest in the world. The IMF noted that "In 2002, opium production was estimated by the United Nations Office on Drugs and Crime (UNODC) to have reached 3,400 tons, a level similar to that of the late 1990s. Production in 2003 increased further to 3,600 tons. The opium sector has a profound impact on the economy and may account for about half of overall GDP." [74] (p 1-4)

3.4 According to the US Department of State Report 2003, "The country remained engaged in agriculture and animal husbandry and remained extremely poor; per capita earnings for the population of 26 million was below subsistence level...Illegal opium poppy was the mainstay of the economy and largely financed the military operations of various provincial authorities. According to the U.N., the poppy harvest grew by an estimated additional 6 percent during the year. There was little manufacturing, and there were few exports; a projected 36 percent of the Government's operating budget came from domestic revenues; the rest, as well as the development budget, was donor-financed." [2e] (p1)

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See also Humanitarian Situation paragraphs 6.263 - 6.301

4 History

For history prior to 1992 see Europa Yearbook, source [1]

1992 - 1994: Mujahidin Government

4.1 The Islamic State of Afghanistan was proclaimed in April 1992 as successor to the Soviet backed regime of President Mohammad Najibullah, which had been overthrown by opposition mujahidin (holy warriors) following the end of the (1979-89) Soviet military intervention. [54] After the fall of President Najibullah four main armed groups with different ethnic characteristics and foreign support initially fought for power in Kabul. [11a] Having discarded a UN proposal to form a neutral body, the guerrilla leaders agreed to establish a 51-member interim Islamic Jihad Council, composed of military and religious leaders which was to assume power in Kabul. Sibghat-ullah Mojaddedi was the leader of the small moderate Jebha-i-Nejat-i-Melli (National Liberation Front). He was to chair the Islamic Jihad Council for two months, after which period a ten-member Leadership Council, comprising mujahidin chiefs would be set up for a period of four months, to be presided over by the head of the Jamiat-i-Islami, Burhanuddin Rabbani. Within six months a special council was to meet to designate an interim administration which was to hold power for up to a year pending elections. [1]

4.2 Mojaddedi arrived in Kabul on 28 April 1992 as the President of the new interim administration. The Islamic Jihad Council was not however supported by Gulbuddin Hekmatyar (leader of rival guerrilla group, the Pashtun dominated Hizbi-I Islami), whose radical stance differed substantially from Mojaddedi's more tolerant outlook. At the end of the month, Hekmatyar's forces lost control of their last stronghold in the centre of Kabul. Within a few weeks, the Government of the newly proclaimed Islamic State of Afghanistan had won almost universal diplomatic recognition, and by early May 1992 about one-half of the Islamic Jihad Council had arrived in the capital. An acting Council of Ministers was formed, in which Ahmad Shah Masoud (Tajik general and leader of the Jamiat-i Islami guerrilla group) was given the post of Minister of Defence. The premiership was set aside for Ustad Abdol Sabur Farid, a Tajik commander from Hizb-i Islami (Hekmatyar declined to accept the post). [1]

4.3. Despite Mojaddedi's repeated pleas to Hekmatyar and his followers to lay down their arms, Hekmatyar, who was particularly angered by the presence of Uzbek forces under the command of General Abdul Rashid Dostum in the capital, continued to bombard Kabul with artillery and indiscriminate rocket launches from various strongholds around the city. Scores of citizens were killed and wounded. On 28 June 1992 Mojaddedi surrendered power to the Leadership Council, which immediately offered Rabbani the presidency of the country and the simultaneous responsibility of the Interim Council of Ministers for four months. [1] Following the Islamabad Accord of March 1993, Afghanistan was formally ruled by President Rabbani. The post of Prime Minister was given to Hekmatyar. [11a]

4.4 Renewed intense fighting broke out on 1 January 1994, when Prime Minister Hekmatyar formed a new alliance with Uzbek, General Dostum, and attempted to force President Rabbani from office. The fighting over control of territory and political authority in Afghanistan intensified between the Jamiat-i Islami (led by President Rabbani and his commander, Masoud) and the alliance between the northern General Dostum and Hekmatyar (referred to as the Supreme Co-ordination Council, with the backing of the Hizb-i Wahdat). [11a] Dostum's militia reportedly oppressed the civilian population of Kabul, as bitter fighting by the mujahidin factions ensued amongst looting and lawlessness. [25]

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Emergence of the Taliban

4.5 United Nations efforts to promote a broad-based government acceptable to the various factions continued. A plan for the transfer of power to a broad-based interim administration was postponed due to the absence of political will amongst the major powers and new political developments. [11a] Notably there was the emergence of a new political grouping in the latter half of 1994, the (mainly Pashtun) Taliban (Taleban). The Taliban were hitherto unknown - Taliban being the plural of 'Talib', meaning 'seeker of religious knowledge'. They were reportedly young Pashtun graduates, emanating from fundamentalist Islamic schools established by Afghan refugees in Pakistan. [1]

4.6 In November 1994 the Taliban captured Kandahar from the mujahidin, and moved north-eastwards. The term of office of President Rabbani came to an end on 28 December 1994 but he remained President, pending the outcome of UN sponsored peace negotiations. [11a]

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February 1995 - June 1996

4.7 On 14 February 1995 the Taliban captured the headquarters of Hekmatyar's Hizb-i Islami in Charasyab, south of Kabul. They took control of nine of the country's provinces. In early March 1995 the Taliban entered the Karte Seh district in western Kabul and disarmed Hizb-i Wahdat militia who had been in control of the area. The Taliban's presence there brought them face to face with President Rabbani's government forces, and the Taliban were subsequently pushed out of the area to

Charasyab, withdrawing further south to Maidan Shahr. Heavy fighting continued between government and Taliban forces over control of the city. [11a]

4.8 On 5 September 1995 the Taliban captured the city of Herat from the forces of the governor, Ismail Khan, who was allied to the government of Rabbani. [11a] In October 1995 the Taliban launched a massive ground and air assault on Kabul, but by early January 1996 had failed to breach the capital's defences. Despite the holding of exploratory negotiations between the Rabbani government and major opposition parties in the first quarter of 1996, the fighting in and around Kabul intensified. The President's attempts at conciliation finally proved successful in late May 1996 in a critical development (the 'Mahipar Agreement'), when he persuaded Hekmatyar to rejoin the Government. [1] As Hekmatyar resumed the post of Prime Minister, fighting in Kabul broke out and the city became a target of indiscriminate bombing. Daily rocket attacks on Kabul peaked in June 1996. [11a]

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September 1996 - December 1999

4.9 On 11 September 1996 the Taliban captured Jalalabad, the eastern city bordering Pakistan. They went on to capture Kabul on 27 September 1996. Their first act was to publicly hang former President Najibullah, who since the fall of his government in April 1992 had sought shelter in a UN compound. The capture of Kabul quickly realigned political forces within Afghanistan and the region. The non-Pashtun forces allied again as they did in the North Alliance of 1992. The country was effectively partitioned between areas controlled by Pashtun and non-Pashtun forces, as the Taliban now controlled all the predominantly Pashtun areas of the country (as well as Herat and Kabul). Meanwhile, non-Pashtun organisations controlled the areas bordering on the central Asian republics. [11a]

4.10 To the north of Kabul, the forces of the ousted government were pushed out of the towns of Charikar and Jebul Siraj, and the front line reached the village of Gulbahar at the mouth of the Panjshir Valley: the stronghold of Commander Masoud. In the week of 14-20 October 1996 the forces of General Dostum joined Commander Masoud's front line and fought their way to Kabul in a counter-attack. As a result the Taliban lost their strategic military airbase at Bagram. A second front line was opened in the north-west, where the Taliban held territory bordering the area controlled by General Dostum. [11a]

4.11 By late October 1996 the anti-Taliban forces had launched a concerted offensive against Kabul in the hope of ousting the Islamic militia. Their leaders were now collectively known as the Supreme Council for the Defence of Afghanistan (SCDA). Their headquarters were situated in General Dostum's stronghold of Mazar-i-Sharif. Despite repeated calls for a cease-fire from various foreign governments and the UN, the fighting between the Taliban and the allied opposition continued into January 1997. [1]

4.12 Heavy fighting between Taliban and anti-Taliban alliance forces resulted in thousands fleeing south toward Kabul. [3a] The Taliban pushed further north, capturing three districts in Kapisa province in north-eastern Afghanistan (previously under the

control of Commander Masoud's troops), progressing toward the Salang Pass to within 20 kilometres of the Soviet-built tunnel that leads through the Hindu Kush mountain range into provinces held by General Dostum. The opposition reportedly surrendered much of the territory without fighting. [11a]

4.13 On 23 January 1997 the Taliban captured Jebul Siraj and Gulbahar, both former Masoud strongholds. [3a] In the North, residents of Mazar-i-Sharif (the northern Afghan capital controlled by General Dostum) were threatened in January 1997 when the Taliban opened its offensive north of Kabul. Forces loyal to General Dostum destroyed parts of the Salang highway (the Salang tunnel north of Kabul, nearly three kilometres long, is the main route to the northern provinces and beyond to Central Asia), blocking direct access north of Kabul. Dostum's Shia Muslim allies managed to block a Taliban attempt to bypass the crucial road link. [11a]

4.14 In May 1997 the Taliban were reportedly pushed out of Jebul Siraj, a strategic town north of Kabul by forces of Commander Masoud. In late May the situation swiftly changed as the fragile coalition linking General Dostum with former government forces of President Rabbani, Hekmatyar's Hizb-i-Islam and the mainly Shia Hizb-i-Wahdat fell apart following the defection on 19 May 1997 of General Dostum's senior commander, Abdul Malik. On 24 May 1997, fighters loyal to Malik captured Mazar-i-Sharif, which became under the full control of ethnic Uzbek fighters who had until a week before been part of the northern alliance opposing the Taliban. Meanwhile the towns of Kunduz, Baghlan and Samangan east of Mazar were announced as under Taliban control. General Dostum fled to Turkey [11a], and General Malik assumed his position as leader of the National Islamic Movement. [1]

4.15 The Taliban's control of the north swiftly ended on 28 May 1997, when they were defeated in Mazar-i-Sharif through an eighteen-hour battle, by Uzbek soldiers who broke the new alliance with the Taliban. Commander Masoud's resistance continued in the north-east as he launched a surprise attack on the Taliban on 25 May 1997 after one of his senior commanders, General Bashir Salangi, defected to the Taliban and gave its troops permission to move up the mountain road. Commander Masoud, who was fighting from north-eastern strongholds in Takhar and Badakshan provinces, moved reinforcements into the area the same day. [11a]

4.16 The anti-Taliban alliance expanded and strengthened in early June 1997 by the inclusion of forces of Hekmatyar and of the Mahaz-i-Melli-Islami, led by Pir Sayed Ahmad Gailani. This new coalition, which superseded the SCDA, was known as the United Islamic Front for the Salvation of Afghanistan (UIFSA), commonly known as the United Front and the Northern Alliance, hereafter referred to as the Northern Alliance. [1] At the beginning of June 1997, the Taliban effectively controlled two-thirds of the country. [11a]

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4.17 In mid-August 1997 it was reported that the UIFSA had appointed a new government based in Mazar-i-Sharif with Rabbani continuing as President, Abdorrahim Ghafurzai as Prime Minister, Ahmad Shah Masoud as Minister of Defence and General Adbul Malik as Minister of Foreign Affairs. However the former Prime Minister in the anti-Taliban administration, Hekmatyar, refused to recognize the new government. Within a few days of its appointment seven members of the new

Government, including Prime Minister Ghafurzai, were killed in an aeroplane crash. In late August 1997 the anti-Taliban opposition alliance appointed Abdolghaffar Rawanfarhadi as the new Prime Minister. [1]

4.18 In September 1997 the main battlefield moved northwards from Kabul when the Taliban launched an offensive in an attempt to recapture Mazar-i-Sharif. Following fierce fighting the Taliban were forced to lift the siege and retreat in early October 1997. Meanwhile, in mid-September 1997 General Dostum was reported to have returned to Mazar-i-Sharif from Turkey, and in the following month the member parties of the UIFSA re-elected him as commander of the forces of the alliance. They also appointed him as Vice-President of the anti-Taliban administration. [11b] In late October 1997 the Taliban unilaterally changed the country's name to the Islamic Emirate of Afghanistan. [1]

4.19 There were reports of a bitter rivalry between General Dostum and General Abdul Malik, with skirmishes between their respective forces. Dostum's battle for supremacy with his rival led him to make overtures to the Taliban, including offers of exchanges of prisoners of war. By late November 1997 General Dostum reassumed leadership of the National Islamic Movement, ousting General Malik. [11b]

4.20 In late 1997 the World Food Programme launched an emergency operation to help those facing starvation in the central region of Hazarajat which had been blockaded by the Taliban since August 1997. In January 1998 the UN was forced to suspend its airlifts of emergency supplies when Taliban aircraft bombed the area. [1]

4.21 In March 1998, reports of factional fighting between rival members of the Northern Alliance highlighted the fragile nature of the anti-Taliban alliance. Following a major diplomatic effort by the US, the Taliban and the Northern Alliance held peace talks in Islamabad. In early May 1998 the talks broke down and fighting resumed north of Kabul.[1]

4.22 Relations between the Taliban and the UN deteriorated in June 1998 when the Taliban decided to close more than 100 private schools and small home-based vocational courses which were educating girls. In July 1998 the Taliban expelled almost all international aid agencies. [1]

4.23 On 1 August 1998 the Taliban captured the headquarters of the ethnic Uzbek leader General Dostum in Sheberghan. Dostum reportedly fled via the Uzbek border to Turkey. The Taliban, reinforced by considerable numbers of extremist volunteers from other Islamic countries including Pakistan, Saudi Arabia, Egypt and Algeria, then recaptured Mazar-i-Sharif in early August 1998. [1]

4.24 On 20 August 1998 the US launched air attacks against alleged terrorist bases in eastern Afghanistan and Sudan, reportedly operated by Usama bin Laden leader of the Al Qa'ida organisation. The attacks were in retaliation for attacks on two US embassies in East Africa earlier in the month. In September 1998 the Taliban suffered a serious setback when Saudi Arabia, one of only three countries to recognise the regime, withdrew its funding and political support and recalled its envoy from Kabul.[1]

4.25 In September 1998 a serious tension developed between Iran and the Taliban over the deaths of nine Iranians who had been killed by the Taliban during the storming of Mazar-i-Sharif. Both Iran and Afghanistan massed troops on the border. It was reported later that some 2,000 to 6,000 Shia Hazara civilians had been massacred by Taliban guerrillas after the recapture of Mazar-i-Sharif. [1]

4.26 In mid September 1998 the Taliban captured the capital of Bamian Province, a Shia stronghold; this, ~~and the last major town outside its control~~ victory meant that any substantial anti-Taliban opposition was effectively restricted to ~~the Panjshir valley~~, the stronghold of former defence minister Ahmed Shah Masoud in north-eastern Afghanistan. [1]

4.27 In January 1999 it was reported that the Northern Alliance had established a multi-ethnic Supreme Military Council under the command of Masoud, with the aim of giving fresh impetus to the anti-Taliban movement and co-ordinating manoeuvres against Taliban forces in northern Afghanistan. Despite the holding of UN monitored direct peace talks between the representatives of the Taliban and the Northern Alliance in Turkmenistan in February, ~~and March~~ and July 1999, ~~and in Uzbekistan in July 1999~~ very little was achieved. [1] The Hazaras regained control of Bamian in April 1999, although it was then recaptured by the Taliban in May 1999, when a number of Shia residents were reportedly killed. [2b]

4.28 In July 1999 following reports that Usama bin Laden was being sheltered in eastern Afghanistan the US imposed financial and economic sanctions on the Taliban regime, a further attempt to persuade it to hand over the militant leader. In early August 1999 the Taliban launched a massive offensive against the Northern Alliance in the Panjshir valley; tens of thousands of mainly Tajik civilians were displaced. Masoud instigated a massive counter attack and the Taliban were forced into a swift retreat towards Kabul. [1]

4.29 Between July and December 1999 a series of Taliban offensives in the north was marked by summary executions, the abduction and disappearance of women, forced labour of detainees, the burning of homes, and the destruction of other property and agricultural assets. [17b]

4.30 In mid November 1999, the UN Security Council imposed an embargo on all Taliban-controlled overseas assets and a ban on the International flights of the national airline, Ariana Afghan Airlines, in response to the Taliban's refusal to hand over ~~Islamist fugitive~~ Usama bin laden. [1]

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January 2000 - December 2000

4.31 During 2000 the Taliban and Northern Alliance suffered internal discord, with defections of senior officials occurring on both sides. Heavy fighting concentrated in the north of Kabul resumed in early March 2000. [1]

4.32 In May 2000 there was reportedly a massacre by the Taliban near the Robatak pass on the border between Baghlan and Samangan provinces in the north central

area. A Human Rights Watch report stated that all of those killed had been detained for four months, and many had been tortured. Thirty-one bodies were found at the site, twenty-six being identified as Ismaili Hazara civilians from the Baghlan province, although the true figure of the dead may be much higher. There were also reported to be as many as three other gravesites along the same road northwards.[17a] Uzbek prisoners were also amongst those executed in Samangan. [11d]

See also Hazaras paragraphs 6.136 – 6.151

4.33 During peace negotiations between the Taliban and the Northern Alliance in March and May 2000 the parties did not reach agreement on a cease fire. In early June there was renewed fighting in northern and central Afghanistan; by the end of July 2000 the Taliban had acquired more territory in northern Afghanistan.[1] The drought began to reduce a significant amount of the population to a marginal level of survival. The situation was particularly bleak in the west of the country, although there were also reports that the water table in the south had fallen significantly. Mullah Omar reportedly issued a statement in response to the drought, saying that it represented a punishment by God for discontent with Taliban rule among the population, and neglect of religious duties. It is believed that this was the first time that the Taliban leader acknowledged that some elements of Afghan society were unhappy with the Taliban. [22a]

4.34 In early September 2000 the Taliban secured the key northern town of Taloqan. This victory represented a serious military and political setback for Masoud and the Northern Alliance. ~~Heavy fighting continued and by the end of 2000 the Taliban controlled over 90% of Afghanistan.~~ [1] Amnesty International reported that during the fighting houses were burned and villagers were killed. It was also reported that the Taliban cut the throat of one man in front of his relatives. There were also unconfirmed reports that Taliban soldiers (some foreign) abducted women and girls from villages in the area.[2b]

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January 2001 - December 2001

4.35 In early January 2001 the Taliban allegedly detained and shot 300, male civilians, mainly Hazaras, living in Yakaolang district of Bamian. Kofi Annan UN Secretary General expressed concern about reports of deliberate killings and human rights violations and demanded a prompt investigation. The Taliban denied the claims and refused foreigners access to the town. In mid-February 2001 the Northern Alliance recaptured Bamian city and uncovered evidence of the alleged massacre. A report by Human Rights Watch confirmed that 170 men had been killed and that serious human rights violations had been committed.[1][17a]

See also Hazaras paragraphs 6.136 to 6.151

4.36 On 7 February 2001 the World Bank Country Director for Pakistan and Afghanistan commented that the humanitarian situation in Afghanistan was one which had all the ingredients of a famine. The UN Under Secretary-General for

Humanitarian Affairs also began a visit to Kabul, Faizabad and Herat on 12 February 2001 and echoed these observations, stating that one million were at risk of famine. [22b]

4.37 In March 2001, in the face of intense international opposition, the Taliban undertook the destruction of Afghanistan's pre-Islamic cultural heritage including the world's two largest Buddhas in Bamian.[1]

4.38 In April 2001 General Dostum returned to Afghanistan after a three-year exile and reportedly met Ahmed Masoud in the Panjshir Valley. Morale amongst anti-Taliban forces was reported to have risen following the return of Dostum, who still had the support of many fighters. [25]

4.39 In August 2001 a key commander in Mazar-i-Sharif withdrew from the Taliban, a loss which threatened to undermine the Taliban's hold on the fiercely independent city. The Commander had given the Taliban one of their most decisive victories in 1998 after defecting from the opposition. Meanwhile Taliban troops found themselves stretched too thinly to make any significant gains, despite motivated reinforcements from Pakistan and Arab countries. [18c]

4.40 In August 2001 eight ~~foreign aid workers~~ and sixteen Afghans ~~aid workers of a working for a~~ German Christian aid organisation were arrested by the Taliban on charges of proselytising Christianity.[1]

See also History paragraph 4.47

4.41 On 9 September 2001 suicide bombers seriously injured anti-Taliban alliance leader Ahmed Shah Masoud. He died six days later. General Mohammed Fahim Khan was appointed as his successor.[1]

4.42 The situation in Afghanistan changed drastically as a result of the terrorist attacks on the US on 11 September 2001. Two days later Colin Powell US Secretary of State publicly identified Usama bin Laden and his Al Qa'ida organisation as principally responsible. On the 16 September 2001 the UN imposed diplomatic sanctions and an arms embargo on the Taliban. The US began to form an anti-terrorist coalition with the United Kingdom. Pakistan a supporter of the Taliban reversed its policy and agreed to co-operate with the US led coalition.[1]

See also Al Qa'ida paragraphs 6.345 – 6.349

4.43 Initially the Taliban appealed to the US not to attack Afghanistan and denied complicity with bin Laden. However on 26 September 2001 the Taliban announced that an edict had been sent to bin Laden asking him to leave the country. Through intense diplomatic efforts the US and UK sought to build a broad anti-terrorist coalition to prepare for military action against the Taliban regime. Throughout September US and UK military forces were mobilised and deployed in areas close to Afghanistan.[5b]

4.44 Despite the looming crisis the Taliban and Northern Alliance continued military operations in September 2001. On 12 September 2001 the UN World Food Programme halted shipments of food aid in the face of concerns over the safety of

workers in involved in the relief effort. The cessation of aid efforts and an increasing concern that US attacks on Afghanistan were imminent caused an increase in the number of displaced people seeking refuge in camps near the Pakistan and Iran borders. Border controls were strictly enforced with Pakistan restricting access to those judged to be in need of assistance. It was estimated that as many as 1.5 million refugees left their homes in the second half of September 2001.[5b]

4.45 On 7 October 2001 the US-led coalition commenced military operations (Operation Enduring Freedom) against Taliban military targets and Al Qa'ida camps in Afghanistan.[5c] In addition to military strikes aircraft released food and medicine parcels to Afghan civilians and leaflets offering protection and a reward in return for information on the whereabouts of Al Qa'ida leaders. After ten days one-week the US announced that -most-of the Taliban's air defences had been destroyed -and military action was intensified. On 20 October 2001 US ground forces began an assault on Afghanistan.[1]

See also Al Qa'ida paragraphs 6.345 – 6.349

4.46 During October the US conducted further operations on an almost daily basis. Aid agencies reported significant increases in the numbers of refugees seeking shelter in camps close to Afghanistan's borders. In Afghanistan the Taliban appeared to have scaled down operations against the Northern Alliance, in contrast the Northern Alliance were reported to have stepped up operations in particular launching an attack to seize the high ground surrounding Bagram airbase. [5c]

4.47 In early November attacks against the Taliban in northern Afghanistan escalated and on 9 November 2001 the Northern Alliance captured Mazar-i-Sharif. The Northern Alliance continued to seize almost all of northern Afghanistan. On the night of 12 November 2001 the Taliban fled Kabul and the Northern Alliance entered and took over the capital on 13 November 2001. There were reports of defections of large numbers of Taliban fighters as morale among the Taliban declined. [1] In both Kabul and Mazar-i-Sharif it was reported that Northern Alliance forces summarily executed hundreds of foreign Taliban volunteer fighters. ~~-, in~~ In general, captured Afghan Taliban were treated more leniently, although there were reports that they had been subjected to beatings and other reprisals. The eight western aid workers detained by the Taliban in August, accused of proselytising Christianity, were moved out of Kabul 13 November 2001 and subsequently released. [5d]

4.48 ~~On 19~~ In late November 2001, the Taliban regime's sole official contact with the outside world ended when Pakistan severed all diplomatic links with the Taliban and closed their last remaining embassy. [1] ~~Pakistan, the only country to continue to recognise the Taliban (even after announcing its support for the American-led coalition), broke off its relations with the Taliban.~~ [25v] The United Nations sponsored talks on the future of Afghanistan commenced in Bonn, Germany on 27 November 2001. The talks brought together representatives of the four Afghan groups, the Northern Alliance, the Pakistan based Peshawar group, the Iranian backed Cyprus delegation of Afghan refugees and exiles and the Rome group headed by the former king.[5d] After nine days of talks a formal "Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions" (The Bonn Agreement) was signed on 5 December 2001. [25x][39b]

4.49 The Bonn Agreement stated that the Interim Authority, the initial governing body would rule for six months from 22 December 2001 and that power would pass to a Transitional Authority on 22 June 2002.^[39b] An Interim Administration, to govern Afghanistan, was inaugurated on 22 December 2001. A 30-member cabinet was sworn in under the leadership of Hamid Karzai. The cabinet included representatives from Pashtun, Hazara and Tajik ethnic groups and included two women ministers.^{[25aa][25ab]}

See also Political System paragraphs 5.20 - 5.28

4.50 In early December 2001 the Northern Alliance supported by US and UK forces defeated the remaining Taliban troops who had fled to the southern city of Kandahar. Isolated pockets of Taliban continued to engage the Northern Alliance throughout the country, however the fall of Kandahar on 7 December 2001 signalled the end of the Taliban regime's grip on Afghanistan. Mullah Omar and senior Taliban leaders evaded capture. US forces stepped up efforts to locate Usama bin Laden, alleged leader behind the 11 September attacks on the US. He was believed to be at a complex of caves at Tora Bora south-west of Jalalabad. The cave complex had been captured by 20 December 2001 but he was not found.^[5e]

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January 2002 – December 2002

4.51 A Military Technical Agreement was signed by the Afghan Interim Administration on 4 January 2002 on the deployment of an International Security Assistance Force (ISAF) to Afghanistan. The agreement tasked the ISAF to work alongside Afghan Security Forces maintaining security in and around Kabul. Britain was lead nation of the ISAF for the initial three months of its mandate.^{[25ac][39c]} The ISAF reached its full operating capacity of 4,500 troops on 18 February 2002.^[39e] On 25 January 2002 the Interim Administration leader Hamid Karzai announced names of members of the Special Independent Commission responsible for convening an Emergency Loya Jirga. This would decide on the make up of a Transitional Authority, to govern for 18 months from June 2002.^[36e]

4.52 In January 2002 US led forces continued military operations against small pockets of Taliban resistance and focused their efforts on locating former Taliban leaders and Usama bin Laden. Despite these efforts Taliban leader Mullah Omar remained at large and Usama bin Laden also continued to evade capture.^[5f] On 10 January 2002 the US commenced flying prisoners captured during the campaign in Afghanistan to a US prison camp in Guantanamo Bay, Cuba.^[25ad] By 23 January 2002 the camp held some 158 prisoners; transfers were then halted to allow the camp to be expanded.^[25ae]

4.53 In February 2002 US forces continued military operations against small pockets of Taliban resistance and continued their efforts to locate troops loyal to Usama bin Laden's Al Qa'ida organisation. Small-scale conflicts between rival regional leaders were reported in regions throughout the country. On 14 February 2002, the Civil Aviation and Tourism Minister Abdul Rahim Wardak was assassinated.^[5g]

4.54 On 1 March 2002 US troops launched Operation Anaconda against suspected Taliban and Al Qa'ida forces in the Shah-i-Kot valley in Paktia province. The operation developed into a 17-day conflict, which saw the bloodiest fighting since the arrival of the US troops in October 2001. On 18 March 2002, the UK announced plans to deploy 1,700 troops in Afghanistan to assist in Operation Anaconda.^[5h] By 20 April 2002 the full force of 1,700 Royal Marines had arrived in Afghanistan.^[25bh]

4.55 On 25 March 2002, an earthquake measuring 6.1 on the Richter scale hit the Hindu Kush region of the country. It was reported that as many as 1,800 people were killed and thousands left homeless. The city of Nahrin was hit hardest by the earthquake with 90% of the city's housing destroyed. Violent after shocks continued for several days hampering rescue efforts and causing further damage.^[5h] On 31 March 2002 the Special Independent Commission announced and published the procedures for the Emergency Loya Jirga.^[40b]

4.56 On 4 April 2002 the Interim Administration claimed to have foiled an attempt to assassinate Hamid Karzai and detained some 300 supporters of the former Prime Minister Gulbuddin Hekmatyar. Officials said they had seized significant quantities of arms from supporters of Hekmatyar's Shia Hezb-i Islami. A few days later an alleged assassination attempt was made on Mohammad Fahim Khan the Defence Minister and Vice Chairman of the Interim Administration. The alleged assassination attempt followed warnings from the ISAF that groups excluded from the governing process intended to destabilise Kabul and undermine the interim Government.^{[5i][25ax]}

4.57 In April 2002 Human Rights Watch issued a report detailing abuses against ethnic Pashtuns in Northern Afghanistan following the fall of the Taliban.^[17e] Also in April 2002 there were reports that mass graves had been found in the Bamiyan area believed to contain the bodies of members of the local Hazara community killed late in 2001 after the fall of the Taliban.^[25be]

4.58 US and UK forces continued military operations in April 2002 against small pockets of Taliban resistance and continued to focus their efforts on locating Al Qa'ida troops loyal to Usama bin Laden. On 8 April 2002 the Interim Administration launched a programme to destroy Afghanistan's crop of opium. Farmers were offered payment for destroying opium crops. According to Hamid Karzai farmers who refused to join the programme would be liable to prosecution and would have their land seized.^[5i]

4.59 In May 2002 US and UK forces continued military operations within Afghanistan. On 1 May 2002 the UK forces launched a two week offensive named Operation Snipe. On 23 May 2002 the UN Security Council adopted resolution 1413 extending the mandate of the ISAF for an additional six months from 20 June 2002.^[5j] On 21 May 2002, the Civil Service Commission was formally established by Presidential decree. ^[40br] (p10) On 6 June 2002 Hamid Karzai signed a decree establishing an Afghan Independent Human Rights Commission. According to the decree the commission is charged with developing a national plan of action for human rights in Afghanistan.^[40m]

4.60 The process of selecting delegates for the Emergency Loya Jirga started in the middle of April 2002 and continued until 6 June 2002. Following the selection of

delegates the Loya Jirga took place between 11 and 19 June 2002. In a report to the UN Secretary General dated 11 July 2002 it was noted that despite some imperfections in the nomination and selection of candidates and incidents of intimidation during the Loya Jirga itself, it reached a successful conclusion. Hamid Karzai was elected as the new Head of State and the structures and appointment of the Transitional Authority were approved. The final cabinet of the Transitional Authority was composed of five Vice-Presidents, three Special or National Advisors with Cabinet status and 30 Ministries. The ethnic balance showed Pashtun representation increased slightly to just under 50%, and Tajik representation reduced to below one third. The Administration included three women.[40s]

See also Political System paragraphs 5.20 - 5.28

4.61 The choice of Taj Mohammad Wardak a Pashtun as Interior Minister caused a demonstration by police in Kabul on 20 June 2002. They blocked a road near the Interior Ministry when Mr Wardak arrived for a handover from the former Interior Minister Yunis Qanooni. Hamid Karzai stated that the police had to accept the command of the minister.[25w]

4.62 In June 2002 Hamid Karzai underlined his determination for rule by government and not factional warlords.[25w] Factional clashes continued to be a problem and on 15 June 2002 UN Special Representative Lakhdar Brahimi called on prominent warlords General Dostum and General Atta Mohammad to take urgent action to stop lawlessness and intimidation in the north of the country.[25v] Foreign aid workers in the area had also come under attack prompting some to consider withdrawing from the area.[36i] On 20 June 2002 Turkey took over the leadership of the International Security Assistance Force. [5k]

4.63 On 20 June 2002 UK Secretary of State for Defence announced that the UK force of 1,600 troops, deployed in Afghanistan to search for Taliban and Al Qa'ida, would be withdrawn.[5k]

4.64 ~~On 6 July 2002 Afghan Vice President Haji Abdul Qadir was assassinated by unidentified gunmen. The ISAF were asked to assist in the investigation of his death.[25t] Later in July 2002 American bodyguards were employed to reinforce security for Hamid Karzai.[25p] In August 2002 a report by the ISAF of its investigation into the assassination of Qadir indicated that they had failed to identify the killers.[25n]~~ In early July 2002 the Vice-President and Minister of Reconstruction, Haji Abdul Qadir was assassinated. Later that month US authorities declared that they would provide armed guards for President Karzai. An ISAF report published in mid-August on the assassination of Qadir stated that Afghan officials were inadequately protected and it was unlikely that the assassins would be found, since the Afghan security agencies were ill-equipped to investigate the incident. [1] In late July 2002 it was reported that the Afghan authorities had foiled an attempt to blow up a government minister's car. It was alleged a car carrying explosives was intercepted in Kabul. A statement from the General Department of National Security said that the driver was a subject of a foreign country and claimed international terrorists were responsible. [25j]

4.65 In early August 2002 growing concerns about violence involving troops of regional warlords was reported. US troops had engaged in action twice against members of rival warlord factions battling for control in the eastern province of Kunar. In the west near the Iranian border several clashes between Herat Province Governor Ismail Khan and ethnic Pashtun troops were reported. On 7 August 2002 Afghan police reported that at least 15 people were killed in a shoot-out between Afghan police and what were described as foreigners at Binizar near Kabul. A Foreign Ministry spokesman said that there were signs that the 12 gunmen killed were members of Al Qa'ida.[40w]

4.66 On 5 September 2002 an assassination attempt on Hamid Karzai was made in the southern city of Kandahar. Two rounds were fired on the President's vehicle. American soldiers guarding the President fired back at the gunman killing at least three people. Earlier in the day there was a large explosion in Kabul killing at least ten people and injuring dozens. The target of the bomb, reportedly inside a taxi, was unclear. The explosion took place close to the Ministry of Information and Culture and the Spinzar Hotel.[25k]

~~**4.67** In early November 2002 President Karzai sacked an estimated 20 high-ranking officials in the provinces. He said this action was aimed at rooting out corruption. Delegations had been sent out to the provinces to report to Karzai on those suspected of abuse of power. According to an Afghan Government spokesperson the men were sacked for a number of reasons including corruption, allegations of drug trafficking, disobeying the law and abuse of authority.[25h]~~ In early November 2002 President Karzai dismissed more than 20 senior regional officials - including Gen. Abdul Hamid, the military commander of Mazar-I-Sharif – in an attempt to consolidate the Transitional Authority's jurisdiction outside Kabul. [1]

4.68 On 12 November 2002 a protest took place in Kabul involving 1,000 university students. The students were protesting against poor living conditions in the campus dormitory. The protest was fired on by police resulting in the deaths of up to four students and the wounding of several dozen. President Karzai met the students and ordered an investigation into the causes of the protest and the killings.[6a] The investigation concluded that the police had been responsible for the use of excessive force and that the miserable living conditions at the students' dormitory, which had apparently triggered the demonstrations, were partly the result of corruption. Several government officials, including some at senior levels were subsequently arrested.[39h]

4.69 On 27 November 2002 the UN Security Council decided to extend the mandate of the ISAF for a period of one year until 20 December 2003.[40j]

4.70 In December 2002 the Governments of Afghanistan and the six neighbouring states signed the Kabul Declaration on Good Neighbourly Relations. The signatories reaffirmed their commitment to constructive and supportive bilateral relationships based on the principles of territorial integrity, mutual respect, and non-interference in each others affairs. The seven States also expressed their determination to defeat terrorism, extremism and drug trafficking.[39h]

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January 2003 to December 2003

4.71 In late January 2003 there were reports of renewed fighting between Taliban/Al Qa'ida remnants and US and Afghan troops near the border in Pakistan, showing the continuing threat from Afghans opposed to the presence of US forces. Beside the Taliban, Gulbuddin Hekmatyar is also opposed to the presence of US troops in Afghanistan and to President Karzai's government. [25ao] In February 2003 it was reported that the expelled Taliban regime had regrouped in Afghanistan and allied itself to Hekmatyar. [51] However, other reports stated that there was little evidence that Hekmatyar and the Taliban had joined forces.[25ao]

4.72 On 10 February 2003 Turkey handed over leadership of the ISAF to Germany and the Netherlands.[39n] In February 2003 Afghanistan deposited its accession to the International Criminal Court (ICC) at the United Nations. Under ICC provisions the treaty will take force in Afghanistan on 1 May 2003. After that date ICC will have the authority to investigate and prosecute serious war crimes, genocide and crimes against humanity committed on Afghan soil. ICC has authority not only over troops committing atrocities but also over commanders who order or incite them, or fail to stop atrocities from occurring. ICC jurisdiction will apply to Afghan government officials and local military and police commanders as well as armed insurgent groups, whether they are connected to the government or not. The ICC will not investigate or prosecute past crimes committed prior to 1 May 2003.[17k]

4.73 On 27 March 2003 an ICRC field delegate was shot by a group of unidentified assailants in the southern province of Kandahar. This was the first killing of an international ICRC field staff member in Afghanistan since 1990. ICRC immediately placed a temporary freeze on all field trips in Afghanistan.[36c] Following the murder a number international agencies suspended work in the southern provinces. A few days later there was a rocket attack on the compound of the multi-national peace-keeping force in Kabul. It was also reported that leaflets had been circulated in some areas of the country threatening both government and aid agency staff.[40ag]

4.74 On 28 March 2003 the UN Security Council extended the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA) for a further 12 months until 28 March 2004.[40ad] In early April 2003 the Afghan government and the United Nations signed an agreement to launch a programme to disarm, demobilise and reintegrate factional armies and militias. The three-year plan envisages the demobilisation of some 100,000 fighters currently loyal to regional power warlords. The men will be given the opportunity to join the Afghan National Army or given assistance to rejoin civilian life.[40af]

4.75 On 1 April 2003 the US Department of State issued a statement expressing concern over recent security incidents targeted at foreigners in Afghanistan including US forces and workers in NGOs. The statement confirmed that Operation Enduring Freedom continued to search for and neutralise the remnants of Al Qa'ida and the Taliban.[40ae]

4.76 On 16 April 2003 UNHCR expressed concerns about the security situation. Following the murder of an ICRC worker in late March 2003 more than 10 international NGOs have pulled out of Kandahar at least temporarily. Local Afghan officials had

also been targeted and as a result large areas of south-eastern Afghanistan remained off limits to aid agency staff because of the dangers. UN activities in eastern Afghanistan and in the north-west have also been affected by ongoing security concerns. [40ah]

4.77 In July 2003, the UNHCR reported that there are still pockets of resistance of Al Qa'ida and Taliban forces and indications that some Taliban forces might be regrouping. Since August 2002 the anti-western commander, Gulbuddin Hekmatyar and his followers had become notably more active, being linked to sporadic bombings in Kabul city and insecurity in parts of the Eastern, Central and Northern regions.

Coalition forces remain active in the Southeast, East, Southern and Central Region and maintain a large military presence in Kandahar province. Combat between coalition forces and resistance groups has occurred in all these areas. [11i]

4.78 The United States has deployed Provincial Reconstruction Teams (PRTs) to Kunduz, Gardez and Bamian to support reconstruction activities and help extend central government authority in those provinces. [11i] In addition, a British PRT started working in late July 2003 in the northern city of Mazar-I-Sharif. [40ba]

4.79 An ongoing border dispute between Afghanistan and Pakistan resulted in the Pakistani Embassy in Kabul being attacked in July 2003 by protesters demonstrating against alleged Pakistani incursions into Afghanistan. The Afghan Interior Minister said that four people had been arrested in connection with the incident. [25b1] An agreement was subsequently reached between Pakistan and Afghanistan, to settle the border dispute along the tribal region dividing the two countries, with the help of the US. [20c]

4.80 In July 2003, the UN in Kabul reported that more than 12,000 people living in 57 villages had been badly affected by serious sandstorms in the Lash Juwayan and Shib Koh districts of western Farah province. The storms, described by the UN as the worst in living memory, had left hundreds of people homeless, destroyed crops and contaminated water supplies. Serious flooding in southern and north-eastern provinces in July left more than 100 people dead and many more missing. [36b]

4.81 In a report issued on July 2003, the UNHCR reiterated concerns about the ongoing security situation [11i] and the UN Secretary General Kofi Annan identified the security situation as the main challenge facing the Afghan peace process. [40a1] NGOs expressed similar concerns following an attack on the government and US military in northern Afghanistan [40ak]. In August 2003, suspected Taliban fighters killed five Afghan soldiers and an Afghan driver working for an American aid agency, Mercy Corps, in the southern province of Helmand [25b1] and the United Nations suspended road travel in parts of southern Afghanistan following three attacks in one week. UN missions have been told to avoid travel in parts of Kandahar and Helmand provinces and in all of Uruzgan and Zabul. [25aw]

4.82 Further attacks on Afghan and Western government, military and humanitarian targets were reported in August 2003, believed to have been launched by insurgents loyal to the Taliban, its Al Qai'da allies and the leader of Hizb-i-Islami, Gulbuddin Hekmatyar. [40av] In September 2003 it was reported that military action taken by the government and coalition forces in the southern and southeastern provinces had resulted in the death of 100 suspected insurgents in two weeks. UN missions to

Uruzgan, Zabul and parts of Helmand province as well as all districts near the Pakistan-Afghanistan border remained suspended. In the east, missions to Kunar province and several districts in Nangarhar and Laghman provinces were classified as high-risk areas and/or suspended. [40az]

4.83 In a report dated July 2003, the Secretary-General to the UN Security Council stated that the cultivation, production and trafficking in illegal narcotics threatened not only peace in Afghanistan but also had regional and global consequences. The dependence of Afghan farmers on poppy cultivation complicated the search for a solution. As the law-enforcement capacity of the Government developed it would be better able to control criminal activities but this would take time. [39j] The Civil Service Commission passed the 'Priority Reform and Restructuring Decree' in July 2003 which provided the legal basis for the restructuring of ministries and departments within ministries. [40br] (p10)

4.84 In August 2003 an agreement was signed between the United Nations Office on Drugs and Crime (UNODC) and the Minister of Interior to help establish a new drug interdiction department within the Ministry. Other developments during 2003 to promote effective drug control include the creation of a Counter Narcotics Directorate (CND) and the adoption of a national drugs strategy. Twenty UNODC projects in Afghanistan, worth \$38 million, cover four major areas of drug control: monitoring; prevention – helping to develop the judicial system and law enforcement; demand reduction - providing assistance in addressing the increasing internal drug abuse problem; and alternative development - involving direct assistance to the communities dependent on opium cultivation. [66j]

4.85 On 11 August 2003 the North Atlantic Treaty Organisation (NATO) assumed control of the ISAF from Germany and the Netherlands who had taken control in February 2003. In its first mission beyond the Euro-Atlantic area, NATO has taken over leadership of the force indefinitely removing the need to find a new lead nation every six months. [63a]

4.86 On 1 November 2003, Agence France-Presse (AFP) reported that according to the state-run Bakhtar news agency, "Some 40 people were killed when Afghan police and a former military commander and his fighters fought a fierce battle in southwestern Helmand province... Helmand security commander Amanullah said the fighting was brought to an end when US forces intervened later Friday." [25bg]

4.87 On 3 December 2003, the Secretary General to the UN reported that " On 13 October 2003 the Security Council adopted resolution 1510 (2003), authorizing the expansion of ISAF beyond Kabul, which the Afghan Government and the United Nations had been urging since early 2002. The establishment under ISAF command of a German provincial reconstruction team in Kunduz is the first deployment of ISAF beyond Kabul." [39j] In December 2003, Keesing's Record of World Events recorded that "The mission in Kunduz was seen by some observers to be the start of a gradual widening of NATO'S role." [5n] (p 45740)

4.88 Keesing's Record of World Events News Digest for November 2003 stated that " A draft constitution was formally unveiled in a ceremony on Nov. 3, after many months of delays. The document, an important milestone towards the rebuilding of the

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

4.89 On 19 November 2003, UNHCR reported that “The UN refugee agency has suspended its activities in an eastern Afghan province following the brutal murder of a staff member in Ghazni last weekend...Her attackers have been arrested and police are investigating the murder, which has been condemned by Afghan President Hamid Karzai and UN Secretary-General Kofi Annan...Following the shooting, High Commissioner Lubbers announced that UNHCR was suspending its activities in Ghazni province...In neighbouring Pakistan, the UN refugee agency also decided to temporarily close its voluntary repatriation centres for Afghan refugees in Peshawar and Quetta until the security situation inside Afghanistan becomes clearer...Sunday’s shooting was the latest in a string of attacks on aid workers in Afghanistan. Other recent casualties include a Red Cross worker murdered in March and four people working for a Danish aid group who were killed in September.” [11k] (p10)

4.90 On 12 February 2004, UNHCR reported that an Afghan court had sentenced to death the two men convicted of the UNHCR official’s murder on 16 November 2003. The report said that “The convicted men...were arrested by police shortly after the murder and identified as members of the Taliban regime, which collapsed in November 2001. They had lived in Ghazni province since the fall of the Taliban government.” [11j] (p2)

4.91 Keesing’s Record of World Events recorded in December 2003 that, “Afghan public resentment, especially amongst the Pashtun population, against US forces intensified following two separate aerial bombings of villages in the east of the country. The US led attacks left 15 children and three adults dead. The two incidents, on Dec. 5 and 6 [2003], were a result of US attacks on suspected Taliban hideouts, but the intended targets appeared to have escaped. Six children and two adults were killed in a compound in south-eastern Paktia province in a night assault; the next day nine children and a 25-year-old man were killed in the neighbouring Ghazni province.” [5n] (p45740)

4.92 According to Keesing’s “A series of violent incidents during the month culminated on Dec. 28 when four intelligence agents, their driver, and a suspected suicide bomber were killed in Kabul, the capital, on Dec. 28 [2003]. The agents had arrested two suspects who were in possession of a bomb, but one apparently detonated explosives concealed under his clothes. The other suspect escaped.” [5n] (p45740)

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January 2004 onwards

4.93 In January 2004 Keesing's Record of World Events recorded that "According to Afghan officials, a US helicopter raid on a home in the southern Uruzgan province killed 11 civilians, including four children and three women, on Jan. 18 [2004]. The US military disputed the reports and insisted that five armed militants had been targeted and killed in the air strike. Troops had earlier combed the area looking for Taliban [sic] fighters and launched an air assault after three US soldiers were wounded in a rocket-propelled grenade attack by 15 militants. The incident marked the third occasion in just over a month that US forces had been blamed for killing children...Uruzgan province, south-west of the capital Kabul, was a former Taliban [sic] stronghold and had seen renewed activity as the former regime mounted a resurgence in the south and east of the country." [5a] (p45789)

4.94 On 26 January 2004, the Institute for War and Peace Reporting (IWPR) published a roundup of events at the Loya Jirga convened to debate the draft constitution. IWPR reported that "The approval of a new Afghan constitution took weeks of wrangling between delegates at the Loya Jirga, or Grand Assembly, and represents a compromise between various interest groups. The 502 members of the Loya Jirga, who had been debating amendments to a draft constitution since mid-December, passed the final version on January 4 [2004]. The document sets out the basic institutions for a constitutional democracy in which Islam is accorded a central role, and in theory should make it possible to hold elections this year, as envisaged in the original Bonn agreement of December 2001. The document proscribes a strong presidential system with a two-chamber national assembly." [73b] (p1)

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

4.96 On 28 January 2004, BBC News reported that a British soldier had been killed in Kabul in a blast, which injured four other UK soldiers, two of them seriously, and an Afghan interpreter. It was reported that "The British army confirmed it was a suicide attack shortly after the Taliban said they carried it out. A suicide bombing on Tuesday killed a Canadian member of the international peacekeeping force in Kabul. That, too, was claimed by the ousted Taliban, who have recently issued warnings of a new wave of attacks against peacekeepers and other foreigners in Afghanistan." [25a]

4.97 According to a BBC News report on 9 February 2004, "Hamid Karzai has appealed for greater international support in tackling Afghanistan's growing drugs problem. The Afghan president made the call as he officially opened an international summit in Kabul aimed at tackling Afghanistan's illegal drugs trade. He said the drugs trade was damaging the country's economy, reputation and national security, and profits from the trade were funding terrorism. Afghan poppies account for 90% of the heroin consumed in Europe...Mr Karzai has banned opium poppy cultivation and trafficking but the drug industry is reported to have blossomed since the overthrow of the country's hardline former rulers, the Taliban. He said that the government had not been successful in dealing with the drugs problem, and sought help from other countries...The BBC's Andrew North in Kabul says Mr Karzai stressed the need for greater efforts to develop "alternative livelihoods" for poppy farmers. Nearly 7% of the Afghan population is said to now work in the opium trade, earning as much as

Afghanistan receives in foreign aid. Mr Karzai said poverty forced many farmers to keep growing poppies - a claim some drugs control experts dispute. He also pointed to the growing use of heroin inside Afghanistan - a problem the country had not faced before." [25f]

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

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

4.100 On 17 March 2004, the Guardian newspaper reported that according to an army spokesman, "Pakistani troops killed 24 suspects yesterday during a fierce crackdown on al-Qaida and Taliban fugitives in the rugged tribal regions bordering Afghanistan... The fighting came a day after [Pakistan] President Pervez Musharraf promised to rid the area of some 500-600 foreign terrorists he claims are hiding there. He appealed to tribal elders for their cooperation in the counterterrorism drive. It also followed an announcement over the weekend that US forces were stepping up action on the Afghan side of the border to capture al-Qaida and Taliban hideouts, including those of Osama bin Laden and the Taliban leader, Mullah Omar." [18a]

4.101 On 17 March 2004, BBC News reported that the US Secretary of State Colin Powell had pledged the US will remain committed to rebuilding Afghanistan. According to the report "Mr Powell met President Karzai on a visit to Kabul and vowed that Taleban remnants would not be able to "turn the clock back". He also praised Pakistan's military drive on the Afghan border, which has seen the fiercest clashes there yet. Islamabad says the number killed in the offensive has risen to 39 - 15 soldiers and 24 tribesmen or al-Qaeda suspects." Mr. Powell was reported as saying that the United States would pledge an additional \$1bn in reconstruction aid for Afghanistan at a donor conference in Berlin this month. [25c] According to a BBC News report of 28 March 2004, "The US is sending up to 2,000 more marines to step up the hunt for Osama Bin Laden and other al-Qaeda and Taleban leaders. The troops will join about 12,000 US troops already in the country." [25g]

4.102 On 21 March 2004, BBC News reported that "Afghanistan's Civil Aviation Minister, Mirwais Sadiq, has been killed in the western city of Herat...The attack followed a failed bid to kill his father, the governor of Herat [Ismail Khan]. After Mr Sadiq's death, heavy fighting broke out between troops loyal to his father and a

senior local military commander Zahir Nayebzada, police said. There are reports that up to 100 people have been killed in the clashes. A spokesman for Herat governor Ismail Khan blamed Mr Sadiq's death on forces loyal to Zahir Nayebzada. Mr Nayebzada, for his part, accused Ismail Khan's forces of provoking the fighting by trying to take command of his division...In Kabul, President Hamid Karzai's cabinet convened an emergency session following Mr Sadiq's death. A government statement said Mr Karzai was "deeply shocked" by the killing and had ordered an investigation. The government said it was sending a senior delegation to Herat. State television has reported that the security commander for Herat, the city's director of narcotics control and a bodyguard were travelling in the car with the minister and were also killed in the attack." [25d]

4.103 On 26 March 2004, the UN Security Council announced that "The Security Council this morning extended the mandate of the United Nations Assistance Mission in Afghanistan (UNAMA) for an additional 12 months from today, recognizing that the United Nations must continue to play its central role in efforts to assist the Afghan people in consolidating peace and rebuilding their country. Unanimously adopting resolution 1536 (2004), the Council also called on all Afghan parties to cooperate with UNAMA in the implementation of its mandate and to ensure the security and freedom of movement of its staff throughout the country." [40f]

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

4.105 On 1 April 2004, BBC News reported that \$8.2 bn (£4.4bn) had been pledged over the next three years by international donors at an aid conference for Afghanistan in Berlin. The largest donor was the US, which promised \$2.2bn over the next two years. President Karzai hailed the conference as a great success. [25i] On 2 April 2004, the World Bank Group reported that "The half-billion dollar multi-donor trust fund for Afghanistan that has helped to keep the wheels of the civil service turning in the country, attracted a further US\$300 million from donors for the year ahead at a meeting in Berlin. Further pledges are expected before the end of April." [69d]

4.106 According to global humanitarian organisation CARE International, the \$8.2bn pledged at the Berlin conference brought a welcome increase in funding but falls short on long-term commitment. CARE stated that "According to a recent needs assessment prepared by the Afghan government, reconstruction will require \$27.5 billion over the next seven years." According to CARE, the pledge of \$4.5 billion in the first year slightly exceeds the amount requested. However, only \$1.4 billion in firm commitments - just 36% of the requested amount - has been made for the third year. [40bp]

4.107 CARE reported that "The importance of addressing the current security problems within Afghanistan was also given significant attention at the Berlin conference...NATO's expressed intention to expand ISAF's (International Security Assistance Force) presence outside Kabul is also to be welcomed. However, very

few concrete new commitments in this regard were announced at the conference.”
[40bp]

4.108 On 4 April 2004, a UNAMA press briefing reported that the Berlin Conference concluded on 1 April 2004 with the adoption of the Berlin Declaration. According to UNAMA, “The Declaration highlights the priorities for Afghanistan over the next few years, including intensifying Disarmament, Demobilization and Reintegration ahead of the elections, reducing and eventually eliminating poppy cultivation, and establishing the rule of law and a functioning judicial system, among others. It welcomes the commitments made by donors at the Conference for the reconstruction and development of Afghanistan totaling \$8.2 billion over three years, and also welcomes the commitment by NATO to expand ISAF’s mission with the establishment of additional Provincial Reconstruction Teams (PRTs) by the summer. In his closing statement at the Conference, the Special Representative of the Secretary-General, Jean Arnault, called the outcome a ‘genuine new milestone in the Afghan Peace process’”. [40bq] (p1)

4.109 The Berlin Declaration was adopted with three annexes – The Way Ahead: The Workplan of the Afghan Government; A Progress Report on the Implementation of the Bonn Agreement and the Berlin Declaration on Counter Narcotics within the Framework of the Kabul Good Neighbourly Relations Declaration (signed by Afghanistan, China, Iran, Pakistan, Tajikistan, Turkmenistan and Uzbekistan). [40bq] (p1) [40br]

4.110 According to the German Government on 1 April 2004, the participants in the 2004 Berlin Conference “Determined to continue, in the spirit of the Bonn Agreement, as a common endeavor of the Afghan people and the international community, the tasks of rebuilding and reforming the political, social and economic structures of Afghanistan, with the aim of creating lasting peace, stability and economic development, and with a view to offering all Afghans in an equitable manner tangible prospects for a brighter future.” [40br] (p1)

4.111 On 28 April 2004, BBC News reported that “Afghanistan has carried out its first execution since the fall of Taleban hardliners more than two years ago. A former military commander convicted of murder was killed at a jail outside Kabul last week, it emerged on Tuesday. Abdullah Shah received a single shot to the head after President Karzai gave his approval, the attorney general’s office told the Associated Press...Afghan officials say Abdullah Shah, executed at Pul-e-Charkhi jail, was convicted on 20 counts of murder in special court proceedings in October 2002.” [25bq]

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5 State Structures

The Constitution

5.1 The Bonn Agreement of 5 December 2001 restored the Constitution of 1964 to the extent that its provisions were not inconsistent with those of the Bonn Agreement and with the exception of those provisions relating to the monarchy and to the executive

and legislative bodies provided for in the Constitution. The Bonn agreement stated that “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.” [39b] (p2)

5.2 Keesing’s Record of World Events News Digest for November 2003 recorded that “ A draft constitution was formally unveiled in a ceremony on Nov. 3 [2003], after many months of delays...The document, an important milestone towards the rebuilding of the country as specified in the Bonn Agreement was set to be published nationally and then discussed and ratified at a Loya Jirga (grand assembly of elders) in December [2003]. The draft constitution specified that the country was to be called the Islamic Republic of Afghanistan and that the President would have the power to dissolve and appoint a Cabinet after “consultation” with a bicameral legislature. The President would be directly elected for a five-year term. The lower house would be elected directly and half the members of the upper house would be elected, the other half being appointed by the President. Quotas for the number of women in each house were specified. After much debate, no provision was made for a Prime Minister; some Afghan and Western officials had argued that the creation of such a post could undermine the authority of the President. Presidential elections were scheduled for six months after the date of the constitution’s approval and Interim President Hamid Karzai announced his intention to seek re-election.” [5m] (p45694)

5.3 Keesings for November 2003 stated that “In an effort to reconcile the country’s Islamic tradition with democratic progress, the draft called for national unity, religious tolerance, an end to violence, equal rights in education, and a state health service. No legislation that ran contrary to Islam, however, would be permitted. A crucial issue not resolved by the draft was the relationship between the central administration and the provinces, which were largely outside Karzai’s effective control.” [5m] (p45694)

5.4 In December 2003, Keesing’s Record of World Events recorded that “After repeated delays, the Loya Jirga (grand assembly of elders) began discussing the proposed new constitution on Dec. 14 [2003]. Around 500 delegates, including over 100 women, convened in Kabul to debate and ratify the draft constitution, which was set to pave the way for presidential and legislative elections in 2004... There was fierce debate, but it was expected that the presidential system set out in the draft would eventually be accepted.” [5n] (p 45740)

5.5 On 26 January 2004, the Institute for War and Peace Reporting (IWPR) issued a report of the Loya Jirga proceedings, which stated that, “The 502 members of the Loya Jirga, who had been debating amendments to a draft constitution since mid-December, passed the final version on January 4 [2004]. The document sets out the basic institutions for a constitutional democracy in which Islam is accorded a central role, and in theory should make it possible to hold elections this year, as envisaged in the original Bonn agreement of December 2001...Observers say the new constitution could help bolster the rights of Afghan women and help resolve ethnic rivalries within the country. Although some have expressed reservations about the way in which the document was drafted and amended – often far from the floor of the grand tent - it has been widely hailed as a step forward for Afghanistan.” [73b] (p1)

5.6 On 5 January 2004, according to a statement issued by NATO Secretary General Jaap de Hoop Scheffer “Afghanistan has ratified a new constitution that will lay the ground for the creation of democratic institutions and opens the way for free and fair national elections this year. I congratulate the Afghan people on the adoption of this constitution that will serve as the basis for reconstruction and national reconciliation. This new constitution marks significant progress towards a free and prosperous future and it is an achievement of all Afghans. I would like to thank the soldiers serving in ISAF for their professionalism and dedication in contributing to the security of Kabul throughout the process of ratification of the new constitution by the Loya Jirga. NATO will remain committed to helping Afghanistan on its way to stability and security.” [63d]

5.7 The IWPR reported in January 2004 that “The adoption of a new Afghan constitution marks the end of a long process which began on October 2002, when [President] Karzai appointed the Independent Constitution Drafting Commission to prepare an initial draft. A Constitutional Review Commission, set up in April 2003 to organise public involvement in the process, organised over 500 gatherings nationwide at which the constitution was discussed by around 150,000 people, giving officials a chance to gauge public opinion on the matter. Radio programmes, posters and a magazine were also produced in an effort to make the document more accessible to the general public.” [73b] (p1)

5.8 The preamble of the adopted constitution states as one of its aims “For creation of a civil society free of oppression, atrocity, discrimination, and violence and based on the rule of law, social justice, protection of human rights, and dignity, and ensuring the fundamental rights and freedoms of the people.” [15c]

5.9 On 15 January 2004, the UN Secretary-General stated that “The Constitution, which has now entered into force, provides a permanent foundation for re-establishing the rule of law in Afghanistan. It defines a political order through a strong Presidential system of government with a bicameral legislature. It establishes a judicial system in compliance with Islam. And it includes provisions aimed at ensuring full respect for fundamental human rights, including equal rights for women...Of course, the Constitution will not, by itself, guarantee peace and stability. Afghans - with the necessary support from the international community – must now go on to address the impediments to the peace process that existed before the Loya Jirga. That means tackling the deeply troubling security situation, ensuring an inclusive and broadly representative Government, and quickening the pace of reconstruction. Indeed, if the next step in the Bonn process – elections – is to be credibly achieved, these key challenges demand immediate action.” [40b]

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

5.11 Commenting on the new constitution in January 2004, Human Rights Watch stated that “Despite the democratic shortcomings of the Constitutional Loya Jirga, the new Afghan constitution it approved in January 2004 included significant provisions, notably on women’s rights. The constitution guarantees women a substantial number of seats in Afghanistan’s bicameral National Assembly. Approximately 25 percent of

seats in the Wolesi Jirga (House of the People) are reserved for women; the president is obligated to appoint additional women in the Meshrano Jirga (House of Elders). Another provision of the constitution specifically guarantees equality between men and women under law.” [17n] (p3)

5.12 According to the HRW report, “The document contains several provisions enunciating basic political, civil, economic, and social rights, but little strong language empowering institutions to uphold them. The Afghan Independent Human Rights Commission is given a mandate, but lacks many of the powers necessary for it to credibly protect basic rights. The constitution fails to adequately address the role of Islamic law and its relationship to human rights protections. Human Rights Watch is concerned that extremist factions could use appointments to the new judiciary to implement laws that violate human rights standards. The issue of accountability for past atrocities is also not addressed in the document. Despite Afghanistan's recent history, the charter does not directly address issues of past war crimes and serious human rights abuses. The AIHRC may be able to delve further into this area, but it lacks any specific constitutional mandate to do so.” [17n] (p3)

Citizenship and Nationality

5.13 In May 2002 the Afghan Embassy in Islamabad provided information to a Danish fact finding mission on the types of passports issued to Afghan citizens. The report stated that six different types of passports were issued, diplomatic, service, trade, student, Hajj (only valid in connection with a pilgrimage) and ordinary nationality passports. Diplomatic and service passports were only issued in Kabul by the Foreign Ministry, while trade passports, student passports and Hajj passports could be issued by local authorities in Afghanistan. Ordinary nationality passports could also be issued at Afghan representations outside Afghanistan. [8b]

5.14 A Danish fact finding mission in September 2002 interviewed the Minister of the Interior. According to the report, “The Minister of the Interior said that a normal birth certificate is issued by the hospital where the person is born. As regards ID-cards (tazkara), such a card with photo attached will be issued when the person turns 7 years. This is because such a card is required in order to be able to start school. The ID-card will be replaced when the holder turns 18. If a person does not have a birth certificate, an ID-can be issued if persons certify before the authorities the identity of the person in question. In Kabul, ID cards are only issued by the Ministry of the Interior. In the provinces, this is done at the governor’s office. In the districts, they are issued by the “District Commissioner”. ID cards can also be issued by Afghan Embassies abroad. The ID cards look the same everywhere in the country. The Ministry of the Interior finally said that the issuing authorities have used up all previous ID-forms. This has been the case since the end of the Taliban period. This is why the authorities are now issuing a form instead of the actual ID-card. A copy of all ID-cards issued in places other than Kabul must be sent to the Ministry of the Interior in Kabul”. [8c] (p60) A report by a Swedish fact finding mission in November 2002 stated that the German police were assisting the Afghan authorities in the development of a new kind of ID card. The current tazkara was one single paper, issued at a provincial level. [61] (p32)

5.15 According to a Swedish fact finding mission in November 2002 "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 also advised that the Central Police Department in Kabul issued passports for Kabul residents and Afghans from other areas would be issued passports by the Ministry of Interior in Kabul and at the ministry's offices in other cities eg Jalalabad, Mazar-i-Sharif and Herat. According to the Minister of Interior, in general there are no fixed rules on what is required in order to obtain a passport or an ID card and no specific papers are required to obtain a passport. [61] (p32)

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Political System

Before 22 December 2001

5.16 The Europa World Year Book 2003 records that "On assuming power in 1996, the Taliban declared Afghanistan a "complete" Islamic state and appointed an interim Council of Ministers, led by Mola Mohammad Rabbani, to administer the country...The Taliban imposed a strict and intimidatory Islamic code – women were not permitted to enter employment or be formally educated beyond the age of eight; television, non religious music, gambling and alcohol were all banned; amputations and public stonings were enforced as forms of punishment; compulsory attendance at mosques by all men was introduced; and women were ordered into purdah. [1] (p402)

5.17 The Taliban's restrictions regarding the social behavior of men and women were communicated by edicts and enforced mainly by the Religious Police. The edicts were enforced with varying degrees of rigor throughout the country.[2b] Following a visit in February 2001, the UN Under-Secretary-General for Humanitarian Affairs and Emergency Relief stated that the Taliban "appear to be both unable and unwilling to cater to the basic concerns and needs of people under their control" and that "they seem to be consumed by their immediate goals of military gain and religious progress." [11d]

5.18 In 1997 the Taliban issued an edict renaming the country the Islamic Emirate of Afghanistan and named its leader Mullah Omar Head of State and Commander of the Faithful. Ultimate authority vested with Mullah Omar who headed the inner *Shura* (Council) based in the southern city of Kandahar.[2b] At the local level, local *Shura* were constituted and also ruled by decree.[11d] In practice however decision-making became totally centralised and secretive, with the Kabul ministers rarely consulted on key issues.[33]

5.19 The Taliban controlled approximately 90% of the country the remaining 10% was controlled by a rival regime, the Islamic State of Afghanistan (generally known as the Northern Alliance or United Front). Former President Burhanuddin Rabbani who controlled most of the country's embassies and retained Afghanistan's United Nations seat nominally headed this regime. Rabbani and his military commander, Ahmed Shah Masoud controlled the majority of Tajik areas in the extreme north-east of the

country. The anti-Taliban forces of the Northern Alliance acted in concert with the US led military coalition, Operation Enduring Freedom, which commenced on 7 October 2001.[2b]

Interim Administration

5.20 Afghanistan had experienced civil war and political instability for 22 years.[2b] On 22 December 2001 the Interim Administration took office following the signing of The Bonn Agreement.[2b] The Bonn Agreement set out the provisions for the establishment of the Interim Administration. The final provisions of the agreement stated that

- “The Interim Authority and the Emergency Loya Jirga shall act in accordance with basic principles and provisions contained in international instruments on human rights and international humanitarian law to which Afghanistan is a party.
- The Interim Authority and the Special Independent Commission for the Convening of the Emergency Loya Jirga will ensure the participation of women as well as the equitable representation of all ethnic and religious communities in the Interim Administration and the Emergency Loya Jirga.” [39b] (p 4)

5.21 The Interim Authority, the repository of national sovereignty, consisted of an Interim Administration, a Special Independent Commission for Convening the Emergency Loya Jirga and a Supreme Court of Afghanistan. The Interim Administration (the Executive of the Interim Authority) took office on 22 December 2001. The Interim Administration was entrusted with the government of Afghanistan during its mandated period of rule. The Bonn Agreement specified the transfer of power to a Transitional Authority within six months and called for the convening of an Emergency Loya Jirga (under the auspices of a Special Independent Commission) to elect a Head of State and approve proposals for the structure and key personnel of the Transitional Administration.[39b] The 30 member interim cabinet which formed the Interim Administration was drawn from representatives of the Northern Alliance, the Rome group loyal to the former king Zahir Shah, and the smaller Cyprus and Peshawar exile groups, and included a mix of ethnic backgrounds.[25aa][25ab]

5.22 The Bonn Agreement called for a Special Independent Commission for Convening the Emergency Loya Jirga to be established within one month of the inauguration of the Interim Authority.[39b] Accordingly the members of the Commission were announced on 25 January 2002.[40a] The Special Independent Commission announced the procedures for the Emergency Loya Jirga on 31 March 2002. They said that the Loya Jirga would meet between 10 and 16 June 2002, to decide on a Head of State and the composition of a Transitional Administration. Selection of the delegates to the Loya Jirga would take place in two stages, nomination at district level followed by selection at regional level (regions being made up of several districts). [40b] The Commission said that 1,450 delegates would attend the Loya Jirga of which 1,051 would be elected, with the remainder being quotas of reserved seats for women, members of the Interim Administration, refugees, internally displaced people, nomads, business people, intellectuals, religious scholars and members of civil society.[25z][40b] Selection of the delegates at district level commenced in mid April 2002. [25af]

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The Emergency Loya Jirga and Transitional Administration

5.23 The Loya Jirga finally opened on 11 June 2002, more than 25 hours after originally planned.^[25ar] Recurring themes throughout the speeches by delegates from the various provinces included; the need to promote national unity in spite of political and ethnic differences; the need to address insecurity in many parts of the country; the need to create a national army; the reform of the security agencies; the need to expand education; the need to bring about an ethnically balanced Government; and the need to curb corruption and patronage. Political differences emerged in particular over the role of the former King and a fundamentalist agenda put forward by some members of jihadi parties. Hamid Karzai emerged from these confrontations as a consensus candidate for the presidency of the Transitional Administration. He was elected overwhelmingly by secret ballot with 1,295 votes out of 1,575.^[40s]

5.24 President Karzai supported the establishment of a transitional national assembly. This was not stipulated by the Bonn Agreement but had been suggested by the Special Independent Commission. Although the idea was broadly endorsed the debate over equitable representation of different regions and ethnic groups became bogged down in disagreements. Finally President Karzai suggested that the concept and mode of election to the assembly be revisited at a later stage, based on the recommendations of an advisory committee to be selected by the Loya Jirga. A transitional national assembly was not however established.^[40s]

5.25 On 19 June 2002 following intense consultations President Karzai announced the names of 14 Ministers and 3 Vice Presidents who were endorsed by the Loya Jirga.^[40s] The final make-up of the Transitional Administration which was announced later, was composed of 5 Vice Presidents, 3 Special or National Advisers with Cabinet status, and 30 Ministers.^[40s] The ethnically mixed Transitional Administration included 13 Pashtuns including Hamid Karzai, nine Tajiks, three Uzbeks, three Hazaras, and one Turkmen.^[48b] The Administration included three women, Dr Suhaila Seddiqi, Minister for Public Health, Habiba Surabi, Minister for Women's Affairs, and Mahbooba Huqooqmal deputy Women's Minister.^[48b]

5.26 In a report dated 11 July 2002 the Secretary-General to the UN Security Council noted that the Loya Jirga process had not been without difficulties, imperfections being noted in the nomination and selection of delegates and incidents of intimidation during the Loya Jirga itself. However the Secretary General reported that the Loya Jirga had reached a successful conclusion, accomplishing the tasks of electing a Head of State and approving the structures and appointment of the Transitional Authority.^[40s]

5.27 The Secretary General's Special Representative Lakhdar Brahimi also commented on 19 July 2002 that the Loya Jirga incorporated significant and innovative democratic elements. As a result two thirds of the 1,600 delegates who took part were actually selected by the people themselves, the members spanned every ethnic and political group, and 200 of them were women.^[39f]

5.28 The new Afghan Transitional Islamic Administration was sworn in on 24 June 2002. ^[25az]

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The Constitutional Loya Jirga

5.29 In July 2003, the Secretary-General to the UN Security Council said that, in spite of considerable obstacles, the implementation of the Bonn Agreement continued to be largely on track. The constitutional consultations were under way in advance of the Constitutional Loya Jirga scheduled for October 2003. The Secretary-General stated that the Government had fully understood the necessity for progress in the reform of key government institutions, including law enforcement and the judiciary. [39]

5.30 In September 2003, President Karzai signed a decree to postpone the Constitutional Loya Jirga from October to December 2003, following advice from the Constitutional Commission that it needed more time to complete its work. The revised date is still in line with the Bonn Agreement. The draft constitution has just been finalised. However, the Commission reported in late August that preparations for the Loya Jirga would take up to four months as the election of 500 members could take some time. Each province of Afghanistan will elect representatives to the Loya Jirga, with seats reserved for women, minorities and representatives of the millions of Afghan refugees still living in Pakistan and Iran. [40aw]

5.31 According to the US Department of State Report 2003, "The registration of district representatives to elect delegates for the Constitutional Loya Jirga (CLJ) was completed in mid-November [2003]. Countrywide elections for the candidates to the CLJ took place in November and December [2003]. Despite reports of intimidation of representatives, most independent observers deemed the registration and election free and fair. In November [2003], the TISA released a draft Constitution. In December, 502 delegates to a CLJ met to discuss the new charter. Presidential elections were scheduled for June 2004. The Bonn Agreement stipulated that national elections must take place by June 2004, which the country is preparing for." [2e] (p1)

5.32 On 8 January 2004, Human Rights Watch reported that "The new constitution was approved January 4 [2004] by 502 delegates at a special constitutional loya jirga, or "grand council," mandated under the Bonn Agreement. The meeting began December 14 [2003]. During elections for delegates to the convention, Human Rights Watch documented numerous cases of death threats and corruption, and a general atmosphere of intimidation at election sites. U.N. officials told Human Rights Watch that many of the elected delegates to the convention were proxies or allies of local factional leaders." [17d] (p1)

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Elections

5.33 A key element of the Bonn Agreement is the holding of elections by June 2004. According to a UN Secretary-Generals report in March 2003 there is an absence of electoral institutions, no national electoral body, no electoral registration system and no laws regulating the conduct of elections or the functioning of political parties. Since the draft constitution is not scheduled to be completed until late 2003 it may not be possible to base the legal framework for the elections on the new constitution. Specific and limited electoral and political parties' laws may therefore have to be promulgated solely for the purposes of the 2004 elections.[39h]

5.34 In a report dated July 2003, the Secretary-General to the UN Security Council

said that conducting the national elections mandated by the Bonn Agreement would be the largest political undertaking ever in Afghanistan. The Secretary General noted that preparations had commenced for initiating voter registration for the national election by October 2003 and that the recruitment of consultants and electoral staff was in progress. [39i]

5.35 In a report to the UN Security Council on 30 December 2003, the Secretary-General said that, “During the reporting period [July to December 2003] the Transitional Government established the institutional, and in particular much of the legal institutional, framework necessary for the voter registration process. On 26 July 2003 the Joint Electoral Management Body was established to oversee the registration process...The Interim Afghan Electoral Commission, comprising six members, was established the same day and has been working, with the support of UNAMA and UNDP, on the registration exercise. This has included the development of a public information/civic education strategy, as well as the process of hiring and training some 5,000 Afghan registrars.” [39k] (p10)

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

5.37 On 4 March 2004, a spokesman for the UN Assistance Mission in Afghanistan (UNAMA) reported that only phase I of the voter registration exercise was open and in eight cities only: Kabul, Kunduz, Kandahar, Gardez, Herat, Mazar, Bamyan and Jalalabad. The potential or maximum number of voters in these eight locations is 2.5 million. Of this number, over 1.2 million had been registered. Phase 2 of the Voter Registration campaign will commence in May 2004. [40an]

5.38 According to a UNAMA spokesman at a press conference on 14 March 2004, “Currently, there are five political parties that have been officially registered by the Ministry of Justice. Each of these parties is now able to submit their application to the JEMB [Joint Electoral Management Body] for participation in the voter registration process.” [40c] (p1) The spokesman drew attention to the law on political parties, which says that the Ministry of Justice may refuse the registration of political parties which have fewer than 700 members at the time of registration. The spokesman further noted that “According to the law political parties shall not pursue objectives that are opposed to the principles of the holy religion Islam; use force, or threaten with, or

propagate, the use of force; incite to ethnic, racial, religious or regional discrimination; create a real danger to the rights and freedom of individuals or intentionally disrupt public order and security; have military organizations or affiliations with armed forces and receive funds from foreign sources.” [40c] (p6)

5.39 On 21 March 2004, a UNAMA spokesman advised that “During a visit to Kandahar, the Deputy Minister of Women's Affairs, Ms. Najiba Sharif, said illiteracy was one of the causes of low levels of women's registration in the Province. While there visiting the Joint Electoral Management Body (JEMB) she also acknowledged that other reasons also included lack of free time from house hold chores, little access to media and television, security problems, cultural restrictions, lack of women's organizations in the districts, and lack of support from male family members to take part in [the] registration process.” [40p] (p2-3)

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

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

5.42 On 28 March 2004, BBC News reported that “Afghanistan's first post-Taleban elections have been postponed until September [2004]. President Hamid Karzai announced the delay, saying that parliamentary and presidential elections would now be held at the same time. The elections had been due to be held in June [2004], according to the timetable established in late 2001. But security concerns and delays in voter registration had led to concerns about the original timetable. “We are ready to manage both elections - for the parliament and presidency - in September [2004],” President Karzai said on Sunday... In January, the UN teams responsible for drawing up voter lists had warned that parts of the country remained inaccessible, due to security problems. Only 1.5 million of an estimated 10.5 million eligible voters have so far been registered.” [25g]

5.43 On 28 March 2004 the UN News Service announced that “Jean Arnault, head of the UN Assistance Mission in Afghanistan (UNAMA), told reporters in Kabul today that President Hamid Karzai's decision [to postpone elections] “is going to make everyone's life a lot easier” because preparations can now be better organized. “It is also very important in terms of public information and civic education,” he added...

"In order to have a proper election in September [2004], clearly many things that haven't happened in the past couple of years must now happen in a very, very short period of time." Disarmament efforts must go hand-in-hand with the electoral process, Mr. Arnault added. "The next few months will have to focus in a very significant way on allowing these elections to take place in a country that will not be fully disarmed but should be well on its way towards disarmament." Attention must also be paid to political freedoms and freedom of the press in the time leading up to September, he said." Mr. Arnault noted that there are places throughout Afghanistan where political parties have difficulty operating, and he said that this would have to change before a free and fair election could take place. [40b0]

5.44 In April 2004, the participants at the International Berlin Conference on Afghanistan "Determined to complete the Bonn Process by creating the conditions under which the people of Afghanistan can freely determine their own political future by establishing a fully representative government through free and fair elections in a secure and peaceful environment." In the Berlin Declaration, the Afghan government committed to establishing a secure environment before the holding of elections in which the full political rights of citizens, candidates and political parties could be exercised. The government also committed to passing the Civil Service Law before the elections in order to guarantee the independence of the Civil Service and the transparency of its work and senior level appointments. [40br] (p3-5)

See also Internal Security paragraphs 5.146 – 5.147 and Human Rights paragraphs 6.25 – 6.26

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Situation in Herat

5.45 The city of Herat lies in the northwestern corner of Afghanistan and has long been an important commercial, political, and military centre. Since November 2001 it has been governed by Ismail Khan. HRW issued a report on the situation in Herat in December 2002 and stated that Ismail Khan had created a virtual mini-state in Herat with little allegiance to Kabul. Herat remained as it was under the Taliban, a closed society in which there is no dissent, no criticism of the government, no independent newspapers, no freedom to hold open meetings and no respect for the rule of law. According to HRW since taking control of Herat Ismail Khan's troops have regularly committed acts of violence and intimidation against persons and groups perceived to oppose his rule. In particular HRW reported that violence and intimidation were especially severe in the run up to the June 2002 Loya Jirga, candidates were arrested in Herat and in several nearby provinces. [17i]

5.46 According to sources consulted during a Swedish fact finding mission in November 2002, Ismail Khan continued to have complete control over the area and allowed no opposition. [61] In August 2003, President Karzai announced that Ismail Khan could not continue in his post as military commander of western Afghanistan while governor of Herat Province. President Karzai had said earlier in the year that officials could not hold both military and civil posts. [25r]

5.47 On 21 March 2004, BBC News reported that "Afghanistan's Civil Aviation Minister, Mirwais Sadiq, has been killed in the western city of Herat...The attack followed a failed bid to kill his father, the governor of Herat [Ismail Khan]. After Mr

Sadiq's death, heavy fighting broke out between troops loyal to his father and a senior local military commander Zahir Nayeبزادا, police said. There are reports that up to 100 people have been killed in the clashes. A spokesman for Herat governor Ismail Khan blamed Mr Sadiq's death on forces loyal to Zahir Nayeبزادا. Mr Nayeبزادا, for his part, accused Ismail Khan's forces of provoking the fighting by trying to take command of his division.” [25d]

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Judiciary

5.48 Following their seizure of power in Kabul in September 1996, the Taliban imposed a strict Islamic code of conduct on Kabul, including the introduction of stonings, lashings, amputations, and the death penalty as punishment for various crimes.[1] According to the UN the Taliban established a lower court and a higher court in every province, with a Supreme Court in Kabul.[2b] However there was no functioning nation-wide judicial system in place. The Taliban regime recognised only the validity of Sharia (Islamic) law and did not accept the notion of secular law or binding international law.[11d] The Taliban ruled strictly in areas they controlled, establishing ad hoc and rudimentary judicial systems.[2b]

5.49 In 1997 the UNHCR reportedly had misgivings about the proper working of the legal system in northern Afghanistan (those areas not under Taliban control). This was considered especially true in areas where individual commanders had established independent power bases and accordingly acted as the legislative, judiciary and executive authority all in one.[8a]

5.50 The Bonn Agreement stated that 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 Bonn Agreement also called for the establishment of a Judicial Commission to rebuild the domestic justice system in accordance with Islamic principles, international standards, the rule of law and Afghan legal traditions.[39b]

5.51 The International Commission of Jurists undertook missions to Afghanistan in April and May/June of 2002 and produced a report -Afghanistan's Legal System and its Compatibility with International Human Rights Standards. The report stated that the legal institutions established under the 1964 Constitution and subsequent legal norms continue to exist in Kabul and Mazar-i-Sharif. The legal and judicial institutions that do exist face a host of problems, including understaffed and ill-equipped courts and lack of access to applicable statutes and legal materials by judges, lawyers and educational institutions. In practice courts apply Islamic law, and not the provisions of the 1964 Constitution, or applicable statutory laws. In practice and legal reality Afghanistan's courts have been applying Islamic and customary laws since the 1964 Constitution. In addition non-state fora for the settlement of disputes like jirgas (councils of elders) have always played an important role in the legal system although they do not enjoy any legal status under the provisions of the 1964 Constitution.[57]

5.52 On 21 May 2002 a Judicial Commission was established by decree, consisting of 16 eminent Afghan scholars, legal practitioners and jurists. A subsequent decree promulgated on 6 June 2002 outlined the specific powers and functions of the

committee.[40s] This first Judicial Commission was dissolved by President Karzai amid concerns that its membership was not sufficiently independent and with a view to broadening its representation to include more women and representatives of minorities. [6b] A new 12-member commission was subsequently mandated by presidential decree to lead the effort to reform the judicial sector, as called for by the Bonn Agreement. The new commission includes two women as members. The Commission began work on 28 November 2002 and has completed a national plan for the justice sector based on consultations with relevant parties in the justice sector.[39h][6b]

5.53 In a report in October 2002 UN Special Rapporteur Asma Jahangir reported that provincial governors, the central administration and the Chief Justice are making the appointment of judges. No particular merit-based criteria are being followed. The Supreme Court has been expanded beyond the constitutional requirement and there are 137 judges. In the 32 provinces of Afghanistan 244 District Courts are operative. According to the Ministry of Justice and the office of the Attorney-General there are approximately 4,000 judges and 3,000 prosecutors are currently employed.[6a]

5.54 The new chief justice of Afghanistan and head of the Supreme Court, Mr Fazal Hadi Shinwari asserted in January 2002 that, as an Islamic country, Afghanistan would continue to apply Islamic law to judgements in courts. He also announced an amnesty for those who had worked for the Taliban regime (but not those accused of murder). [24a] In October 2002 the Chief Justice told UN Special Rapporteur that he was familiar with international human rights law and norms and in his opinion there were no inconsistencies between international human rights norms and Shariah (Islamic Law). [6a]

5.55 During the course of a Danish Fact Finding mission in September 2002 the Deputy Minister of Justice stated that the country has a system of courts with three levels

- a primary court in each district,
- a secondary court-the appeals court-in each province,
- a court of third instance the Supreme Court in Kabul.

There is a Public Prosecution Department in each province and everybody is entitled to a defence. Sentences may only be pronounced for matters which are clearly set out in the criminal law. Judges are appointed by the President Karzai, and must be graduates from the Faculty of Law or the Faculty of Islamic Law. Promotion of judges is decided by the Supreme Court whose decision is final. The Supreme Court acts independently of the Government. [8c] However other sources interviewed during the course of the Danish Fact Finding mission, including UNAMA and the EU's Special Representative, stated that the judicial system was not functioning, weak and bordering on the non-existent.[8c]

5.56 The International Crisis Group (ICG) report issued in January 2003 stated that Afghanistan's legal system has been nearly destroyed by 23 years of conflict and misrule. Delays in the establishment of the Judicial Commission had resulted in the Commission achieving little. However, the second Commission appointed in November 2002 appears more independent than the first, which was disbanded in August 2002. [26b]

5.57 ICG reported that Afghanistan has two court systems: general courts and special courts. General courts comprise the district, provincial and Supreme Courts. The major provincial courts are in Kabul, Herat, Kandahar, Nangrahar and Balkh and each city zone has one primary court. Kabul has sixteen primary courts and these courts have jurisdiction only within their zones. [26b]

5.58 The UNHCR reported in July 2003 that Afghanistan's legal institutions suffer from lack of resources. Court systems exist from district to national level but the influence of commanders and powerful figures often makes it impossible for fair and just decisions to be made over land disputes.[11i]

5.59 In a report dated July 2003, the Secretary-General to the UN Security Council said that the justice sector in Afghanistan had probably suffered more damage than any other part of the State structure and its rehabilitation would be unavoidably slow. Nonetheless the Judicial Reform commission had made some progress in the areas of infrastructure rehabilitation and training. Three training programmes for judges, prosecutors, lawyers and legal scholars were underway and in Kabul, reconstruction of the State judicial infrastructure had commenced. [39i]

5.60 Amnesty International reported in August 2003 that long-term financial assistance is required to ensure the re-establishment of the rule of law in Afghanistan. Despite the political and security problems undermining the rule of law, courts are operating in some urban centres in Afghanistan but with limited capacity. However, in rural areas the judicial system is barely functioning. The report noted that at present the judiciary does not receive the support necessary to ensure that it is free from outside influences. Consequently, the independence of the judiciary is being undermined by political interference from certain armed groups, persons holding public office and private individuals. Furthermore, economic influences have led to a widespread problem of corruption. [7d]

5.61 In a report on land issues published in September 2003, UNHCR advised that "There is a strong and evident lack of faith in the effectiveness of the existing judicial system. As such, returnees, similar to other Afghans, hardly resort to the local courts when exploring solutions to land disputes... In the few cases where returnees have accessed the legal channel, they have had to wait for many years before their cases were processed. In Kandahar province, UNHCR was informed that a large number of cases relating to land ownership/occupation registered in the district and the provincial courts have been pending for a long time. Interestingly enough, representatives of the justice system admitted to the various problems they were encountering in fulfilling their duties. In an interview with a member of a court in a province, he stated that the judges were receiving calls from the governor and from other commanders, urging them to take the "appropriate decision" on certain land cases. The pressure they were subjected to was real and substantial, forcing them to deviate or keep cases pending if it was too sensitive." [11m] (p11)

5.62 According to the UNHCR report, "Given the lack of faith in the legal channel, the parties continue to largely rely on the informal and tribal dispute resolution mechanisms. Most villages establish councils of representatives or elders, otherwise

known as “shuras” in order to tackle various kinds of disputes that arise at the village level. The effectiveness of these informal mechanisms has been mixed, and is also affected by the power structure in the village or district. It has however managed to solve many disputes and conflicts among individuals in a peaceful manner that is acceptable to both parties. “ [11m] (p11-12)

5.63 According to a briefing published by Minority Group International (MRG) in November 2003 “A Land Court has been established to address the property concerns of returnees, but it is overburdened, politicized and, like Afghanistan's formal courts, subject to both intimidation and widespread corruption. More recently, a special commission has been established to look at the issue of land rights following the high-profile demolition of some houses in the Shiropur district of Kabul to make room for private houses for a number of government ministers. In the meantime many Afghans prefer to settle disputes informally, using customary practices. As John Dempsey, a property lawyer based in Kabul, stated, 'Because so much of the conflict still pervasive in Afghanistan centres on disputes over land, fair resolution of these disputes, as well as sufficient mechanisms to enforce these resolutions, is needed to improve security throughout the country. But both the formal and customary justice systems lack the capacity to counter the influence of local commanders and other politically-connected persons.' Lawyers from the Norwegian Refugee Council have convened a number of Jirgas that have settled disputes, in a fair manner, but the legal standing of these informal settlements is uncertain and they are also vulnerable to political pressure.” [76] (p5)

5.64 On 30 December 2003, the UN Secretary-General reported to the Security Council that “In the justice sector, the civil and criminal codes and other important legal frameworks are being reviewed and updated. The Bonn Agreement provided for the establishment of the Judicial Reform Commission to serve as platform for discussions among the permanent justice institutions on how to rehabilitate and strengthen the administration of justice...The limited pool of professionally trained and experienced jurists, as well as a lack of effective working coordination between the Judicial Reform Commission and other elements of the justice sector, such as the Minister of Justice and the head of the Supreme Court, have impeded progress in the sector. Efforts (led by Italy) are now focussed on improving the coordination between the permanent institutions, the Supreme Court, the Ministry of Justice and the Office of the Attorney-General...As part of the efforts to strengthen governance at the provincial level, the justice sector is developing an integrated model of intervention in Paktia province, which combines reconstruction, rehabilitation and refurbishing of judicial and corrections buildings, training for magistrates, administrative justice personnel, police, corrections staff and defence counsels, and public awareness.” [39k] (p6)

5.65 In February 2004, a spokesman for UNAMA announced that “In April reform of the Afghan Judicial system will receive another boost as work will begin to refurbish judicial facilities at the district level and train judicial functionaries on gender-sensitive adjudication, prosecution and case handling. Public awareness campaigns will also be launched focusing on the rights of vulnerable groups. The projects will begin in Herat, Balkh, Bamyán and Nangarhar and will be implemented by the United Nations Development Programme (UNDP) through a pledge of six million Euros from the European Commission for justice sector reform. The aim is to improve access to justice by women, children and other vulnerable groups such as returnees. The project is expected to expand throughout the country. From 10-29 January this year [2004]

the European Commission and UNDP visited the four provinces to ascertain the state of the justice system in those areas.” [40ai]

5.66 According to the UN Secretary-General in a report to the Security Council on 19 March 2004, “There have been several achievements in justice sector reform. The decree on the reformed code of criminal procedure was issued in mid-February [2004], providing a versatile system under which jurisdiction can be shifted to provincial courts from district courts where necessary. This should enable the gradual transfer of criminal cases to the formal justice system, though it is conditional upon an effectively functioning provincial infrastructure and the rehabilitation of district courts. Construction of provincial courts is under way in nine capitals, while the prioritization of district courts will be determined by the Provincial Stabilization Strategy. On 21 February [2004], a two-week training-of-trainers seminar was initiated with senior judicial and law enforcement personnel on the new criminal procedural code. In addition, 450 judges are being trained by the International Development Law Organization, an intergovernmental organization that promotes the rule of law and good governance.” [39o] (p9)

5.67 According to Amnesty International in March 2004, “Lack of proper security for the courts, judicial personnel, victims and witnesses further undermines the capacity of the judicial system to act independently. Low level and irregular salaries contribute to corruption being widespread among judges and prosecutors in every region of Afghanistan. As a result, certain individuals remain above the law because of their place in the community or their ability to threaten, intimidate and use other forms of pressure to influence judicial proceedings.” [7a] (p2)

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Legal Rights/Detention

5.68 Taliban courts imposed an extreme interpretation of Islamic law (not a formal countrywide legal code) and punishments followed swift summary trials. Those found guilty of murder or rape were generally ordered to be executed, although victims' relatives could alternatively accept other restitution.[2b] The judiciary in Taliban controlled areas consisted of tribunals, where clerics with little legal training ruled on Pashtun customs and the Taliban's interpretation of Sharia law.[11d]

5.69 With the absence of formal legal and law enforcement institutions, justice was not administered according to formal legal codes, and persons were subject to arbitrary detention. There were credible reports that both Taliban and Northern Alliance militia extorted bribes from civilians in return for their release from prison or freedom from arrest. Judicial and police procedures varied from locality to locality. Little was known about the procedures for taking persons into custody and bringing them to justice. In both Taliban and non-Taliban areas practices varied depending on the locality, the local commanders and other authorities. Some areas had a more formal judicial structure than others.[2b] In April 2001 UNHCR reported that in Taliban and Northern Alliance controlled areas the rule of law was similarly non-existent.[11d]

5.70 Little is known about the administration of justice in the areas that were controlled by the Northern Alliance. The administration and implementation of justice varied from

area to area, and depended on the impulse of local commanders or other authorities who summarily executed, tortured and meted out punishments without reference to any other authority.[26]

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

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

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

5.72 It has been reported that following the departure of the Taliban, judges in Afghanistan could not find any copies of the codes of Afghanistan. After the Taliban rose to power in 1996 the decrees of Mullah Omar and his harsh interpretation of Islamic law became the new governing institute and previous legal codes were often intentionally burned and destroyed. Efforts are currently underway to reassemble the legal codes in effect prior to Soviet and Taliban rule.[10] The International Crisis Group reported in July 2002 that in Afghanistan no semblance of a functioning national judicial system remains. Three decades of regime change have lead to massive alterations of the legal system in content and implementation. Afghanistan's few experts are uncertain which laws are actually in force.[26a] In October 2002 UN Special Rapporteur Asma Jahangir reported that the judicial system did not seem to follow any uniform legal system. The Law Ministry and Attorney Generals office had distributed law books to the judiciary and public prosecutors in the entire country. It appears that some courts are following traditional or customary law while others follow different interpretations of Sharia law without any form of consistency.[6a]

5.73 According to the Department for International Development (DFID) on 11 June 2002, "ISAF is not specifically mandated to assist the Afghan police in Kabul. It is mandated to provide a stable and secure environment for the political process up until the Loya Jirga and beyond in support of the Interim and Transitional Administrations. There are certainly some places safer than others in Kabul: criminality in some districts, notably District 5, is notorious – armed robbery, car jackings etc. Mines and structurally insecure buildings damaged by shelling are also a major safety concern in many areas." DFID noted that the ISAF were not responsible for the protection of individuals or minority groups, and had no official authority to investigate complaints or take action. Complaints could be taken to the police, but they had a limited capacity to react in the face of a high level of crime and the domination of warlords of large parts of Kabul. A judicial and legal system existed but its effective functioning was minimal. [51]

5.74 As local militias are dismantled a reformed national police force will have to provide the foundation of law and order in Afghanistan. The Minister of the Interior Ali Ahmad Jalali appointed on 28 January 2003 has displayed a readiness to reform the

police. Discussions are underway to reorganize the Ministry with efforts to establish the Border Police under the Ministry of Interior. A German-led police training programme is proceeding well. A new group of 500 to 600 trainee officers have been recruited to commence training in March 2003.[39h]

5.75 The Government has taken steps to ensure the accountability of the police. President Karzai established an independent commission to investigate the violent police response to student demonstrations at Kabul University in November 2002. It concluded that the police had been responsible for the use of excessive force and that the miserable living conditions at the students' dormitory, which had apparently triggered the demonstrations, were partly the result of corruption. Several government officials, including some at senior levels were subsequently arrested. A special human rights department has also been created in the Ministry of the Interior. It is expected that the Afghan Independent Human Rights Commission and UNAMA will cooperate through this department to implement a programme of human rights education for the police.[39h]

5.76 UN Special Rapporteur Mr Kamal Hossain who undertook three missions to Afghanistan in 2002 reported that persons were being detained in jails and other places of detention for a prolonged period, since the capacity to investigate allegations against them and have their cases disposed of through judicial process had yet to be established.[6a]

5.77 According to HRW, in Herat military, police and Amniat forces have committed numerous cases of torture, beatings and arbitrary arrests. Independent and credible sources with access to detainees, including UNAMA officials confirmed that torture is common place at the Herat police station, where it is reported that special rooms have been set up to carry out torture. The HRW report issued in November 2002 details instances of torture both inside police stations and other sites used as detention cells, and outside police stations for example at military checkpoints. HRW reported that Pashtuns are specially targeted for arbitrary arrest and abuse. [17j]

5.78 According to a UNAMA spokesman on 14 March 2004, "Efforts to reform the juvenile justice system began this month with a national strategy to protect children at risk and victims as well [as] to prevent delinquency and return to a life of crime. In Afghanistan anyone seven years and up can be charged for a criminal offence. Currently there are some 45 juveniles aged from seven to 18 who have been arrested and detained with adults. Seventy per cent await trial and the rest have been convicted. The national strategy, led by the Ministry of Justice (MOJ) with support from the Ministries of Labour and Social Affairs, Interior, Women's Affairs and UNODC will: strengthen juvenile justice administration including establishing a focal point in the MOJ; set up new premises for the Kabul Youth Court and train experts on juvenile justice. The strategy includes reform of corrections' administrations for offenders as well as the establishment of a residential institution for offenders aged 15-18 in Kabul. The aim is to extend these initiatives to the provinces later." [40c] (p2)

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Death Penalty

5.79 According to the US Department of State report on human rights practices

2001, the Taliban imposed strict and oppressive order by means of stiff punishments for crimes in the areas that it controlled. The Taliban's religious police and Islamic courts enforced the Taliban's ultra-conservative interpretation of Islamic law, carrying out punishments such as stoning, flogging, amputations for theft, and public executions for adultery and murder. [2b]

5.80 In September 2000 a man convicted of adultery was publicly stoned in Maymana in Fariab province. The woman with whom he was convicted of engaging in adultery was sentenced to 100 lashes, although the sentence was postponed because she was pregnant. The punishment for homosexuality was to have walls toppled on those found guilty. This punishment was carried out on at least one occasion in 1999 and seven times in 1998 (resulting in five deaths). There were however no known instances of such punishment during 2000 or 2001. [2b]

5.81 The Deputy Minister for Justice stated in September 2002 that there are still provisions for amputation and the death sentence in the law but such sentences are not applied in practice. A number of sources consulted during the course of the Danish Fact Finding mission in September 2002 also confirmed that they knew nothing about any amputations or death sentences having taken place in accordance with Sharia law since the fall of the Taliban. [8c] In November 2002, the United Nations Assistance Mission to Afghanistan (UNAMA) confirmed to a Swedish fact finding mission that there had been no known cases of the death penalty being carried out since the fall of the Taliban. [61]

5.82 In October 2002 an Afghan tribunal sentenced one of the country's most notorious commanders Abdullah Shah to death for murdering dozens of people. Abdullah Shah can appeal against the sentence, and President Hamid Karzai's approval for the death sentence is needed. If the court's decision is upheld it would be the first official execution since the fall of the Taliban regime. Asma Jahangir UN Special Rapporteur on extrajudicial, summary or arbitrary executions who attended the court hearing expressed strong reservations about the way the trial was conducted.[55]

5.83 In August 2003, Amnesty International reported that the Criminal Code and the Criminal Procedure Code currently provided for the imposition of the death penalty in certain circumstances. However, President Karzai had imposed a moratorium on the death penalty. [7d]

5.84 On 28 April 2004, BBC News reported that the first state execution since the fall of the Taliban had been carried out on 20 April 2004. According to the report, "A former military commander convicted of murder was killed at a jail outside Kabul last week, it emerged on Tuesday. Abdullah Shah received a single shot to the head after President Karzai gave his approval, the attorney general's office told the Associated Press... Afghan officials say Abdullah Shah, executed at Pul-e-Charkhi jail, was convicted on 20 counts of murder in special court proceedings in October 2002." [25bq]

5.85 Amnesty International responded to the news of the execution in a public statement dated 26 April 2004, which said "Amnesty International today expressed shock at news of the first judicial execution known to have been carried out in Kabul since the fall of the Taliban. Abdullah Shah, a military commander from Paghman, was executed on approximately 19 April [2004]. Amnesty International urges President

Karzai to declare a formal moratorium on executions in line with assurances given to Amnesty International in 2003.” [7k] (p1)

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Internal Security

Before 22 December 2001

5.86 According to the US Department of State Report 2001, “The Taliban sought to institute its extreme interpretation of Islamic observance in areas under its control and declared that all Muslims in areas under Taliban control must abide by the Taliban's interpretation of Islamic law. The Taliban announced its proclamations and edicts through broadcasts on the Taliban's Radio Shariat and relied on a religious police force under the control of the PVSV to enforce rules regarding appearance, dress, employment, access to medical care, religious practice, expression, and other behavior. Members of the PVSV, which was raised to the status of a Ministry in May 1998, regularly monitored persons on the street to ensure that individuals were conforming to Taliban edicts. Persons found to be in violation of the edicts were subject to punishment meted out on the spot, including beatings and detention. In practice the rigid policies adopted both by the Taliban and by certain opposition groups had a chilling effect on adherents of other forms of Islam and on other faiths. Enforcement of Taliban social strictures was erratic; Taliban edicts generally were enforced in the cities, especially in Kabul, but enforced less consistently in rural areas, in which more discretion was permitted based on local custom.” [2b] (p13)

5.87 Following the arrival of the Taliban, it was reported in 1996 that many roads were reopened and security conditions apparently improved. [11a] The strict security enforced by the Taliban in areas under its control resulted in a decrease in abductions, kidnappings and hostage taking. However, there were also credible allegations that Taliban forces were responsible for disappearances, abductions, kidnappings and hostage taking and maintained private prisons to settle personal vendettas. [2b]

5.88 According to a report by the International Crisis Group in September 2003, “After the Coalition toppled the Taliban in November and December 2001, militias that had collaborated with it or taken advantage of a security vacuum assumed power...What emerged in the aftermath of the Coalition intervention, then, was a patchwork of militia fiefdoms, with varying levels of internal organisation.” [26d] (p2)

After 22 December 2001 (The Bonn Agreement)

5.89 The Bonn Agreement raised the possibility of an international security force for Afghanistan and called upon the international community to assist in the formation of a national army and police force. [39b] A Military Technical Agreement was signed with the Interim Administration on 4 January 2002 on the deployment of an International Security Assistance Force (ISAF) to Afghanistan to work alongside Afghan police to maintain security in and around Kabul. Britain agreed to be lead nation of the ISAF for the initial three months of its mandate.[25ac][39c] The ISAF reached its full operating capacity of 4,500 troops on 18 February 2002.[39e]

5.90 A UNHCR report, dated 13 February 2002, indicated that the security situation

whilst improved in urban centres had not improved in other parts of the country. In the provinces, pockets of instability remained or re-emerged, often as a result of unsettled power-sharing agreements.^[11e] A further UNHCR update on the situation in Afghanistan dated July 2002 also reported that insecurity remained a major concern in certain regions.^[11g]

5.91 ISAF reported in late April 2002 that the security situation in Kabul had improved significantly since their arrival. According to ISAF ongoing statistical analysis, crime rates have decreased across the city by as much as 70%. ISAF reported that the general population of Kabul welcomes the security and confidence that ISAF brings, with some 89% of respondents saying that they are happy with the presence of the Force. There were a few low-level incidents involving ISAF patrols, which ISAF associated with increased patrolling activity, especially in the hours of darkness, in the more lawless areas of the city. ISAF will continue to work to improve the security situation in these areas.^[40d] In late May 2002, further evidence of the improvement in the security situation in Kabul was provided when night time curfew hours were reduced, so that the curfew only ran from 2300 hours until 0400 in the morning.^[40ac]

5.92 A Danish fact finding mission to Kabul in May 2002 reported that the security situation in Kabul was generally good although in certain areas, (particularly districts 5,6 and 7) civilian safety was poor. Crime in these areas was mainly directed against the wealthy. Some politically motivated crime was also reported, but thought to be in connection with the selection process for the Loya Jirga, still underway at the time of the visit. The director of the Danish Committee for Aid to Refugees (DACAAR) did not believe that there was any ethnically motivated violence in Kabul. The Deputy Chief of Police in Kabul stated that there were no security problems in Kabul. He attributed the crime rate to economic problems.^[8b] In September 2002 during a Danish Fact Finding mission to Afghanistan most sources stated that the presence of international peace keeping troops (ISAF) in Kabul has the effect of ensuring good security in the capital. UNAMA also advised that the presence of the ISAF in Kabul had improved security and limited intimidation. According to the Co-operation Centre for Afghanistan the situation in Kabul is generally good, as there is no harassment or political arrests.^[8c]

5.93 The Transitional Administration has limited reach outside Kabul. Various warlords and their forces continue to control the provinces.^[50] There continued to be reports of tension and fighting between rival warlords in particular in the north of Afghanistan in Mazar-i-Sharif city, Sholgarah district and Sar-e Pul in late April and early May 2002. The conflict led to at least twenty deaths before the UN negotiated a cease-fire on 2 May. ^[17h] A Briefing Paper issued by HRW in June 2002, highlighted the factional rivalries and open hostility affecting the security situation in northern Afghanistan. The competing ambitions of two ethnically-based armed parties, the mainly Uzbek Junbish-e Milli led by General Abdul Rashid Dostum, and the mainly Tajik Jamiat-e Islami led by General Atta Mohammad were reported to have led to an increase in crime. Robbery, rape and other violent crimes were apparently being committed with impunity. The line between these two parties runs through the southern part of Balkh province and neighbouring Sari Pul province.^[17i] Fighting erupted again in late June 2002.^[40e] On 1 July 2002, President Karzai sent a four man team (headed by his personal advisor to the Ministry of Religious and

Tribal Affairs) to the north to launch an investigation into factional fighting between rival warlords.^[40q] Fighting was also reported around Gardez and in Wardak province in late April 2002 ^[17h] and around Kunduz in late May 2002.^[20e]

5.94 The security situation was also covered in the Secretary-General to the UN Security Council's report dated 11 July 2002, (covering the period from 18 March 2002). He reported that in Kabul the ISAF has continued to have a very positive impact on security in conjunction with the Afghan police and other domestic security forces. However security in Afghanistan remains a cause for concern. In addition to actions by ex-Taliban and Al Qa'ida, armed factions that nominally support the Bonn process continue to pose a threat to the consolidation of peace and civil government in the country. Particularly in the north a rivalry between Jumbesh and Jamiat factions has prevented the establishment of effective security in Mazar city. The Secretary-General also reported that in the weeks prior to his report a number of armed attacks and robberies took place against international aid agencies. At the time of his report no credible measures had been taken to address these security problems.^[40s]

5.95 On 23 May 2002 the UN Security Council voted to extend the mandate for the International Security Assistance Force for a period of six months beyond 20 June 2002. Commenting on the security situation Kieran Prendergast, Under-Secretary-General for Political Affairs, said that the creation of new Afghan security institutions would take time. He also said that the current security situation, in particular outside Kabul, remained a major concern. A representative from Afghanistan who attended the meeting thanked the international community for its assistance, citing in particular the general establishment of peace and security in the country.^[39e] On 20 June 2002, the UK handed over leadership of ISAF to Turkey. Major General John McColl, Commander of the UK force handed over command to Turkey's Major General Akin Zorlu. Commenting on the achievements of ISAF, General McColl said that a dramatic change in the nature of Kabul had been achieved, "when we arrived there was a great deal of lawlessness, now we have a situation where the city has come to life."^[25ay] Leadership of ISAF passed to Germany and the Netherlands on 10 February 2003. ^[39h] The North Atlantic Treaty Organisation (NATO) took over leadership of the ISAF indefinitely on 11 August 2003. ^[63a]

5.96 The Secretary General also reported in July 2002 on sporadic fighting and skirmishes in Uruzgan, Laghman, Kunar, Wardak, Paktia, Khost and Nimruz provinces. Disputed governorships had destabilized several provinces, with the Central Government frequently unable to quell military opposition to Governors it has legitimately named. ^[40s]

5.97 The ISAF monthly report covering the period 20 June 2002 to 31 July 2002 reported that the security situation in Kabul and its surrounding areas was generally calm, but said the security circumstances remained potentially vulnerable as demonstrated by the assassination of Vice President Haji Abdul Qadir on 6 July 2002.^[40y]

5.98 In a quarterly report on ISAF operations covering the period 1 November 2002 to 10 February 2003 Turkish commander General Zorlu reported that Kabul continued to enjoy vastly improved security during the reporting period. Crime rates

remain low and a full sense of normality has returned. He described the atmosphere as calm and peaceful, with a thriving commercial and social life. The night curfew was lifted on 3 November 2002 for the first time since 1979. There were a number of rocket attacks on the city from the hills beyond ISAF's area. However due to ageing rockets and crude firing mechanisms these caused no casualties or damage to property.[40z]

5.99 The UMAMA situation report for 22 to 28 September 2002 reported on stable or calm security situations in most areas in Afghanistan. However the situation in the north continued to be volatile, despite a recent spate of recent fighting ceasing as a result of intervention by the Security Commission.[40ab]

5.100 In a report of the Secretary-General to the United Nations Security Council in March 2003 it was said that security remains the most serious challenge facing the peace process in Afghanistan. The report stated that since October 2002 rivalries between factional leaders had worsened in the west with the forces of Herat's Governor Ismail Khan and those of local leader, Amanullah Khan clashing in late 2002. In January 2003 fighting broke out in the province of Baghdis between forces loyal to Ismail Khan and the local Governor Gul Mohammed. In Kandahar a dispute over responsibility for law and order in the city was resolved after the intervention of tribal leaders. The report also stated that sporadic acts of terror continue to occur. Several sources in early 2003 reported increased activity by elements hostile to the Government and the international community in Afghanistan. There were signs that remnant Taliban groups and factions loyal to Gulbuddin Hekmatyar were trying to re-organise in the south-eastern and eastern border areas.[39h]

5.101 A UNHCR Returnee Monitoring Report issued in the spring of 2003 stated that the situation in Kandahar Province was generally unstable due to the reported presence of suspected Taliban and Al Qa'ida elements. Clashes between fighters from these groups and Afghan military forces have occurred periodically since the fall of the Taliban. [11h]. For example, in June 2003, 40 fighters believed to be allied to the Taliban and 9 Afghan pro-government militiamen were killed after a major clash between the two groups in the south-east border region of Loikarez, Kandahar province [20d].

5.102 A Swedish fact finding report published in April 2003 stated that security in Afghanistan had improved in some regions but worsened in others due to factional clashes repeatedly erupting between rival political and military figures attempting to gain regional influence. [61] In July 2003, the UNHCR reported that the absence of disarmament, lack of law enforcement and the consequences of a war economy have given rise to banditry and criminality. Road travel has become more dangerous in certain areas, including on some main road links, with money being demanded by bandits and individual commanders in ambushes or at checkpoints. [11i] At the beginning of July 2003, at least 11 people were killed in the north of the country during fighting between two rival militias. [25am] In a report published July 2003, Amnesty International expressed serious concerns about the ongoing security situation in Afghanistan, stating that the situation in the country had not fundamentally changed during 2003 and if anything had deteriorated. [7f]

5.103 In a report to the UN Security Council dated 23 July 2003, the Secretary-General stated that the presence of the ISAF in Kabul had greatly contributed to security in the city, reducing crime and instilling a measure of confidence in its citizens. However, there remained a pressing need for international security assistance beyond Kabul. The Secretary-General stated that the overall situation throughout Afghanistan remained fragile and in many areas shows signs of deterioration. Clashes in the northern provinces of Balkh, Samangan and Sari Pul occurred repeatedly between the Jonbesh forces of General Abdul Rashid Dostum and the Jamiat forces of Ustad Atta Mohammed, resulting in the personal intervention of the two factional leaders. [39i] According to UNHCR in July 2003, "Although the security situation in Kabul is better than elsewhere because of the presence of ISAF, certain persons could still be targeted in Kabul, if the persecutors intend to target them." [11i] (p41)

5.104 The Secretary-General to the UN Security Council stated in July 2003 that the initiation of the disarmament programme, due to commence on 1 July 2003, had been delayed, pending the implementation of a series of reforms at the Ministry of Defence to restructure the Ministry's most senior echelon, including the appointment to high level positions of people from differing political, regional and ethnic backgrounds. However, preparations for the DDR programme were underway in Bamian, Gardez, Kandahar and Kunduz. [39i] (p10)

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

5.106 In September 2003, plans to reform the Defence Ministry were finally approved by the Cabinet. A senior analyst with the International Crisis Group stated that the reforms, including 22 new appointments, were intended to create a more equitable balance within the leadership of the Ministry and encourage national disarmament and demobilisation among commanders who felt they lacked representation in the current Defence Ministry structure. Commanders in several regions, including the Pashtun southeast and the Uzbek regions of the northeast, had previously said that they would not comply with national disarmament if all the leadership positions in the Defence Ministry were held by Panjshiri Tajiks. [36a]

5.107 The report of the UN Secretary General in July 2003 observed that members of groups thought to be aligned with the Taliban, Al Qa'ida and Hekmatyar (leader of Hizb-i-Islami), had stepped up their activities along the southern and eastern borders of Afghanistan, resulting in repeated clashes with Coalition and Afghan National Army forces operating in the region. US and Afghan military forces in Khost and Paktia Provinces had come under rocket attack on several occasions. On 7 June 2003 a suicide car bomber drove into a German ISAF bus, killing four soldiers and one bystander and injuring 29 others. [39i]

5.108 A spate of attacks took place in August 2003, mainly in the south and south-

east of the country involving suspected Taliban and Al Qa'ida elements. [25q] In response, coalition forces launched Operation Mountain Viper in the mountainous territory of southern Afghanistan, resulting in the deaths of around 124 enemy fighters and five government soldiers. [25o]

5.109 In August 2003 the BBC World News reported that President Karzai had replaced the governors of Kandahar and Zabul provinces, where anti-government insurgents had been active in recent months. [25p] The BBC also reported that, at the same time, President Karzai had reiterated that Ismail Khan could not continue in his post as military commander of western Afghanistan while governor of Herat Province. The announcement came as part of a major reshuffle of provincial governors and officials by the National Security Council. President Karzai said earlier in the year that officials could not hold both military and civil posts. [25r]

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

5.111 In August 2003, a UNAMA spokesman announced the establishment of the Faryab Peace Commission in Maymana, Faryab Province, formed by representatives of the Governor's office, the major factions (Jamiat and Jonbesh) and the Faryab police. The Commission will be facilitated by UNAMA with support from the Mazar based Provincial Reconstruction Team (PRT). The spokesman said that the Commission would meet regularly to address, mediate and resolve issues that have the potential to degenerate into fighting. For example, tensions caused by local commanders vying for more power and disputes ranging from disagreements over livestock, annexation of land, extortion and illegal taxation. [40bb]

5.112 According to an International Crisis Group report in September 2003, "Discussions with Afghans about governance and security eventually come down to one point: the need to disarm the commanders currently holding power in most of the country. Without this, virtually all the key elements of the political process set out in the December 2001 Bonn agreement – including a new constitution, judicial reform and elections – will continue to be viewed with justifiable scepticism. If political space and much of the economy remain monopolised by individuals and parties with the threat of force behind them, the possibility for ordinary citizens to express their will through political institutions and to pursue justice through legal institutions will remain virtually nil." [26d] (p1)

5.113 In September 2003, following calls by the UN and President Karzai for the ISAF to be expanded to help restore stability to Afghanistan's provinces, NATO who took over leadership of the ISAF the previous month, asked its military experts to begin studying the feasibility of extending the force beyond Kabul. [40bc] On 3 December 2003, the Secretary-General reported to the UN General Assembly that "The mandate of ISAF remains unchanged under NATO command, and non-NATO countries continue to contribute troops. The presence of ISAF has greatly contributed to the security environment in Kabul and continues to be well received by the public." [39j] (p 10)

5.114 In a further report on 30 December 2003 to the UN Security Council, the Secretary-General stated that "The Security Council's adoption of resolution 1510 (2003) on 13 October, authorizing the expansion of ISAF, gave rise to optimism that stability would come to the areas most in need. The first fruit of this will be the replacement of a coalition provisional reconstruction team in Kunduz province, by German soldiers under ISAF command effective 31 December [2003]." [39k] (p7)

5.115 In a report to the UN General Assembly on 3 December 2003, the Secretary-General stated that, "The primary source of instability remains terrorist activities by suspected Taliban, Al-Qaida, and supporters of Gulbuddin Hekmatyar (leader of Hizb-i-Islami). These groups have targeted members of the Transitional Administration and the international community. During the past year, attacks on international and national staff of the assistance community have intensified." [39j] (p 6)

5.116 In the report of 30 December 2003 to the UN Security Council, the Secretary-General said that "The reporting period [July to December] saw an increase in terrorist activity, factional fighting, activities associated with the illegal narcotics trade and unchecked criminality. In the last 90 days, the number of reported incidents targeting civilians exceeded the total of those that occurred in the first 20 months following the signing of the Bonn Agreement. At their height during the reporting period attacks against the humanitarian community escalated from a rate of one per month to one almost every two days. This rate has subsided over the past several weeks, though threats against the international community remain and a number of steps have been taken to minimize exposure to them. Attacks on international and national staff of the assistance community and officials of the central Government have been concentrated in the south and the south-east. Previously, such acts were largely conducted in relatively remote or isolated areas, but in recent months they have expanded to city centres." [39k] (p2)

5.117 The Secretary-General continued, "On 16 November [2003] an international staff member of the Office of the United Nations High Commissioner for Refugees, Bettina Goisard, was assassinated in broad daylight in the centre of Ghazni. This closely followed a car bomb attack on United Nations offices in Kandahar on 13 November, which damaged the premises but fortunately did not result in loss of life. In the affected areas, in the absence of sufficient forces to provide security, unarmed civilians cannot be asked to shoulder unreasonable risks and continue activities that make them targets. Accordingly, much of the south and south-east of the country is now effectively off limits to the United Nations, the assistance community and central Government officials, except under special escort. Lack of access to assistance or structures of the State risks further alienating the population,

which is predominantly Pashtun, and may increase their willingness to tolerate, if not support, the presence of those among them who have an agenda that is at odds with the peace process.” [39k] (p 2)

5.118 In November 2003 the Human Rights Research and Advocacy Consortium (HRRAC), which includes the Afghan Independent Human Rights Commission, published the findings of the Consortium’s first piece of collaborative research. The Consortium was established in early 2003 to engage in proactive research and advocacy on human rights issues over a sustained period. The HRRAC is a group of 12 Afghan and international NGOs working in the fields of humanitarian relief, reconstruction, human and women’s rights, peace promotion, research and advocacy. [70] (p(i))

5.119 The Consortium’s first research project was undertaken between April and June 2003 and in total 1,479 Afghan men and women participated from eight locations across the country: Kabul, Gardez, Kandahar, Zaranj, Herat, Saripul, Panjao and Faizabad. The survey found that “A mixed picture emerged about security issues. Whilst most respondents (92%) felt safe walking around their village or town, all 31 group discussions prioritized security as the key issue for Afghanistan moving forward. Those surveyed in Gardez (76%) and Kandahar (80%) felt significantly less secure than elsewhere. Overall 83% of respondents felt more secure now than three years ago, but there was significantly less optimism about security in Gardez (23%) and Kandahar (53%).” [70] (p2)

5.120 The HRRAC survey also noted that “Group discussions revealed fears about the rise in theft, the presence of armed groups and the related lack of rule of law and central authority. Women generally felt the same level of security walking around their village/town as men, possibly as the boundaries of public space women are allowed to travel in are extremely restricted. Group discussions revealed this may also be linked to perspectives on the Taliban. Women recognised that security was good in an abstract sense under the Taliban, but personally felt insecure and restricted at that time, and therefore much safer now.” [70] (p2)

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

5.122 On 30 December 2003, the Secretary-General to the UN Security Council reported that “In response to the increased threat against the United Nations and the aid community, on 26 November [2003] President Karzai established two national task forces, bringing together the Afghan security ministries, the International Security Assistance Force (ISAF), the coalition forces and the United Nations. One task force is working on short-term measures to ensure the necessary security for

the Bonn processes and for aid and reconstruction efforts, while the second is to work on responses to security threats over the longer term.” [39k] (p3)

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

5.124 Commenting on the disarmament, demobilization and reintegration of ex-combatants, the UN Secretary-General announced in a report of 30 December 2003 that “Under the Afghan New Beginnings Programme, the pilot phase of the disarmament, demobilization and reintegration [DDR] programme began on 24 October [2003] in Kunduz province. With financing from Japan and assistance from the United Nations Development Programme (UNDP), 1,008 ex-soldiers were processed through the disarmament and demobilization phases. Nine hundred and twenty-six weapons were collected and transported to Kabul, where they are being stored by the Afghan National Army Central Corps under a dual-lock system and held by the Ministry of Defence and the international observer group. By 11 December [2003], 1,004 of the ex-soldiers had selected reintegration options.” [39k] (p4)

5.125 According to the UN Secretary-General, “The second disarmament, demobilization and reintegration pilot phase began in Gardez (Paktia province) on 9 November [2003]. As at 17 December [2003], 628 ex-soldiers and officers had been disarmed, 584 demobilized and 471 reintegrated. Heavy weapons accounted for the bulk of the arms collected and have also been transported to Kabul. The international observer group is observing the work of the regional verification committees and the Ministry of Defence operational groups responsible for preparing and verifying lists of soldiers to be demobilized.” [39k] (p4)

5.126 The Secretary-General noted that “In Kabul, the pilot disarmament, demobilization and reintegration programme began on 10 December [2003]. Thus far 2,000 soldiers from eight units have been identified by the Ministry of Defence to take part in the Kabul pilot project. Two hundred of them have been disarmed, and the remainder are undergoing verification. All eight units will be decommissioned

and their components reintegrated by the end of January [2004]. Similar to the process in Mazar-i-Sharif, disarmament, demobilization and reintegration in Kabul will hopefully take place in parallel with the ISAF-sponsored heavy weapons cantonment plan, which began on 10 December [2003] with the collection of 250 heavy weapons. This is a very welcome and important development because disarmament in Kabul was called for in the Bonn Agreement, and the delay in its implementation until now has been a source of contention and distrust. Its credible conduct could make an essential contribution to building wider public confidence that the disarmament, demobilization and reintegration process serves all of Afghanistan's interests, not only factional interests." [39k] (p5)

5.127 On 22 January 2004 a feature article by Radio Free Europe/Radio Liberty reported that "Last week, in a program that is backed by the NATO-led International Security Assistance Force for Afghanistan (ISAF), Afghan militia commanders in Kabul turned in more than 100 armored vehicles and heavy artillery pieces to the central government. That handover was seen as an important initial step toward demilitarizing the Afghan capital. Much of that equipment belonged to the military wing of Defense Minister Fahim's Jamiat-e Islami faction. It included a convoy of armored troops carriers, ground-to-ground missile launchers, antitank guided missiles, and multiple rocket launchers that can destroy an entire city block with a single salvo. The weapons were given to the Afghan Transitional Administration and moved to a military camp about 10 miles outside of Kabul. ISAF's deputy commander, Major General Andrew Leslie, said disarmament in Kabul has been a tremendous success. He said it shows that rival commanders are beginning to trust each other on disarmament. More importantly, Leslie said the program shows that commanders who don't trust each other are at least ready to trust ISAF. Militia commanders in Kabul are expected to hand over another 300 heavy weapons during the next month. If successful, the program would remove all of Jamiat-e Islami's heavy artillery from the Afghan capital." [29]

5.128 According to Radio Free Europe/Radio Liberty, General Abdul Rashid Dostum, the ethnic Uzbek commander who heads the Junbish-e Melli-Islami, gave a press conference on 21 January 2004. The source reported that "Speaking at a press conference yesterday in the northern Afghan city of Mazar-e Sharif, Dostum stressed that much of his private militia is participating in a UN disarmament program that is aimed at bolstering the authority of the central government by helping to build a multiethnic Afghan National Army...However, officials at a British-run Provincial Reconstruction Team near Mazar-e Sharif noted recently that the 50th Regiment of Dostum's militia continues to refuse to surrender its heavy artillery. When asked about the British PRT's report on the 50th regiment, Dostum insisted that some of his militia forces have the right to retain their heavy weapons until rival militia disarm...Altogether, some 100,000 militiamen across Afghanistan are supposed to surrender their weapons under the UN program...Dostum also told journalists that he would personally intervene in cases where some members of his militia have been accused of hindering the return of refugees in northern Afghanistan by robbing them or confiscating their property." [29]

5.129 On 6 January 2004, NATO announced that "A ceremony held in Kunduz on 6 January [2004] marked the transfer of command of the Kunduz Provincial Reconstruction Team [PRT] to NATO and a first step in the expansion of the

Alliance's mission in the country...On 19 December [2003], NATO decided to expand the role of the Alliance-led International Security Assistance Force (ISAF) by taking on the command of the German-led Provincial Reconstruction Team in Kunduz. The takeover of the Kunduz PRT is a pilot project for the further expansion of ISAF, which could see NATO taking on command of more PRTs. This is also the first time that NATO is taking on tasks outside of Kabul, as ISAF's initial mandate limited the peacekeeping force to providing security in and around the capital city...The German-led PRT is comprised of more than 170 personnel, with plans for as many as 240 personnel on the ground as the mission develops." [63b]

5.130 In a report published in January 2004, Human Rights Watch (HRW) observed that "There is no question that ISAF has been modestly successful in increasing security in Kabul, hence helping support the remarkable economic development that the city has witnessed over the last two years, and demonstrating how quickly Afghans can and will work toward creating a civil society if given the space to do so. But even in Kabul and its immediate environs ISAF did not (or could not) carry out one of its central missions, which was to rid Kabul of factional militias. Armed men, particularly those associated with the forces of Defense Minister Marshall Fahim and fundamentalist warlord Abdul Rasul Sayyaf, still roam the streets by day and engage in robbery and banditry by night." [17m] (p5)

5.131 Commenting on the creation of Provincial Reconstruction Teams in January 2004, the HRW report noted that the teams combined 300 to 400 military and intelligence personnel with reconstruction specialists. According to HRW, "By most accounts, the PRTs have somewhat improved security conditions, although this should not be exaggerated: the city of Mazar-i Sharif, for instance, is still a flashpoint of local conflict despite the presence of a well-regarded British PRT. But the real problem with the PRT program is that it is a bandage being touted as a cure. After months of claiming that no expansion of ISAF was possible because it would require thousands of (unavailable) armed troops, it seems dishonest of the U.S. and the European powers to now claim that a few hundred lightly armed reconstruction teams will suffice to secure Afghanistan. The security mandate of the U.S. PRTs is more focused on force protection than the protection of Afghans." [17m] (p5)

5.132 HRW commented in the January 2004 report that "Humanitarian aid organizations, which still provide for many of the basic needs of the Afghan people, vociferously oppose the PRTs' confusion of military and aid missions. Such blurring of distinctions poses a real threat to civilian aid workers, who become viewed as agents of the military forces instead of as independent actors, and thus become targets for attack." HRW said that it remained to be seen how the PRTs would interact with the newly reconstituted ISAF under NATO command. [17m] (p5)

5.133 On 28 January 2004, a writer for the Washington File (a product of International Information Programs, US Dept of State) reported that "General James Jones, the Supreme Allied Commander, Europe for the North Atlantic Treaty Organization (NATO) testified as to the role of Provincial Reconstruction Teams (PRTs) in the country. He said the PRTs enable the NATO-led International Security Assistance Force (ISAF) "to facilitate and create an environment that allows for reconstruction and nation-building activities to proceed." General Jones said there are currently nine active PRTs operating across Afghanistan, six of which are led by

U.S. forces. The PRTs are composed of both civilian and military elements. He explained that the civilian component, made up of Afghans, U.N. personnel and non-governmental organizations (NGOs) perform reconstruction and infrastructure projects, while the military component provides security.” [40b] (p1-2)

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

5.135 On 4 March 2004, Agence France-Presse (AFP) reported that, according to an official statement, the US-led coalition forces in Afghanistan had set up a new civil-military team in southwestern Ghazni province to improve security in the region hit by violence. According to the statement, “The Ghazni Provincial Reconstruction Team (PRT) will serve the whole province, potentially reaching 1.86 million people.” According to the AFP report the Ghazni PRT brings the number of PRTs established in the country to ten. The official statement noted that the team in Ghazni, manned by approximately 50 US soldiers, will focus on reconstruction and security as well as providing conditions for non-governmental organizations operating in the region. [40ax]

5.136 On 19 March 2004 in a report to the UN Security Council, the Secretary-General reported “There are now 11 provincial reconstruction teams nationwide, 10 under coalition command and the first ISAF team in Konduz. Additional coalition-led provincial reconstruction teams are scheduled to open in Qalat (Zabol) in April and Tarin Kowt (Oruzgan) by early May.” [39o] (p11)

5.137 The Secretary-General noted that “The deployment of provincial reconstruction teams has contributed to stability in a variety of ways: improvement of the security environment through patrols and contacts with local authorities, assistance to the deployment of national police forces and the Afghan National Army, support to UNAMA in local conflict resolution, security advice and support to voter registration and disarmament, demobilization and reintegration, and support to local security forces through the provincial security task forces. As provincial reconstruction teams are gaining increased access to funds for project implementation, it is important to reaffirm the existing understanding that the teams focus on the creation of a secure environment, and that projects under the team umbrella are implemented in high-risk areas rather than in the safe areas where the assistance community can operate freely. UNAMA will continue to work with the coalition and ISAF to facilitate the all-important dialogue with the aid community.” [39o] (p11-12)

5.138 Commenting on the ISAF in his March 2004 report, the UN Secretary-General

said that “Under the command of the North Atlantic Treaty Organization (NATO), ISAF has continued to make an invaluable contribution to the security of Kabul. Since the takeover by Germany of the Konduz provincial reconstruction team on 6 January [2004], NATO has also begun its deployment outside Kabul, as authorized by the Security Council in resolution 1510 (2003) of 13 October 2003. The recent decision of NATO to further expand its operations in Afghanistan is encouraging, as are indications that it will take over the three existing provincial reconstruction teams in the north — Mazar-e-Sharif, Konduz and Herat — and possibly set up two more by June 2004.” [390] (p11)

5.139 According to the Secretary-General’s March 2004 report, “Insecurity in the country continues to follow a well-known pattern and has shown no signs of significant improvement. Civilians continue to be killed in inter-factional fighting. Attacks by extremist elements on aid agencies, both national and international, and on government officials continue to occur, predominantly in the southern provinces.” [390] (p4)

5.140 The Secretary-General noted that “On 21 February [2004] an Australian national was killed and a United States and a United Kingdom national were seriously wounded when their helicopter was attacked in Panjwai district, Kandahar. On 5 March a Turkish road engineer and an Afghan security guard were killed in Shah Joy district, Zabol, when their vehicle was ambushed by suspected Taliban; a Turkish engineer and a security guard were also kidnapped. The next day a member of the Red Crescent Society was shot dead outside the provincial capital, Qalat. Recently, however, some of the most deadly incidents have occurred outside the southern high-risk areas. Last December [2003] in Farah Province five members of a government census team were killed; and in February [2004] five Afghan aid workers were killed in a rural area of Kabul Province. This supports the consensus view that extremist groups, even if unable to launch military operations, can and will attack unprotected targets affiliated with the Transitional Administration or the aid community. Given this pattern of attacks, national and international non-governmental organizations maintain a low profile in the south and operate cautiously in other areas of the country. This seriously constrains the implementation of activities such as reconstruction, the census and voter registration.” [390] (p4)

5.141 In the March 2004 report the UN Secretary-General observed “At the same time, factional feuds, rivalries and, increasingly, drug-related incidents continue to affect the lives of the population. The weak or corrupt provincial and district administrations, the continued rule of local commanders, and the absence of effective national law enforcement are more common sources of insecurity for the population than terrorist violence. These factors are likely to have contributed to a recent deterioration of security in the north-east, traditionally one of the safest regions of the country, where rival commanders have been fighting over land, possibly driven by attempts to expand drug production.” [390] (p4)

5.142 On 11 March 2004, NATO reported that “The landmark force generation conference to man and equip the First Stage of the expansion of NATO’s role in Afghanistan took place here [Belgium] today...Senior officers from all 19 NATO nations, as well as those from the new Accession nations, Partnership for Peace (PfP) nations, and other nations committed to the ISAF mission, were represented. The conference consisted of a review of clearly identified requirements with specific

capabilities and locations which the nations are asked to support with manpower and equipment. The detailed list covered such areas as headquarters command elements, provincial reconstruction teams, communications, medical units and aviation forces.” [63c]

5.143 In a press briefing on 21 March 2004, a spokesman for the UN Assistance Mission in Afghanistan (UNAMA) reported that “To date some 5,378 ex-soldiers and officers have been demobilized while 3,816 are going through the reintegration process...DDR is in its pilot phase and is happening at this moment in four cities: Kunduz, Gardez, Kabul and Mazar-e-Sharif.” The UNAMA spokesman also said that “As of a week ago about 4,200 weapons have been collected through the DDR exercise. And I reiterate that the total number of weapons collected do not tally with the number of soldiers disarmed because certain arms are not operated by one soldier.” [40p]

5.144 On 19 March 2004 in a report to the UN Security Council, the Secretary-General stated that “The voluntary disarmament, demobilization and reintegration programme has shown some success but fallen short of expectations...The experience of the pilot disarmament, demobilization and reintegration projects in Kondozi, Gardez, Mazar-e-Sharif and Kabul is being reviewed by the Afghan Transitional Administration, Japan as lead nation, UNAMA and the United Nations Development Programme (UNDP) to see whether improvements can be made. The review revealed a series of shortcomings typical in demobilization operations including the handing in of old weapons and the demobilization of part-timers and “reservists” as opposed to full-time members of active units. Lack of political will on the part of factional leaders was also apparent, as evidenced in the go-slow approach of General Dostum in the north. A worrying pattern has been the widespread extortion of demobilized soldiers by local commanders, which led the Afghan New Beginnings Programme to stop severance payments to soldiers as part of the overall reintegration package. The pilot projects implemented to date have shown the need for more political engagement at high levels of government to pave the way for more significant disarmament, demobilization and reintegration.” [39o] (p8)

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

5.146 In April 2004, the Berlin Conference on Afghanistan resulted in the Berlin Declaration. The participants in the conference agreed that, although responsibility for providing security and enforcing law and order throughout the country resided with the Afghans themselves, the engagement of the ISAF and Operation Enduring Freedom (OEF), at the request of and welcomed by the Afghan Government, would be continued until such time as the new Afghan security and armed forces are sufficiently constituted and operational. [40br] (p2) The Berlin Declaration welcomed NATO’s commitment to expand ISAF’s mission by establishing five additional Provincial Reconstruction Teams (PRTs) by summer 2004 and further PRTs thereafter, as well as the readiness of ISAF and OEF to assist in managing security

ahead of the elections. [40br] (p3)

5.147 The Workplan of the Afghan Government, an Annex of the Berlin Declaration of April 2004, set out an agenda of measures to be taken in order to improve security. The Workplan stated that the government would, by June 2004, achieve the demobilization of no less than 40% of the stated troop strength of the AMF [Afghan Military Force], in a balanced way and on the basis of the decommissioning of military units. In addition the concentration of all heavy weapons under credible supervision would be achieved and DDR intensified ahead of the 2004 elections. [40br] (p4) The Workplan committed to completing the implementation of the Disarmament and Demobilization process of the AMF by June 2005 and of the Reintegration activities by October 2006, as agreed between the Government and the international community. [40br] (p8)

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National Security Directorate

5.148 Since the Soviet invasion the “secret police” has been a key tool of repression. While the agency’s name has been changed several times many personnel and tactics have remained the same. The internal intelligence branch now called the National Security Directorate (NSD)(also known as Amniat) was formerly known as “KhAD”. Since the fall of Kabul in November 2001 this has been controlled and staffed by the Panshiri Shura-i-Nazar. [8c] President Karzai has highlighted the establishment of the national army and police and reform of the NSD as being among his top priorities for the transitional period.[39f]

5.149 In September 2002 UNAMA advised that the National Security Directorate is not a ministerial department although it functions as such, it was unclear who the service reports to but it probably reports to the Ministry of Defence. According to UNAMA NSD carries out random arrests but could not be said to systematically violate human rights. [8c]

5.150 According to a report issued by Amnesty International in March 2003 members of NSD have committed human rights violations including arbitrary detention and torture. In addition Amnesty reported a widespread perception that the police are responsible for perpetrating human rights abuses rather than preventing or addressing them. [7g]

5.151 In July 2003, an Amnesty International report noted that “The National Security Directorate (NSD), Afghanistan’s intelligence service, which in theory reports directly to the Head of State, is carrying out arrests and detention across the country and it is unclear on what legal basis they are operating. This intelligence system is a legacy of the Communist period. In Kabul there are widely reported to be at least two NSD prisons, one holding prisoners suspected of being members of al-Qa’ida and Taleban, and another holding political opponents of certain powerful members of the ATA... All those in detention are foreign nationals.” [7e] (p28)

5.152 In April 2004, a Progress Report on the implementation of the Bonn Agreement, attached to the Berlin Declaration, stated that “The National Directorate of Security is undergoing a programme of substantial reform and restructuring both

in Kabul and the provinces on the basis of a new charter that restricts its previously held wide powers.” [40br] (p11)

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Accountability Department

5.153 In August 2002 it was reported by Reuters News Service that an Accountability Department similar to that of the notorious religious police of the ousted Taliban regime, but with less draconian powers had been established. According to Reuters, Deputy Chief Justice Manawi explained that the Accountability Department was tasked with ensuring that Afghan Muslims refrained from crimes such as drinking alcohol, fornication and sodomy. Manawi was reported as saying that accountability employees were trying to persuade people not to pursue vice and unlawful acts. Manawi also stressed that offenders would face gentler punishments than under the Taliban. The new punishments would depend on the crime, but included fines, imprisonment and some lashings. The Supreme Court would have the final say in the administering of punishments, which would not be carried out in public, as they were under the Taliban. [24b]

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Army

5.154 The UN Secretary-General reported that the lack of security can only be resolved by loyal and unified government forces. On 1 December 2002 President Karzai signed a decree that provides the basis for the new Afghan National Army, the disarmament, demobilization and reintegration of all factional forces and the reform of the Ministry of Defence. On 12 January 2003 the Defence Commission began implementing the decree by creating four commissions to coordinate these issues. Also in accordance with the decree an advisory committee was created on 18 February 2003. This brings together key Afghan ministers and representatives of the lead nations and UNAMA to promote the ANA and the disarmament, demobilization and reintegration processes. On 20 February 2003 15 positions in the Ministry of Defence were created or changed to create a better ethnic balance amongst the senior personnel. [39h]

5.155 In July 2003, the International Committee of the Red Cross (ICRC) launched a programme to train officers of the future Afghan National Army in the law of armed conflict. Under the Geneva Conventions, the Transitional Islamic State of Afghanistan must ensure that the rules and principles of the law of war are known and implemented by all members of the Afghan armed forces. The ICRC is organising teaching and providing documentation. [42h]

5.156 In September 2003, plans to reform the Defence Ministry were approved by the Cabinet. A senior analyst with the International Crisis Group stated that the reforms, including 22 new appointments, are intended to create a more equitable balance within the leadership of the Ministry and encourage national disarmament and demobilisation among commanders who feel they lack representation in the current Defence Ministry structure. [36a]

5.157 In December 2003 the UN Secretary-General reported on the current Afghan

National Army situation. His report to the Security Council stated that "Towards the aim of reaching a strength of 70,000 troops under a 10-year plan, 12 battalions have so far been trained and established under the lead of the United States of America, representing a total force strength of 6,500 (all ranks). These troops are currently engaged in security roles, such as in the disarmament, demobilization and reintegration programme (guarding cantonment sites of heavy weapons); in counter-terrorism and stabilization operations led by coalition forces; and in assisting with the provision of security during the Constitutional Loya Jirga (four battalions)." [39K] (p5)

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

5.159 In January 2004, the UN Office for the Coordination of Humanitarian Affairs Integrated Regional Information Network reported that "More than a quarter of the newly-trained 10,000-strong Afghan National Army (ANA) have left the service since its formation in mid-2002, officials at the Afghan Ministry of Defence told IRIN on Sunday. "Around two to three thousand soldiers have fled the ANA so far," General Zahir Azimi a spokesperson for the ministry said. The widespread desertion of so many new troops is a serious challenge to the internationally-trained and supervised ANA, seen as critical to the country's future peace and stability. Azini said tough training, low wages, factional links and forced recruitment were the key causes behind the decision of so many new soldiers to forsake the force. The new army is scheduled to grow to 70,000-strong and replace the armed private militias - said to number around 100,000 - currently being disarmed by the Afghan government." [40V]

5.160 In a press briefing on 21 March 2004, a UNAMA spokesman said "Last Thursday [18 March 2004] the 15th, and 16th Kandak (battalion) of the Afghan National Army (ANA) had their graduation ceremony increasing the number of full trained soldiers to 9,000. Included in that figure are 700 new Officers and Non-Commissioned Officers (NCOs) of the 13th Kandak - a battalion-sized unit -- who graduated on December 28, 2003. The United States is the lead nation supporting the reform of the ANA and is currently training and equipping 15 army battalions. France leads the officer training efforts, and the United Kingdom is in charge of training NCOs. Gradually, the responsibility for training will be come under the ANA, with limited assistance from the US and its partners in this process. The creation of the ANA is part of the Security Sector Reform." [40P]

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Police

5.161 In a report issued in March 2003 on police reconstruction Amnesty International reported on the need to rebuild an effective police force in Afghanistan. Amnesty documented a widespread pattern of human rights violations committed by

members of the police, including torture and arbitrary arrest. Extortion is commonly practiced by police officers. Much of the current police force consists of former Mujahideen, who have extensive military experience but little or no professional police training or experience. Their loyalties rest with the powerful regional commanders who have been able to assert control in the provinces. [79]

5.162 Amnesty reported that although according to Afghan law the police fall under the jurisdiction of the Ministry of Interior it was unclear who was responsible for policing. General Salang is head of the Kabul police and has a force of ten thousand. In addition in Kabul General Jurat, Head of Security and Public Controls has a force of some 4,000 police who patrol Kabul 24 hours a day and control checkpoints at the airport and gates of the city. Afghanistan is divided into 32 provinces, sub-divided into smaller administrative districts. Each district has a police commander who should report to the provincial police commander. Amnesty was told that many commanders have no effective control over police in their district who act with impunity. [79]

5.163 In July 2003, the Secretary-General to the UN Security Council reported that, in April 2003, President Karzai had issued a presidential decree mandating a new structure for the Ministry of the Interior and the establishment of a national police service consisting of 50,000 police officers and 12,000 border guards. The new structure separates the provincial administration of the Ministry from the police, establishes a clear chain of command for all police forces down to the district level and consolidates responsibility for all policing functions under the Ministry of Interior. The Ministry has devised a five-year framework for creating the national police service. [391]

5.164 UNAMA spokesman, Manoel de Almeida e Silva, in a press briefing on 28 July 2003, reported that the first police trainees would be graduating from the Police Academy in Kabul that month. The non-commissioned officers will have completed their one year training courses and will be part of the new police force of 50,000 being trained with the assistance of Germany, the country leading on police reform in Afghanistan. Approximately 1000 commissioned officers have completed the first year of their three year training course. In addition, the US is complementing the Police Academy initiatives by embarking on a training programme aimed at existing police officers. Every two months 750 policemen will complete the course at the US training centre in Kabul. Regional training centres are to be set up in Gardez, Kunduz, Mazar, Bamian, Kandahar, Jalalabad and Parwan. [40as]

5.165 According to the Afghanistan Reconstruction Trust Fund (ARTF) Report to Donors 2003, a UNDP police project is funded by the Law and Order Trust Fund for Afghanistan (LOTFA), whose main purpose is to finance priority police activities. The ARTF report states that "The issue of salary payments to the police is critical to security as it has implications on the reliability and integrity of the police, and ultimately law and order... However, in spite of the reimbursement by LOTFA of salary expenditures for police personnel, preliminary findings already indicate that up to three months delays in the payment of salaries of the police were reported in several cases. It was noted that, while the police officers, patrolmen and sergeants receive their salaries through the Finance Department of the Ministry of Interior, non-police staff of the Ministry of Interior get their salaries regularly through the Provincial

Departments of the Ministry of Finance (as do all other government employees). As a result, additional delays and costs are incurred for the transfer of salaries to the province. Preliminary findings also indicate that in some instances, police staff reportedly received only about 80 percent, the rest having been deducted from their salary to cover various costs.” [59] (p15-17)

5.166 ARTF considered that the grant to LOFTA would require the development of a specific system that permits full transparency and also ensures improved government oversight of the payments processes. According to the ARTF “This is a long-term process. In the meantime the Ministries, UNAMA, UNDP and the German Police Project are working through LOTFA to develop an interim process that will permit accountability for payments. While the issue of police salaries is being addressed in the broader context of on-going reform of the administration, and also tackled by the relevant Consultative Group and Task Forces, LOTFA is one means to address the issue.” The LOTFA Steering Committee had reviewed immediate measures to be taken in support to the Ministry of Interior to ensure that the funds are used efficiently and that police staff is paid on time. These measures include technical advice, the establishment of a Management Unit at the Minister of Interior; computerization of the payroll system; introduction of a police ID card system and the setting up of a Monitoring Committee. [59] (p17-18)

5.167 In a report to the Security Council on 30 December 2003, the Secretary-General noted that “The Ministry of Interior has begun implementing far-reaching reforms geared towards the implementation of a five-year plan to develop a national police service of some 50,000 members and a force of 12,000 border guards. It is projected that some 213 higher-ranking and 2,000 lower-ranking officers would be trained by mid-2004...Where these police have been deployed in three provinces, they have contributed to stability, public confidence and the maintenance of law and order. Yet, at this early stage of the process, the number of trained police remains too low and ill equipped to provide the full support needed by the central Government in its efforts to establish itself in the provinces. [39k] (p5-6)

5.168 The report continued “In an effort to address this shortage, the first regional police training programme, in Gardez (Paktia province), completed its first two-week course on 5 December [2003], graduating 26 police officers. The completion of a permanent training facility is scheduled for the end of December. Current plans foresee additional training centres, in Bamian, Jalalabad, Herat, Kunduz and Mazar-i-Sharif, operational by June 2004. Until the central Government can be assured of sufficient income, including the receipt of customs revenues due from the provinces, funding for police salaries, infrastructure and equipment will continue to be dependent on voluntary donor funds contributed to the UNDP-administered Law and Order Trust Fund. In this regard, the commitment by the European Union of 50 million euros to the Trust Fund in September 2003 was very welcome, fulfilling the current requirements for the payment of salaries and other expenses for the police.” [39k] (p5-6)

5.169 In April 2004, a Progress Report on the implementation of the Bonn Agreement, attached to the Berlin Declaration, stated that “Rebuilding of the Afghan National Police, including border police, as well as anti-narcotics police force, is well under way. All major police facilities in Kabul have been rebuilt and equipped, work has begun in four provinces and is under way in seven more provinces. More than

5000 commissioned and non-commissioned police officers, amongst whom an albeit still small number of women, have so far been trained at the National Police Academy, about 4000 officers and patrolmen have been given training courses in four regional training centers. Three more centers will follow with a view to training up to 20,000 patrolmen by the forthcoming elections. The Law and Order Trust Fund provides for the regular payment of salaries and non-lethal equipment to the police.”
[40br] (p11)

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Prisons and Prison Conditions

5.170 Both the Taliban and the Northern Alliance reportedly held thousands of combatants. The Northern Alliance reportedly held a number of Pakistanis and other third country nationals, along with several hundred Taliban soldiers. A number of persons arrested by the Taliban in 1998 for political reasons were still believed to be in detention until the fall of the Taliban. [2b] Civilians suspected of collaboration with the Taliban were arbitrarily detained by opposition factions and severely beaten, with their family members also subject to ill treatment. [11d] All Afghan factions are believed to have used torture against opponents and POWs, though specific information is generally lacking. During 2001 there were reports of a number of detentions by the Taliban, including 60 civilians in Bamiyan's Yakawalang district. The detention of journalists increased during the military conflict late in 2001. [2b]

5.171 In January 2002, the International Committee of the Red Cross (ICRC) reported on the release of some 270 detainees in Kabul. They had been recently transferred from the Do Ab prison in Panjshir having previously been in prison for up to six years. ICRC delegates confirmed that they were currently visiting some 4,800 detainees in approximately 40 places of detention throughout Afghanistan. [42a]

5.172 Physicians for Human Rights reported in January 2002 on conditions found at Shebarghan Prison west of Mazar-i-Sharif. Investigators found severe overcrowding, non-existent sanitation and exposure to winter cold, inadequate food and no medical supplies, resulting in epidemic illness and deaths. According to the commander of the facility, cells designed to hold 10-15 prisoners were holding 80-110 men. The prisoners held included 1,000 Pakistanis, Afghan Taliban who surrendered at Kunduz in December 2001 and 100-150 prisoners who had been held since before the Taliban rose to power. [45] The ICRC confirmed in March 2002 that it had been visiting detainees at Shebarghan prison since November 2001. The prison held the largest number of detainees captured after the fall of the Taliban, and ICRC had provided detainees with blankets, clothes, shoes, bowls, water containers and soap. Immediate steps had also been taken to ensure a sufficient supply of water. [42e]

5.173 US officials confirmed in January 2002 that they were holding 368 prisoners captured during the conflict, 306 at a base in Kandahar, 38 in Bagram outside Kabul, 16 at Mazar-i-Sharif and eight aboard the Navy ship USS Bagram. [25ad] A number of the US held prisoners including suspected members of Usama bin Laden's Al Qa'ida network and fighters from the ousted Taliban were flown to a US prison camp in Guantanamo Bay, Cuba in January 2002. [25ad] By 25 January 2002 some 158 prisoners had been transferred to Guantanamo Bay. There was some international criticism of the treatment of the prisoners however the US maintained they were illegal combatants rather than prisoners of war and were therefore denied rights enshrined in

the Geneva Convention on prisoners of war. The US insisted they were being treated humanely. [25ae] ICRC delegates were permitted to visit these detainees in accordance with ICRC standard working procedures. [42b]

5.174 In May 2002 Klaus-Peter Klaiber European Union Special Representative in Afghanistan called for urgent action to improve the conditions of former Taliban and Al Qa'ida fighters in Shebarghan prison camp. Over 2,000 prisoners were held at the camp all of whom were ethnic Pashtuns, mostly Afghans but some Pakistanis. The prisoners were reportedly being fed only on thin soup and some were being kept in rooms only 1.5 meters square. A spokesman for the Deputy Defence Minister General Dostum confirmed that he shared concerns about the camp but said that funds were needed urgently elsewhere. [25ai] In May 2002 it was reported that some 500 prisoners had been released from Shebarghan prison and another 400 were shortly due for release. The prisoners were Pakistanis who were returned to Pakistan following their release and were described as Taliban and Al Qa'ida foot soldiers. [20f]

5.175 In May 2002 the Interim Administration instituted an amnesty which it hoped would ease overcrowding in the country's jails. Commissions were set up around the country to review the cases of prisoners. The Kabul commission chairman reported that over 60 people including some women and children had been released during the commission's first four days of work. In Kabul's main detention centre convicted criminals are being held alongside untried defendants as the main prison is without sewers and water. [24c]

5.176 ICRC reported that during the period January to August 2002 it had visited 6,189 security detainees and prisoners held in 78 places of detention. Those detained were under the responsibility of the Afghan authorities or those attached to the US forces. In addition it had provided assistance to 3,043 detainees to help them return home. [42f]

5.177 According to a UN Secretary-General report in March 2003, in Kabul all prisoners regardless of their status are held in the Kabul detention centre, an overcrowded and dilapidated facility adjacent to the Kabul police headquarters. The Afghan prison authorities have started reconstruction of the Pul-i-Charki prison outside Kabul, but sufficient funds for this reconstruction and the rehabilitation of the prisons sector have not been provided. [39h]

5.178 In March 2003, following a recommendation from international donors, Amnesty International and UNAMA, the administration of prisons was transferred from the Ministry of Interior to the Ministry of Justice. [7e] According to UNAMA, the key objective of this transfer is to improve the general standard of prisons starting with Kabul. In July 2003 Cellblock 1 of Pul-i-Charki prison was 90% complete using funds provided by the Italian government and would be assessed by engineers from UNAMA and the United Nations Office on Drugs and Crime (UNODC) to ensure that prisoner's basic needs are met. It is anticipated that Cellblock 1 will be the model for other prison projects. [40as] According to the US Dept of State Report on Human Rights Practices in 2003, most NGOs noted that the change of administration would facilitate an improvement in prison conditions. [2e] (p 4)

5.179 In a July 2003 report on the prison system in Afghanistan, Amnesty International advised that “The current administration does not have resources and expertise to reconstruct a prison system that conforms to international minimum standards. Prisoners are being held for months in overcrowded cells, some of them shackled, with inadequate bedding and food. Staff have received no training and have not been paid for months. Prisoners and detainees are not being held in safety, some are suffering ill-treatment or even torture.” [7e] (p1)

5.180 According to Amnesty International “Prisons in Afghanistan have a long and disturbing history of serious abuses. Amnesty International (AI) has repeatedly raised its concerns over conditions of detention in Afghanistan including reports of torture and cruel, inhuman and degrading treatment and punishment. During the last two and a half decades, prisoners have been held in overcrowded detention centres, deprived of adequate food, sleeping space and toilet facilities. Imprisonment has been used as a political tool for the repression of political opponents.” [7e] (p3)

5.181 Amnesty International noted that “Between 1992 and 1995 when various regional commanders controlled different parts of Afghanistan, Amnesty International received reports of appalling conditions in almost all of the prisons run by these groups. With the arrival of the Taleban in much of the country, reports of torture and ill-treatment continued and prison conditions did not improve.” [7e] (p4)

5.182 The AI report stated that “Afghanistan has 32 provinces, sub-divided into smaller administrative districts. According to the Law of Prisons and Jails in Afghanistan, currently applicable national law, each provincial centre should have a prison and a detention centre. Each district centre should have a detention centre. Detention centres are under the jurisdiction of the police, working in the Ministry of Interior. Prisons are under the jurisdiction of the Ministry of Justice. In many provinces, prisons are in no condition to hold any person. The police are responsible for arrested detainees for the first 72 hours of arrest, after which they should be brought before a judge and then become the responsibility of the prison system. Under international law, detained suspects should be brought promptly before a judge to assess the legality of detention. Currently people are being held for months without any access to a court before trial, which may result in the police having responsibility for detainees for long periods of time without judicial supervision. This is particularly the case in rural areas.” [7e] (p4)

5.183 The Amnesty International report of July 2003 noted that “Hundreds of women and girls are being held in prisons across the country, the majority for violating social, behavioural and religious codes. Girls from 13 years of age are being held in prison with adults alongside elderly women of approximately 70 years of age. The majority of women prisoners are from 18 to 25 years of age. Like men and children, they are being held for months in prisons across the country before having the legality of their detention determined by a judge. Women are being held often within a compound in the main prison area rather than in a separate compound.” [7e] (p8)

5.184 The Amnesty International report further noted that in May 2003 the United Nations Office for Drugs and Crime (UNODC) signed a project proposal "Reform of the penitentiary system" with the Ministry of Justice focusing on the reconstruction of the penal system. According to AI, the project's key components are:

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

However, funds for this project, due to run for two years from July 2003, stand at only US\$2.1 million. UNODC acknowledges that the project only covers Kabul, leaving the rest of the country untouched.” [7e] (p10)

5.185 In August 2003, Amnesty International published a report entitled “Afghanistan: Re-establishing the rule of law” in which it was stated that “The AIHRC (Afghan Independent Human Rights Commission) investigation unit has started to monitor the prison system from an international human rights law perspective. However, the AIHRC currently lacks the capacity to engage in an all encompassing judicial monitoring program, including court observation.” [7q p 3]

5.186 In December 2003, the UN OCHA Integrated Regional Information Network reported on conditions in Pol-e Khomri provincial jail in the northeastern Baghlan Province. “When IRIN visited it, the inmates were on hunger strike in protest against insufficient food and poor living conditions in the antiquated and overcrowded facility... The United Nations Office on Drugs and Crime, which is the lead agency in implementing reform within the justice and penal systems, told IRIN that conditions in Pol-e Khomri prison were similar to prisons in other parts of Afghanistan. It said it had already started justice and prison reform in the capital, Kabul, with an intention to start operating outside the city soon. Meanwhile, officials in Kabul told IRIN that lack of sufficient funds for prisoners' food and logistics constituted the major problem for all the approximately 3,000 convicts in the 32 government-run prisons across the country.” [40aa]

5.187 The US Dept of State Report on Human Rights Practices 2003 published in February 2004 stated that “Prison conditions remained poor; there reportedly were many other secret or informal detention centers. Prisoners lived in overcrowded, unsanitary conditions in collective cells and were not sheltered from severe winter conditions. Prisoners reportedly were beaten, tortured, or starved. According to TISA [Transitional Islamic State of Afghanistan] officials, there were 612 prisoners at Kabul City prison at year's end. [2003]” [2e p4]

5.188 The US Dept of State also reported that “With the assistance of NGOs and the UN during the year, the TISA was organizing programs for the renovation and humanization of prisons. For example, the AIHRC (Afghan Independent Human Rights Commission) established a “complaints” department within the Ministry of Justice and eight interagency commissions visited prisons in April [2003] to assess prison conditions. Further, in May [2003] the Minister of Justice called a donors meeting to discuss moving prisoners from the Welayat detention center to Pul-i-Clarki prison, where two wings of the prison were under renovation; however, no prisoners were moved at year's end [2003]... The TISA permitted the International Committee of the Red Cross (ICRC) to visit all prisons which it controlled and the ICRC conducted such

visits during the year; however, fighting and poor security for foreign personnel limited the ability of the ICRC to monitor prison conditions.” [2e p 4]

5.189 In March 2004, Human Rights Watch (HRW) published a report alleging that the United States is maintaining a system of arrests and detention in Afghanistan as part of its ongoing military and intelligence operations that violates international human rights law and international humanitarian law (the laws of war). According to the HRW report, “Afghans detained at Bagram airbase in 2002 have described being held in detention for weeks, continuously shackled, intentionally kept awake for extended periods of time, and forced to kneel or stand in painful positions for extended periods. Some say they were kicked and beaten when arrested, or later as part of efforts to keep them awake. Some say they were doused with freezing water in the winter. Similar allegations have been made about treatment in 2002 and 2003 at U.S. military bases in Kandahar and in U.S. detention facilities in the eastern cities of Jalalabad and Asadabad. “[17o] (p4)

5.190 The Human Rights Watch report also stated that “In December 2002 two Afghan detainees died at Bagram. Both of their deaths were ruled homicides by U.S. military doctors who performed autopsies. Department of Defense officials claim to have launched an investigation into the deaths in March 2003. In June 2003, another Afghan died at a detention site near Asadabad, in Kunar province. The Department of Defense has yet to explain adequately the circumstances of any of these deaths.” [17o] (p4) In March 2004, Amnesty International (AI) noted its concern at the long term arbitrary detentions at Bagram airbase and other detention centres run by US military forces. AI reported that they have not been permitted to visit detainees at those places and the detainees continued to be held in a legal black hole. [7a] (p2)

5.191 On 8 March 2004, Agence France-Presse (AFP) reported the US response to the HRW report. AFP reported that “US military spokesman Colonel Bryan Hilferty denied the accusations.” “This report shows lack of understanding on the region, this is a combat zone. We follow strict rules of engagement and the laws of war” Hilferty told a news conference here. “Some of the things reported in the HRW report have happened, like the case of two detainees who died in custody in Bagram, and we are investigating that very actively,” he said. “But their main point is incorrect. This is a combat zone, we are applying appropriate rules of engagement,” Hilferty added.” [40bn]

5.192 In a report to the UN Security Council on 19 March 2004, the Secretary-General stated that “Reform of the correctional system has thus far focused on Kabul. In February, the United Nations Office on Drugs and Crime completed the first round of rehabilitation and reconstruction of the Kabul male detention centre. Work is also progressing on upgrading the main prison at Pol-e-Charki and the Kabul female detention centre. The Transitional Administration has devised a long-term redevelopment plan for the reform of the national prison system. For the next fiscal year, the focus will be on approval of a strategic direction, the rehabilitation of several regional prisons, the establishment of a headquarters facility for the prison administration, and the establishment of a training centre for correctional officers. In the longer term, offender classification systems, programmes for offenders, and a gradual release system will be introduced. Those reforms, however, depend on redressing the critical funding shortage due to competing fiscal priorities facing the Afghan Transitional Administration and the low level of donor support for the

reform of the correctional system.” [39o] (p10)

5.193 According to Amnesty International in March 2004, “Conditions in prisons and detention facilities in Kabul have seen an improvement but there remains an urgent need for the rehabilitation and reconstruction of detention facilities elsewhere. Furthermore, prison conditions (sanitation, food, overcrowding) and legal rights of prisoners fall far short of international standards as laid out in the UN Body of Principles for All Persons under Any Forms of Detention or Imprisonment and the UN Standard Minimum Rules for the Treatment of Prisoners... Prisons in the provinces remain non existent. To date, the central government has responsibility to administer provincial prisons but in reality they remain under the control of various armed groups and human rights violations continue to be reported. The prison service continues to be plagued by insufficient personnel, inadequate training facilities for officers, inconsistent payment of salaries and a marked lack of donor interest. Despite a plan drawn up by Italy, the lead donor government for justice reform, to tackle this, lack of resources hamper reform and development.” [7a] (p2)

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Military Service

5.194 Before 1992 conscription existed, military service could be performed in the armed services, the Ministry of the Interior and the secret police (KhAD). After the 1992 collapse of the communist government all serving conscripts were discharged, all deserters were granted amnesty (except very high-ranking officers) and the previous government's military bodies were dissolved. [9]

5.195 The vast majority of Taliban soldiers have reportedly been volunteers. Conscription has nonetheless apparently taken place, especially in critical situations. Conscripts might have included Hazaras, but were usually Pashtuns. A source at the US representation in Pakistan advised that the Taliban's opposing factions have also practised conscription. [8a]

5.196 During its fact-finding mission in November 1997, the Danish Immigration Service reported a US source as claiming that the Taliban were known to recruit soldiers both in refugee camps in Pakistan and within Afghanistan itself. However, there was reportedly seldom any forced recruitment in camps in Pakistan. [8a] In May 2000 Hazara conscripts were reportedly executed for refusing to serve with the Taliban. [11d] Generally speaking however, it appears that as some communities in Afghanistan resisted conscription, the Taliban could easily find replacements elsewhere - notably in Pakistan with its availability of impoverished and undereducated youth.[33]

5.197 In September 2001 as fears of a US attack began to grow it was reported that the Taliban were forcibly seizing men (including Tajiks and Hazaras) aged between 18 and 30 to fight America. Those who resisted faced the threat of jail, with reports that some were also to be held as hostage. On 24 September 2001 the Taliban announced they were mobilising 300,000 men to defend Afghanistan against the feared attacks. [18d]

5.198 In late February 2002 it was reported that the ISAF had commenced the

training of a professional national army. After more than 20 years of civil war Afghanistan has large numbers of armed soldiers most remaining loyal to their local clan chiefs and war lords. It is planned to disarm as many of these local militias as possible replacing them with a professional national army under the control of central government.[25aj] In March 2002 Hamid Karzai leader of the Interim Administration speaking at a meeting of warlords from all over Afghanistan, said that Afghanistan would have an independent, multi-ethnic national army.[25aq]

5.199 In April and May 2002, in meetings with the Secretary-General of the UN Security Council, the Interim Administration produced plans outlining an armed force which would be overseen by a national security council and a defence council.[40s]

5.200 In June 2002 Human Rights Watch reported instances of families being forced to make cash payments to avoid the conscription of their sons into militia forces. This was occurring in northern Afghanistan where two ethnically based armed parties were involved in conflict.[17f]

5.201 The Secretary-General to the UN Security Council reported in July 2002 that difficulties had been experienced in assembling an ethnically and regionally balanced group of recruits for the first battalion of Afghan National Guard. Similar difficulties were being faced by the US and French who were involved in further troop training exercises. The Secretary General reported that over one third of the soldiers on the first battalion Afghan National Guard have left since completing their training due to lack of support from the Ministry of Defence.[40s]

5.202 In July 2003 the International Committee of the Red Cross (ICRC) launched a programme to train officers of the future Afghan National Army (ANA) in the law of armed conflict. [42h] In an interview on 2 August 2003, President Karzai said that, with international assistance, he hoped to speed up the process of creating a national army and police force. [25t] The ANA has 5000 trained soldiers and will eventually comprise 70,000. However, this may not happen until warlords in Afghanistan disband their private armies. [25s]

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Medical Services

5.203 In a report dated January 2002 entitled Afghanistan: Preliminary Needs Assessment for Recovery and Reconstruction, it was noted that the health status of Afghans ranked amongst the poorest in the world. Life expectancy at birth, 44 for males and 45 for females is among the lowest in the world. The report further indicated that health infrastructure and human resources were grossly inadequate for a population of about 24 million, which is expected to rise to roughly 35 million in ten years.[4] Maternal health care is a particular problem, a World Health Organisation (WHO) medical officer reported in January 2002 a figure of 1,700 maternal deaths for every 100,000 live births, the second highest maternal mortality rate in the world.[36] ~~Under the Taliban women were given only the most rudimentary access to health and medical care.[2e]~~

5.204 There is a strong urban bias in the provision of medical facilities with many being located in Kabul and an uneven distribution in rural areas. Only 30-40% of the

population have access to some health service. About 75% of the population have access to emergency obstetric care, which was only available in 11 provinces. In January 2002 there were about 17,500 public sector health staff, 3,900 of who were doctors providing approximately two doctors per 10,000 of population. In addition it was noted that staff were deployed unevenly to the populations geographical distribution, the composition of staff did not meet the needs required and existing staff needed significant skill upgrading/refresher training to deliver an essential services package.^[4]

5.205 The ICRC has for years pursued a strategy of supporting Afghan medical structures. Surgical structures have been the focus of ICRC activities due to the need for these in conflict situations. In 2001 ICRC maintained the regular support needed to uphold surgical services in key referral hospitals on both sides of the conflict and provided surgical facilities for an average of over 3,000 inpatients and 20,000 outpatients per month.^[42c] In late January 2002 the first surgical operation in three years took place at Bamiyan hospital. ICRC had decided to rehabilitate the hospital in December 2001, and with assistance from the Norwegian Red Cross and Medecins sans Frontieres (MSF) all essential services were expected to be in operation by the end of February 2002.^[42d]

5.206 In a statement to the UN Security Council on 30 January 2002 Hamid Karzai said that he sought to build a health system that would offer affordable services to all.^[39d] The World Health Organisation (WHO) reported in March 2002 that developing a functional health care system was a top priority in the reconstruction of Afghanistan. WHO also reported that the Afghan Ministry of Health had made important strides toward establishing a functioning structure for long-term health sector development; an organisational structure for the Ministry had been established defining roles and responsibilities for departments. A WHO training seminar on health management is to be followed by nationwide planning workshops.^[43a]

5.207 In May 2002 a Danish Fact Finding mission to Afghanistan reported that there were 20 to 25 hospitals in Kabul which were functioning but charged fees which only a small part of the population could afford to pay. Although there were hospitals in most large towns not all were functioning. Generally there was better availability of treatment in Kabul than elsewhere. It was reported that some rural areas had little or no access to health treatment.^[38]

5.208 In June 2002 it was reported that a basic level of medical care was available in Kabul (much better provision than all other parts of the country). ^[51] A World Health Organisation report dated 5 April 2002 showed a concentration of health facilities in urban areas and detailed that Kabul had 12% of the population and 50% of the hospital beds in the country, and a ratio of one doctor per 1,000 people.^[43b]

5.209 The Afghan Red Crescent runs a national network of 48 clinics, which make a huge contribution to improving the healthcare of those most in need. In particular the Qalafatullah clinic in Kabul provides basic healthcare to 50,000 people, caring primarily for women and children.^[40u] The ICRC reported at the end of August 2002 that it continues to provide regular assistance to seven hospitals throughout the

country. Health facilities assisted by ICRC provided service to over 6,000 inpatients, 38,600 outpatients and performed 3,750 operations in the period from January to the end of July 2002.[42f]

5.210 According to a 2002 WHO report Afghanistan has limited Mental Health Resources, some therapeutic drugs are reported to be available, and there are some 0.027 psychiatric beds available per 10,000 of the population. There are however very few trained psychiatrists.[43c]

5.211 It was reported in February 2003 that despite the establishment of aid agency projects Afghanistan's health care services barely existed. An estimated 70% of medical programmes in the country have been implemented by aid organisations. Even the country's largest hospitals lack the most basic equipment needed for simple treatment. A recent survey describes maternal mortality as one of the highest in the world although maternal mortality rates vary widely across the country. However a spokesman from World Health Organisation said that services are slowly getting better. Kabul's largest maternity ward at Malalai hospital has been refurbished and staff have been trained in emergency obstetrics, the regional hospitals are receiving aid and advanced training, and small medical teams are reaching the country's largely inaccessible rural areas and equipping clinics with drugs.[25bj]

5.212 In April and July 2003 it was reported by a Swedish fact finding mission and the UNHCR that, in general, it is not possible to treat serious diseases in Afghanistan and treatment is not available for chronic medical conditions. [61] [11i] The health infrastructure and human resources are reported to be grossly inadequate for the population of 24 million. Institutions have collapsed, physical facilities have been destroyed and the human resource base has been eroded, particularly of female professionals critical to women's health care given the predominant cultural observance of gender segregation. There is a strong urban bias to the limited medical facilities, with many located in Kabul, while rural services are unevenly distributed. There are few psychiatric health care facilities and the existing ones lack essential medical supplies. [11i]

5.213 The United Nations Population Fund (UNFPA) is working in collaboration with the Ministry of Health to improve reproductive health care and reduce maternal mortality, [40at] aiming to establish a centre for the delivery of emergency obstetric care in each province [39i]. In May 2003 the obstetric and gynaecology ward of the refurbished Khair Khana Hospital in north-west Kabul opened and in July 2003 the hospital also began handling general medicine, internal medicine, outpatient and emergency cases. [40at]

5.214 In May 2003, the US Agency for International Development (USAID) announced a three year \$100 million programme entitled Rural Expansion of Afghanistan's Community-based Healthcare (REACH). The aim of the programme is to improve the delivery of healthcare by providing basic essential health services to an estimated sixteen and a half million people each year. The programme is focused on moving healthcare closer to patients in rural communities. [40au]

5.215 In the report of the Secretary-General to the UN General Assembly Security

Council on 23 July 2003, it was stated that most rural communities remain cut off from even minimal health-care services. However, the Ministry of Health is focusing on providing all rural communities with access to primary care by the end of 2003 through the Basic Package of Health Services programme, which is supported by the World Bank, USAID, the EU and UNICEF. [39]

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

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

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

5.219 The ARTF also reported on the Provincial Health Department and District Hospital in Balkh province. According to ARTF “In Balkh province there are, in addition to the main provincial hospital located in the center of Mazar city, 17 health centers in 15 districts and 11 clinics in Mazar city. In total there are 825 Health sector personnel including doctors, nurses and other support staff in the Balkh province. Over 500 outpatients are cared for and more than 50 inpatients are admitted to the hospital daily. All units of the hospital are operating normally. Patients are not only from Mazar but also come from other districts of Balkh province and provinces further north like Faryab, Sari Pul, Jawzjan, Samangan, Baghlan, Takhar and Badakhshan. These provinces have less access to medical facilities. The Mazar hospital employs 135 doctors and 137 nurses. Medicines and supplies are provided from different sources (WHO, UNICEF, Ministry of Public Health, SCF UK and US and some other NGOs).” The report noted, however, that medical equipment in the hospital was badly outdated. [59] (p32)

5.220 The 2004 Appeal by the International Federation of Red Cross (IFRC) and Red Crescent Societies reported that “More than two decades of civil war in

Afghanistan has left the health sector critically damaged and has had a major impact on the health of vulnerable people, particularly women and children. Several statistics illustrate the gravity of the situation: one woman dies every half hour due to pregnancy related complications and one in four children die before their fifth birthday. In Afghanistan, malnutrition and communicable diseases remain among the most significant causes of morbidity and mortality. The large majority of health services are and have been for the last decades financed by international assistance, without coordinated planning. The health system emerging after decades of conflict is too small, fragmented, used only by a minority of the population, grossly gender and urban biased, concentrated along vertical lines across the country and is severely underfinanced. The gravity of the situation is reflected in some of the worst health indicators found anywhere in the world.” [42j] (p6)

5.221 The IFRC Appeal 2004 further noted “It is estimated that there are only 500-600 primary health care facilities in Afghanistan scattered heterogenously throughout the country, leaving the large majority of the population with no access to health services. Hospitals are reported to number between 60 and 100 of varying standards, severely under-used and unevenly distributed with the largest concentration in and around the Kabul area. Data on the structure of the health workforce is inconsistent but a striking feature is the over representation of doctors numbering slightly less then the nurses and midwives put together... Distribution is also severely (sic) uneven with 68 per cent of doctors and 63 per cent of other health professionals found in the Kabul province. Women represent only 26 per cent of doctors and 30 per cent of nurses. Government community health workers are thought to number around 3000 with varying levels of training from a few weeks up to six months. On the supply side, drug shortages are acute, inadequate imports and poor distribution systems hamper access, quality controls are virtually non-existent and irrational drug use is widespread.” [42j] (p6) In January 2004, the UN News Centre advised that there was “One physician for every 50,000 people.” [39n]

5.222 The IFRC Appeal 2004 noted that “In the face of these formidable challenges the Transitional Islamic Government began a process to determine the major priorities for rebuilding the national health system aiming, over time, to make essential health services available to all Afghans. A basic package of health care services (BPHS) was developed for the purpose of:

- providing standardised services in primary health care; and
- providing equitable access, emphasising under-served areas.

The BPHS aims to provide a comprehensive set of health services based on a global system of district health with four standard types of health facilities, ranging from district hospitals with inpatient and outpatient services, to health centres with health posts having increasing focus on health promotion and preventive care.” [42j] (p6)

5.223 In their report of 8 December 2003, the IFRC noted that the government, with the support of the World Bank, European Commission, USAID and Asian Development Bank was in the process of contracting the services proposed under the BPHS package, in designated provinces or clusters, to non-governmental organisations (NGOs) who must then provide the whole BPHS in that province/cluster and build the capacity of the Ministry of Health staff for a period of up to three years. Sustainability after this time had not yet been addressed. [42i] (p3) In

January 2004, a report by the British Agencies Afghanistan Group (BAAG) stated that the “Basic Health Care Package concentrates its resources on providing basic health care to serve the whole population rather than on specialist care for the few. NGOs play an important part in filling gaps in specialist areas such as working with the blind, psycho-social care, orthopaedics, family planning and, increasingly, HIV.” [71] (p7)

5.224 According to a World Bank Group brief of October 2003, “There is no reliable data on the prevalence of HIV/AIDS in Afghanistan...to date 11 cases have been reported. The main mode of transmission is believed to be blood transfusion and sharing contaminated needles during drug use.” The report noted that “Much of the population lacks access to basic health services, and there is an acute shortage of health facilities and trained staff, particularly female staff, in most rural areas. Of the facilities that exist, most are ill-equipped and unable to protect staff and patients from HIV or to treat opportunistic infections or prevent mother to child transmission. WHO [World Health Organisation] estimates that only half of the 44 medical facilities that transfuse blood are able to screen the blood for HIV.” [69c]

5.225 At the time of the World Bank Group brief in October 2003, the Government was working on a national plan of action against HIV/AIDS and STDs and WHO were in the process of conducting a Rapid HIV Situation Assessment in Afghanistan. The report advised that “The World Bank has approved a \$59.6 million project that will help rebuild the public health system in Afghanistan with a strong emphasis on prevention and education. Although there is no specific HIV/AIDS component due to more immediate priorities, interventions to improve maternal health and prevent STDs will also prevent the spread of HIV.” [69c]

5.226 In a report of January 2004, the IFRC noted some achievements made by the Afghan Red Crescent Society including,

- “A national network of 50 clinics providing preventive and curative services including health education (regarding hygiene, breast feeding, nutrition, immunisation, water and sanitation), vaccination of mothers and children, family planning and other maternal and child health services.
- Five EMUs [Emergency Mobile Units] responding to emergencies and providing health care services to vulnerable people living long distances from health facilities...” In addition, the IFRC noted that in 2003, “Around 650,000 people have benefitted from curative and preventive health services in the ARCS clinics.” [42j] (p8)

5.227 In a programme update of 8 December 2003, the International Federation of the Red Cross and Red Crescent Societies advised that “In many places the ARCS clinic provides the only access to health care for vulnerable families, who know they will receive consultation from qualified and dedicated doctors and that the appropriate drugs will be available free of charge.” The IFRC also noted that “There is still an unmet need for health facilities in many remote areas of Afghanistan. Constraints include finding qualified health staff to work in remote areas.” [42i] (p3)

5.228 An ICRC newsletter of January 2004 advised that the ICRC supports and renovates hospitals in “Kandahar, Ghazni, Mazar, Shiberghan, Samangan, Jalalabad and Kabul. In September 2003 only, the facilities assisted by the ICRC provided health services to some 6,500 in-patients, some 30,000 out-patients, and performed more than 3,500 operations.” In addition, “the ICRC runs 6 orthopaedic

centres in the country (Kabul, Mazar, Herat, Gulbahar, Faizabad, and Jalalabad). 38 per cent of the amputees assisted are mine victims. Over 55,000 patients have been assisted since 1988.” [42k] (p6)

5.229 On 2 February 2004, Terres des Hommes (Tdh), an international organisation working for the rights of children, published a progress report on the mother-child health project in Kabul. According to Tdh, “The community-focused maternal health project has now entered its 9th year of implementation...The team of 30 female health professionals improved again its services during the year of 2003:

- The midwives visited a total of 7,752 new homes, and identified 4,814 new clients.
- The midwives visited 31,637 project clients, and identified also 4,793 new clients.
- 87,657 women and adolescent daughters participated in home-based health education in neighborhoods.
- The MCH team interviewed 4,031 participants about domestic violence.
- 7,702 mothers have been referred to clinics and hospitals for routine care, immunizations or complications.
- 600 mothers could access family planning services, provided by the project.
- 3,906 newborns entered the project, and 491 mothers delivered at home.” [40h] (p3)

5.230 It was also reported that “Terres des hommes (Tdh) established the second home-based maternal health project in July 2002 in Kandahar, southern Afghanistan. Kandahar is still a very difficult place to work...It was towards the end of 1994 that the Taliban emerged from the city and began from here to conquer the south, east and centre of the country; the city is still the 'spiritual' home of the movement with all its negative implications for women and girls.” [40h] (p3-5)

5.231 In January 2004, a British Agencies Afghanistan Group (BAAG) paper advised that “The Government has had to take a pragmatic approach to use precious resources on basic health services for the whole population rather than use them on highly intensive, often expensive treatments for the relatively few.” [71] (p 23) According to the Secretary General in a report to the UN Security Council in March 2004, “Coverage by the Government’s primary health service package now reaches 40 per cent of the population.” [39o] (p14)

5.232 According to the January 2004 BAAG report, “A national TB programme has now been developed by WHO (World Health Organisation) with the Ministry of Health and regional offices. Drugs and other essential medicines are supplied and the health care system developed.” [71] (p25)

5.233 Commenting on disability and physiotherapy facilities, the 2004 BAAG report noted that “The ICRC [International Committee of the Red Cross] runs orthopaedic centres in Kabul, Mazar, Herat, Gulbahar, Faizabad and Jalalabad ...The Sandy Gall Afghanistan Appeal (SGAA) provides physiotherapy services at its main centre in Jalalabad... In June 2001 SGAA set up a mother and child physiotherapy clinic in Khair Khana, a northern suburb of Kabul. It serves people from rural areas of the Shomali plain. Children that receive assistance include those suffering from the after effects of polio, cerebral palsy and congenital defects. Women are treated who have osteo-arthritis, rheumatoid arthritis, fractures and neurological complaints. In 1998 and in partnership with UNICEF and HNI, SGAA established a Community Outreach Programme 25 miles from Jalalabad in Ghani Khel. Physiotherapy

services are provided to the local hospital and local health workers and TBAs are trained. The programme has been extended to eight districts in eastern Nangahar... Physiotherapy services are also provided to the local hospital run by Aide Medicale Internationale in Mehtarlam in the province of Laghman.” [71] (p28)

5.234 The January 2004 BAAG report noted that the physical rehabilitation centre in Kandahar, within the Mirwais hospital, sought to address the physical needs of the disabled in southern Afghanistan. According to BAAG, “Currently, the centre has three departments, prosthetic, orthotic (which produces orthoses and mobility aids, including walking aids and wheelchairs), and physiotherapy. There is a separate section for women which is run by female physiotherapists and technicians.” [71] (p28-29)

5.235 In February 2004, UNICEF reported that in order to reduce one of the world’s highest rates of maternal mortality, the organisation was committed to the provision of quality emergency obstetric care (EmOC) facilities throughout Afghanistan. The report stated that “In January, the Centre of Excellence for EmOC in Herat Province was inaugurated, following the completion of [of] the hospital renovation and provision of equipment and medicines. A team of trainers in the hospital attended the training on EmOC in Kabul during 2003 and are to train other service providers from their respective provinces in the coming months. Medicines, renewable supplies and basic equipment for EmOC, sufficient for a year, are being distributed to 24 provincial hospitals.” [40bk] (p5)

5.236 UNICEF also advised in February 2004 that “March 27 [2004] will initiate the first of the three-round Maternal and Neonatal Tetanus Campaign, which aims to reduce one of the world’s highest maternal mortality and to protect new born babies against neonatal tetanus. A total of 4 million women of child bearing age (14-45) are to be immunized during 2004. The campaign is the critical next step following the successful implementation of the pilot campaign for 750,000 women in 4 major cities and surrounding areas during 2003.” [40bk] (p5)

5.237 According to a January 2004 report by the British Agencies Afghanistan Group (BAAG) “An important issue for the Government to address is the high incidence of mental health problems and disability brought about by years of conflict, bereavement and deprivation and this is therefore included in its Basic Healthcare Service Package. The aim is for all districts of the country to be covered...The Dutch NGO, Health Net International’s (HNI) mental health programme aims to integrate mental health services within existing basic health care structures and provides a good model...Currently, one of the HNI mental health care programmes aims at local capacity building and is being implemented in cooperation with the Ministry of Health in Jalalabad, covering several districts of Nangahar. It provides training materials in Pashto for doctors, nurses/midwives and community volunteers and in clinics, where there are trained personnel; essential mental health drugs are supplied.” [71] (p22)

5.238 In March 2004, an article on mental health in Afghanistan was published in Lemar-Aftaab, an independent magazine that focuses on Afghan culture. According to the report by Dr. Amin Azimi, “Currently, there are only a handful of mental health professionals in Afghanistan, mainly psychiatrists. They are poorly equipped to treat patients, and their only method of treatment is medication. These professionals don’t

have training in psychotherapy. Medication is helpful for treating the patients symptoms; however, individual and group psychotherapy is essential in order to resolve the internal psychological conflicts the Afghan population has been experiencing. Afghanistan is in need of trained psychologists to design mental health programs, treat these patients, and train the art of counseling to qualified individuals.” [40b1] (p1)

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Educational System

5.239 In a report dated January 2002 entitled Afghanistan: Preliminary Needs Assessment for Recovery and Reconstruction it was noted that the education system was in a virtual state of collapse. Afghanistan's education indicators rank among the lowest in the world, with the highest gender gap and marked rural/urban and other geographic disparities. The gross enrollment rate in primary education was 38% and 3% for boys and girls respectively. Participation in secondary education was reported as extremely low and tertiary education institutions were hardly functioning.[4]

5.240 The Taliban eliminated most formal opportunities for girls' education, although some girls' schools still operated in rural areas and in some towns. Some girls nonetheless received an education in informal home schools, which were tolerated to varying degrees by the Taliban around the country. [2b]

5.241 In a statement to the UN Security Council on 30 January 2002 Hamid Karzai stated that he would invest in the education of children particularly girls.[39d] In February 2002 women took university entrance exams for the first time since the fall of the Taliban, about 500 young women joined seven times as many male students in the tests at Kabul University campus.[25a1] A new Afghan school year commenced on 23 March 2002 when it was estimated up to 2 million children, including girls, returned to the 3,000 schools which re-opened. Women teachers who had been forbidden from working were rehired and resumed teaching.[25ak][44a] The estimated school-age population is 4.5 million and more children are expected to return to school in April, May and June.[44a] The return to school followed a Back to School Campaign led by the Afghan Interim Administration which had organised an entire educational structure virtually from scratch. The United Nation's Children's Fund (UNICEF) supported the Administrations efforts delivering more than 7,000 metric tons of learning materials to virtually every school in the country. [44a]

5.242 In Kabul basic education facilities are available at primary level, and (to a much more limited extent) secondary level. There is also a functioning university.[51] There are 16 institutions of higher learning in Afghanistan. Kabul has the largest university but there are also universities in Jalalabad, Kandahar, Mazar-i-Sharif and Herat. Herat University suffered under the Taliban, but is emerging again as a centre for higher learning, catering for some 3,100 students. The university has 17 female teachers and hundreds of female students, who study in separate classrooms from the male students.[36h]

5.243 In March 2003 it was reported that UNICEF is playing a major role in the reconstruction of the national education system. Attention is being focused on the

issue of quality and gender-balance in education, a national reform of the primary level curriculum, reform of the system of teacher preparation and continuing education opportunities, supply and distribution of essential learning materials and the rehabilitation of schools. It was reported that over 3 million children enrolled in some form of education in 2002, 30% of whom were girls. The total enrolment rate is believed to be 60% higher than before March 2002 (over 90% higher for girls). UNICEF have set a target of 500,000 additional girls attending school by March 2004. [40a]

5.244 A Human Rights Watch report published in July 2003 reported several attacks on schools between August 2002 and June 2003 in south-eastern Afghanistan. In most cases the identity of the attackers was unknown. In some areas, including Paghman and Ghazni, some families were reluctant to send their older girls to school because of security problems. [17]

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

5.246 The Afghanistan Reconstruction Trust Fund (ARTF) assessed the conditions in Parwan Tajroobawi High School in their report covering September to December 2003. It was reported that "Mohd Hanif, the Head Master at Parwan Tajroobawi High school said there were 92 male and female teachers on the payroll. Around 3,800 students, including girls, are studying in three shifts in the school. He has witnessed a significant increase in student enrollment in the past two years. The school has adequate quantities of teaching materials and stationery provided by the Ministry of Education and other supporting institutions including NGOs." [59] (p30-31)

5.247 In a report to the UN Economic and Social Council on 19 December 2003, the Secretary-General stated that "The recently concluded UNICEF Multiple Indicator Cluster Survey shows a net increase of 37 per cent in girls' enrollment between 2002 and 2003. Even southern provinces show an average net increase of about 30 per cent in spite of higher levels of insecurity and conflict. The ratio of boys to girls in school has reached the same levels as in pre-Taliban days. However, there are still many girls out of school. Safety and security, distance from home and inadequate school facilities are the main reasons cited by families for not sending children, both girls and boys, to school. In the case of girls, a shortage of female teachers continues to be a main obstacle to girls going to school. The Back-to-School campaign launched by the Ministry of Education and UNICEF has been a major success and 4.2 million children are now enrolled in school." [39] (p29)

5.248 On 4 March 2004, a spokesman for the UN Assistance Mission in Afghanistan (UNAMA) advised that "Thirty four per cent of the children enrolled in schools in the country are girls and for many observers this gives great hope because female illiteracy in Afghanistan is estimated at 85 per cent. But while girls account for 34

percent of total enrollment throughout the country that is primarily due to high enrollment here in Kabul City. Wide gender disparities persist in many provinces where girls represent less than 15 percent of total enrollment. There are yet significant numbers of girls and boys... who are not attending school, even where services exist. The United Nations Children's Fund (UNICEF) estimates that up to 1.5 million girls of school age are not enrolled in classes.” [40an] According to a report by the Secretary-General to the UN Security Council on 19 March 2004, “By early 2004, 4.3 million children, 40 per cent of whom are girls, were enrolled in primary and secondary schools.” [39o] (p14)

5.249 In the Berlin Declaration of April 2004, the Afghan Government committed to preparing a Poverty Reduction Strategy Paper in order to prepare a medium term strategy for poverty reduction. This strategy included ensuring that all girls and boys completed compulsory education (9 years) and had opportunities to continue at higher levels, with special attention being paid to the inclusion of girls who have been prevented from access to education. [40br] (p7)

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6 Human Rights

6 A Human Rights Issues

General

6.1 In a paper dated April 2001, UNHCR stated that on assuming power [in 1996] the Taliban imposed a strict and intimidating Islamic code and remained committed to ensuring that its vision of Islam was followed. The paper reported that in areas under the Northern Alliance’s control, the rule of law was similarly non-existent. The paper states that “The human rights situation remains extremely poor. Rival groups carry out torture and extra judicial killings against opponents and suspected sympathizers...Both warring factions have demonstrated their utter disregard for the protection of civilians and international humanitarian law.” [11d] (p 26-27)

6.2 The US Department of State Report on Human Rights Practices for 2001 issued in March 2002 stated that “The overall human rights situation remained extremely poor, and the Taliban committed numerous serious and systemic abuses...The Taliban carried out summary justice in the areas that it controlled, and reportedly was responsible for political and other extrajudicial killings, including targeted killings, summary executions, and deaths in custody...Armed units of the Northern Alliance, local commanders and rogue individuals were responsible for political killing, abduction, kidnapping for ransom, torture, rape, arbitrary detention and looting.” [2b] (p 2-3)

6.3 Following the overthrow of the Taliban, the United Nations talks on Afghanistan on 5 December 2001 resulted in the Bonn Agreement, which established the Interim Authority. The final provisions of the agreement stated that

- “The Interim Authority and the Emergency Loya Jirga shall act in accordance with basic principles and provisions contained in international instruments on human

- rights and international humanitarian law to which Afghanistan is a party.
 - The Interim Authority and the Special Independent Commission for the Convening of the Emergency Loya Jirga will ensure the participation of women as well as the equitable representation of all ethnic and religious communities in the Interim Administration and the Emergency Loya Jirga.” [39b] (p 4)
- Those participating in the talks also “Determined to end the tragic conflict in Afghanistan and promote national reconciliation, lasting peace, stability and respect for human rights in the country.” [39b] (p 1)

6.4 In a paper, dated 13 February 2002, the United Nations High Commissioner for Refugees (UNHCR) reported that, “The overthrow of the Taliban regime, the establishment of an Interim Authority and the gradual deployment of an international security assistance force in Kabul city and surrounding areas, paved the way for a significant improvement in the situation for Afghans, particularly in urban centres, where the previous situation of systematic discrimination by the Taliban regime no longer prevails. In other parts of Afghanistan, however, the security situation has not improved, but deteriorated and pockets of instability remain or re-emerge, often as a result of unsettled power-sharing arrangements.” [11e] (p 2)

6.5 A Danish Fact Finding mission to Afghanistan in September 2002 reported that “Most sources believed that violations of human rights still take place, particularly in the northern regions... The commissioner of the National Human Rights Commission (AIHRC) believed that in general the human rights situation has improved since the downfall of the Taliban, but that outside Kabul the warlords control their areas and that political threats occur in the provinces.” [8c] (p 34)

6.6 The Danish Fact Finding mission reported “The senior human rights advisor of UNAMA stressed that the main problem in Afghanistan today is not that the central government lacks the will to implement the requirements to observe human rights, as set out in the Bonn Agreement, but its lack of penetration – especially in the provinces, where there is no law and order at all.” [8c] (p 34)

6.7 A UNHCR report in July 2003 advised that persons of the following profiles might be at particular risk of violence, harassment or discrimination:

- i. “Persons associated or perceived to have been associated with the Communist regime, as well as others who have campaigned for a secular state”;
 - ii. “Certain profiles of women”;
 - iii. “Persons at risk of persecution on political grounds”;
 - iv. “Persons originating and returning to areas where they constitute an ethnic minority”;
 - v. “Persons who are perceived to have been associated with or supported the Taliban regime”;
 - vi. “Non-Muslim religious minorities”;
 - vii. “Converts”
- [11i] (p 34-38)

For more information on the above categories, see also paragraphs on former KHAD and PDPA members 6.240 -6.250; Women 6.160 -190; Freedom of speech

and media 6.42 - 6.54; Pashtuns 6.121 -6.132; Former Taliban members 6.314 - 6.321; Sikhs and Hindus 6.77 -6.92; Converts 6.93 -6.96.

6.8 In a report dated July 2003, Human Rights Watch (HRW) reported that research conducted between January and June 2003 showed that human rights violations by warlords continued to occur throughout Afghanistan. The report documented human rights abuses in the southeast of Afghanistan and noted that, “Many prominent Afghan commanders, officials, and former mujahidin leaders, including officials in the Afghan ministry of defense, ministry of interior, and the intelligence agency, the Amniat-e Melli, are responsible for or are implicated in many of the abuses. Many of the abuses documented in this report were committed by soldiers belonging to militias and other forces under the command of high-level officials or political leaders. Several former mujahidin political leaders and military commanders who are not officially part of the Afghan government but who maintain military or quasi-military forces and exercise de facto governmental control of certain areas have also been implicated in violations. In some cases, officials or political leaders are responsible because they knew of the abuses but did little or nothing to prevent them. In other instances – especially cases of threats and arrests of journalists and political actors – some officials and political leaders were directly involved.” [171] (p 10)

6.9 According to Human Rights Watch, serious human rights violations were not confined to the southeast of the country and were taking place throughout Afghanistan. HRW had received information throughout 2003 about serious human rights violations in the southern province of Kandahar by troops under Governor Gul Agha Sherzai; abuses in northern provinces around Mazar-e Sharif by troops under Atta Mohammad and Rashid Dostum; and continuing crackdowns on basic human rights by the governor of Herat, Ismail Khan. [171] (p 10)

6.10 The HRW report acknowledged that attempts are being made by the Afghan Transitional Administration to address the ongoing problem, such as Ministry of Defence reform and planning for disarmament, demobilization and reintegration (DDR). The report calls for both national and international authorities to concentrate their attention on expediting such reforms and bring former fighters and commanders under civilian rule in order to put an end to endemic fighting and human rights abuses by security forces. [171] (p 11,14)

6.11 In August 2003 the BBC World Service reported that, “Afghan President Hamid Karzai has reiterated that the powerful warlord, Ismail Khan, cannot continue in his post as military commander of western Afghanistan while governor of Herat Province. The announcement came as part of a major reshuffle of provincial governors and officials by the National Security Council. President Karzai said earlier this year that officials could not hold both military and civil posts...In the same reshuffle, the governor of Kandahar Province, Gul Agha Sherzai, was appointed Construction Minister for Kabul while the current Construction Minister, Yusuf Pashtoon, was named governor of Kandahar.” [251]

6.12 On 30 December 2003, the Secretary-General to the UN Security Council reported that “The overall human rights situation during the reporting period (July to December 2003) has not improved, and is unlikely to do so until the security situation does so.” The Secretary-General highlighted issues of continuing concern,

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

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

6.14 The Secretary General also noted that, “The forced eviction of families in Shirpur village in Kabul and the distribution of lands by the Ministry of Defence and the municipality for the private use of government officials and their associates were highlighted by the Afghan Independent Human Rights Commission, the Special Rapporteur of the Commission on Human Rights on adequate housing and UNAMA in September [2003]. As a result, the President appointed a commission to inquire into the incident. The Chief of Police who was directly involved in the demolition of houses was removed from his post.” [39k] (p 12)

6.15 The US State Dept Report on Human Rights Practices for 2003, published in February 2004, stated that “The TISA (Transitional Islamic State of Afghanistan) and its agents’ respect for human rights improved during the year; however, many serious problems remained, especially where its authority was challenged outside Kabul. Members of local security forces committed arbitrary, unlawful, and some extrajudicial killings, and officials used torture in jails and prisons... The Karzai Government generally provided for the freedom of speech, the press, assembly, association, religion, and movement; however, problems remained.” [2e] (p 2)

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

June 2002.” [17m] (p 9)

6.17 The US Dept of State Report on Human Rights Practices 2003 reported that “The registration of district representatives to elect delegates for the Constitutional Loya Jirga (CLJ) was completed in mid-November. Countrywide elections for the candidates to the CLJ took place in November and December. Despite reports of intimidation of representatives, most independent observers deemed the registration and election free and fair.” [2e] (p1)

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

6.19 The preamble of the new constitution adopted in January 2004 states two of its aims as “Observing the United Nations Charter and respecting the Universal Declaration of Human Rights” and “For creation of a civil society free of oppression, atrocity, discrimination, and violence and based on the rule of law, social justice, protection of human rights, and dignity, and ensuring the fundamental rights and freedoms of the people.” [15c] Article 29 of the new Constitution decrees that “Torture of human beings is prohibited. No person, even with the intention of discovering the truth, can resort to torture or order the torture of another person who may be under prosecution, arrest, or imprisoned, or convicted to punishment. Punishment contrary to human integrity is prohibited.” [15c]

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

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

6.22 The Secretary-General noted that “Against this background, we welcome the development of government institutions for the monitoring and protection of human rights. The Ministry of Foreign Affairs has established a Human Rights Unit and, with training by the Office of the United Nations High Commissioner for Human Rights (OHCHR), is initiating a programme of annual human rights treaty reporting... The Ministry of the Interior’s Human Rights Unit, established in 2003, has expanded its operations to 24 provinces nationwide and has increased its Kabul-based operations. The unit has been limited by a shortage of resources, but the commitment to allocate

\$1.67 million from the Law and Order Trust Fund for Afghanistan should improve its capacity to monitor human rights compliance by the police force and to provide human rights training.” [39o] (p12)

6.23 In an open letter of March 2004, Amnesty International reported that “Despite the scale of war crimes, crimes against humanity and other serious human rights violations committed in Afghanistan over nearly a quarter of a century, justice to date, has been denied to the victim. Amnesty International welcomes the Afghan government's ratification of the Rome Treaty of the International Criminal Court (ICC) as a demonstration of its commitment to the principle of truth, justice and peace but concrete measures have yet to be taken to hold to account individual perpetrators of human rights violations in Afghanistan. No process has so far been set up to systematically investigate serious crimes both past and present.” [7a] (p4)

6.24 The letter continued “Amnesty International welcomes the provision in the Constitution that persons who have been convicted by a court for committing a crime, specially mentioning crimes against humanity, are prohibited from holding public office. Given the weak state of the judicial system in Afghanistan and the lack of progress in ensuring accountability for past violations, this provision is at present meaningless as no one has yet been tried by a competent court for crimes committed during the long years of the conflict. In the meanwhile, suspects are free and in some cases holding government positions.” [7a] (p4-5)

6.25 In April 2004, Annex 1 of the Berlin Declaration, the Workplan of the Afghan Government, committed to the holding of free and fair elections in Afghanistan, as provided for under the Bonn Agreement. The Afghan Government committed to:

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

6.26 The Berlin Declaration stated that “The Government is committed to the continued development of a system of governance based on the rule of law and the promotion and protection of the human rights of the Afghan people in order to reinforce national unity, as laid down in the Afghan Constitution. The Government is committed to strengthen the institutional and organizational mechanisms that will translate these rights into practice.” [40br] (p7)

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Independent Afghan Human Rights Commission

6.27 On 23 June 2002, the UN Assistance Mission in Afghanistan reported that the spokesman for the Special Representative of the Secretary General for Afghanistan announced the first meeting of the Afghan Independent Human Rights Commission. The press briefing by the spokesman Manoel de Almeida e Silva advised that “On 6 June [2002], Chairman of the Interim Administration, Hamid Karzai, signed into law, a decree establishing the independent body. According to that decree, the Commission is charged with developing a national plan of action for human rights in Afghanistan. The 11-member body is composed of persons who were appointed based on their individual human rights expertise, personal and professional integrity as well as their competence, demonstrated independence and commitment to human rights and public credibility. Members of the Commission will serve for a term of two years from the date of their appointment. During this tenure they shall not be subject to removal by any external authority.” [40m] (p2)

6.28 On 11 July 2002 the Secretary General to the UN Security Council reported that “The Human Rights Commission, comprising experts, both men and women, from all major ethnic groups was established by decree on 6 June [2002]... Shortly after the Loya Jirga President Karzai named Sima Samar, former Minister for Women’s Affairs, as Chairperson of the Commission.” [40s]

6.29 Dr Sima Samar spoke to IRIN, a UN humanitarian information unit, on 3 September 2002. Dr Samar said that, “The commission is an independent body established under the auspices of the Bonn agreement. We have human-rights education that works for the inclusion of human rights into the curriculum of the schools and other sectors of education. We work on the advancement of women and children and transitional justice. We also do monitoring and investigation of human rights abuses.” [36d]

6.30 In March 2003, the UN Secretary-General reported that “The Afghan Independent Human Rights Commission, mandated by the Bonn Agreement, was able to intensify the implementation of its programme with the support of a joint UNAMA/Office of the United Nations High Commissioner for Human Rights (OHCHR)/UNDP project that come into force on 28 October 2002. The Commission conducted a number of seminars and workshops on women’s rights, human rights education and transitional justice and carried out joint human rights investigations with UNAMA throughout the country. In addition, the Commission plans to open regional offices in Mazar-i-Sharif, Herat, Kandahar, Bamyán, Jalalabad, Gardez and Fayzabad... The commission has thus far received more than 600 petitions and complaints from individuals and groups across the country. Its investigations have focused on complaints of abuses against witnesses to human rights violations, the situation of Pashtuns in the north, and complaints of the Hazara community from Helmand. Together with the Ministry of Interior and the Attorney General, the Commission is also participating in an investigation of prison conditions throughout the country.” [39h] (p11)

6.31 In July 2003, the UN Secretary-General reported that “On 18 May 2003, the Afghan Independent Human Rights Commission (AIHRC) completed its planned

expansion in the interior of the country. Seven satellite offices are now fully operational. These offices will enable it to monitor more closely the human rights situation throughout the country ...The staff of the Commission have established good working relations with the staff of UNAMA area offices. Joint monitoring and investigation of human rights violations, as well as organising educational and other promotional activities, are being conducted in all areas.” [391] (p 14)

6.32 The UN Secretary-General also noted in the July 2003 report that “The Human Rights Advisory Group, established in the context of the consultative process for the national development budget and chaired by the Afghan Independent Human Rights Commission, has conducted monthly meetings, providing a forum for representatives of the Transitional Administration, the donor community, the United Nations and non-governmental organizations to discuss and coordinate broader human rights issues. The Advisory Group members established benchmarks for the mainstreaming of human rights across government ministries, made recommendations on the creation of an internal accountability mechanism in the police, addressed protection issues related to internally displaced persons and refugees, and is currently providing a venue for participants to discuss the concern that the constitutional consultations should be held in an environment free from intimidation.” [391] (p14)

6.33 In August 2003, Amnesty International reported that “The AIHRC has recently established a unit that is assigned the task of dealing with “transitional justice”. The AIHRC has commenced collecting information regarding past human rights violations and international crimes...Although the AIHRC “transitional justice” unit has started to collect information compiled by human rights organisations over the past 23 years, it does not have the mandate to commence criminal investigations into past violations of human rights and international crimes. Moreover, the security situation in Afghanistan means that it is extremely dangerous for Afghan members of the AIHRC to start to conduct comprehensive interviews with victims and their families without the support of international staff. In addition, the AIHRC has no capacity to conduct forensic or other technical investigations into past human rights violations and international crimes.” [74] (p36)

6.34 According to Amnesty International “The AIHRC has competent staff who have already carried out a significant amount of work. Progress has been made despite long delays on the part of the Office of the High Commissioner for Human Rights (OHCHR) in delivering a promised program of technical assistance to the AIHRC.” [74] (P 3)

6.35 The Human Rights Research and Advocacy Consortium (HRRAC), which includes the AIHRC, was established in 2003. According to a November 2003 research report by the HRRAC, “The Human Rights Research and Advocacy Consortium is a group of 12 Afghan and international NGOs working in the fields of humanitarian relief, reconstruction, human and women’s rights, peace promotion, research, and advocacy. It was established in early 2003 to engage in proactive research and advocacy on human rights issues over a sustained period.” [70] (p1)

6.36 On 30 December 2003 the Secretary-General to the UN Security Council reported that “The Afghan Independent Human Rights Commission continues with the implementation of its work plan to promote and protect human rights, with the

assistance of the Office of the United Nations High Commissioner for Human Rights, UNAMA and UNDP. Importantly, the Commission has been an active partner in monitoring and investigating the above-mentioned [see para. 6.12] allegations of human rights violations; over 930 complaints have been registered and investigated since January 2003. The Commission is also working with UNAMA and the Executive Committee to monitor the Constitutional Loya Jirga and to investigate complaints and issues of concern. Each of the Commission's seven regional offices has professional staff in the five areas of the Commission's work: monitoring and investigations, human rights education, women's rights, children's rights and transitional justice. However, it should be noted that the Commission is not able to follow up on a large number of complaints it receives because of the prevailing security situation and the involvement of high-ranking officers. A concerted effort is needed not only to continue to support the institution-building efforts, but also to implement the commitment made to expand the international security forces beyond Kabul." [39k] (p12-13)

6.37 According to the UN Secretary-General, in a report to the UN Security Council on 19 March 2004, "The new constitution clearly articulates a role for the Afghan Independent Human Rights Commission beyond its current mandate, which will expire in June 2004... While the Commission continues to focus on the need to address current human rights violations, attention is now turning to past abuses. The Commission has begun a nationwide public consultation to ascertain the views of the population on how those crimes should be addressed. It is expected that this exercise, which is carried out with the support of the International Centre for Transitional Justice, will be completed in mid-2004." [39o] (p13)

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Domestic and International Non-Governmental Organisations (NGOs)

6.38 In a paper published in January 2004, the British Afghan Agencies Group (BAAG) reported that "NGOs have worked in Afghanistan and Pakistan for decades providing humanitarian assistance to Afghans through agriculture, health, education, water supply, sanitation and income generation programmes." The paper highlights the challenges faced by NGOs working under different regimes and varying levels of insecurity. The paper states that "Post September 11th physical insecurities have increased to a point where many programmes have been suspended or in some cases halted, particularly in the South and South East of the country. Despite the dangers inherent in Afghanistan in the 1980s and 1990s, NGOs could carry out their work knowing they were relatively safe unless they fell victim to opportunistic crime or factional crossfire. Times have changed. NGOs and the UN are now being deliberately targeted and risks to aid personnel have become too great for programmes to continue in some areas." [71] (p 6)

6.39 The BAAG report continued "In 2002, the AIMS (Afghanistan Information Management Service) database indicated that provision of NGO services had increased significantly throughout many regions of the country and there was reasonable coverage of health and education services. Currently this is being severely affected by the lack of security faced by both national and international aid workers. International organisations are being targeted by radical elements because of a perceived association with the West and Western values, and with what is seen

as a US supported government. Particularly unsafe are the Pushtun areas, mainly in the south and southeast including Kandahar and Zabul.” [71] (p 50)

6.40 The BAAG report concluded that “In spite of insecurities, NGOs continue to face the challenges presented whilst balancing the need to protect their staff against the weight of fulfilling their humanitarian responsibilities. They will not cease from striving to find means to help those in need and are continuing their dialogue with the Afghan government to scrutinise coordination of resources, accountability, planning and professionalism. The changes encapsulated in legislation will provide a sure framework for NGOs to assist in sustainable development, rehabilitation and reconstruction programmes. The NGO sector is the largest implementer of humanitarian assistance in Afghanistan today...NGOs will continue to bring their much needed expertise to Afghanistan, funded by governmental donors, the EC and the significant private support base that many have that allow specialised programmes, which would not otherwise attract funds, to be implemented.” [71] (p 50)

6.41 On December 4 2003, Medecins Sans Frontieres (MSF) announced in a press release that, in the wake of recent attacks on aid workers, it had decided to suspend its activities in Zhare Dasht camp near Kandahar, where it had been providing basic health care to a population of 40,000 displaced persons. MSF continues its programmes in Kandahar town and in other parts of Afghanistan. [72]

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Freedom of Speech and Media

6.42 According to the US Dept of State Report on Human Rights Practices for 2001, “There were no laws that effectively provide for freedom of speech and of the press, and senior officials of various warring factions attempted to intimidate journalists and influence their reporting. There were fewer than 10 regular publications in the country. All other newspapers were published only sporadically, and for the most part were affiliated with different factions. Various factions maintained their own communications facilities. The Taliban selectively banned the entry of foreign newspapers into their territory. Many foreign books were prohibited. The Taliban radio station, the Voice of Shariat, broadcast religious programming and Taliban pronouncements. As anti-Taliban forces began liberating areas of Afghanistan formerly under Taliban control in November and December, facilities began broadcasting a wider variety of programming, including music programs.” [2b] (p10-11)

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

April 2003 it was reported by the BBC that cable television, which had been forbidden from broadcasting in January 2003, had begun broadcasting again after President Karzai's cabinet passed a law allowing them to go back on the air. [25b1]

6.44 Human Rights Watch (HRW) reported in July 2003 that "Press and media in Afghanistan enjoyed a rebirth after the fall of the Taliban, but still have struggled greatly. Scores of newspapers opened in Kabul city in 2002 and early 2003, but other cities have far fewer new publications. There are several independent newspapers in the country, but many publications, both within and outside of Kabul, are run by political parties and do not contain objective news articles, only editorials and opinion pieces...Some newspapers are government-owned: the Ministry of Information and Culture runs a newspaper in Kabul, and local governors own their own papers...There are few genuinely independent newspapers in Afghanistan, and most editors of these are under severe pressure." [171] (p 59)

6.45 The US Dept of State Report on Human Rights Practices for 2003 published in February 2004 reported that the Government generally provided for the freedom of speech and the press; however problems remained. [2e] (p 2) According to the US Dept of State report, "The 1964 Constitution, in effect under the Bonn Agreement, somewhat provided for freedom of speech and of the press; however some senior officials attempted to intimidate journalists and influence their reporting. Government intimidation and surveillance of journalists continued to inhibit open, public discussion of political issues. There were reports of self-censorship by journalists. All information must follow Shari'a law, and a publication could be suspended when the article on "forbidden content" was violated. However, the independent media were active and differing political views publicly were reflected to some extent. The State owned at least 35 publications and almost all of the electronic news media. All other newspapers were published only sporadically and for the most part were affiliated with different provincial authorities. Some government officials through political party ties maintained their own communications facilities. "[2e] (p 8)

6.46 According to the US Dept of State Report on Human Rights Practices for 2003 "There were a few reports [in 2003] that government forces prohibited music, movies, and television on religious grounds... However, televisions, radios, and other electronic goods were sold freely, and music was played widely. There were approximately 150 commercial and governmental Internet cafes in the country, 15 of which were in government offices." [2e] (p 9)

6.47 Article 34 of the Constitution adopted in January 2004 states that "Freedom of expression is inviolable. Every Afghan has the right to express his thought through speech, writing, or illustration or other means, by observing the provisions stated in this Constitution. Every Afghan has the right to print or publish topics without prior submission to the state authorities in accordance with the law. Directives related to printing house, radio, television, press, and other mass media, will be regulated by the law." [15c]

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Journalists

6.48 According to the US Department of State Report on Human Rights Practices

2001, “All factions attempted to pressure foreign journalists who reported on the conflict. The Taliban initially cooperated with members of the international press who arrived in Kabul, but later imposed restrictions on them. The Taliban banned all foreign journalists from filming or photographing persons or animals and required them to be accompanied at all times by a Taliban escort to ensure that such restrictions were enforced. Foreign male journalists were not permitted to interview women... The Taliban had arrested an estimated 34 journalists since it took control of Kabul in September 1996. In March the Taliban authorities expelled a BBC journalist for what it considered biased reporting on the destruction of the statues of the Buddha in Bamiyan.” [2b] (p 11)

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

6.50 The Secretary General to the UN reported in July 2003 that “In view of continuing threats against journalists, the importance of reforming the press law is emphasized.” [391] (p 2) The Secretary General also noted that “One positive sign was the appointment by the President, on World Press Freedom Day, of a commission to protect journalists. Nonetheless, intimidation of journalists in Afghanistan, and threats against them have continued during the reporting period most notably in Herat, where the local government appears intent on silencing any form of opposition, but also in Kabul and Mazar-i-Sharif. On 17 June 2003, the Supreme Court ordered the weekly Afghan newspaper *Aftab* to be closed and the editor and deputy editor arrested for defamation of Islam.” [391] (p 14) Human Rights Watch noted in their report of July 2003 that President Karzai ordered the release of the two editors on 25 June 2003 but said that they would still have to stand trial for blasphemy. [171] (p 63) The US Dept of State reported in February 2004 that the charges of blasphemy were pending at the end of 2003. [2e] (p 9)

6.51 UNHCR reported in July 2003 that, “Although not systematic, political repression may particularly affect certain categories of people perceived by commanders/factions to represent a threat to their power. These vulnerable categories include media and journalists, civil society organisations such as women’s associations and professional *shuras* (councils), as well as witnesses of gross human rights violations.” [111] (p 36)

6.52 The US Dept of State reported in February 2004 that journalists were subjected to harassment, intimidation, and violence during the year [2003]. According to the US Dept of State, “During the year [2003], the government maintained departments that were pre-disposed to crack down on journalists. Members of the intelligence service, National Directorate of Security, reportedly staked out journalists’ homes, followed them on the street, visited their offices, and delivered threats to stop publishing critical articles. While some independent journalists and writers published magazines and newsletters, according to Reporters Without Borders, circulation largely was confined to Kabul and many were self censored.” [2e] (p 8-9)

6.53 The US Department of State Report on International Religious Freedom 2003 noted that “A draft Afghan Press Law of February 2002 contained an injunction

against information that “could mean insult to the sacred religion of Islam and other religions.” This draft law was subsequently adopted in April 2002. The ambiguity surrounding what constitutes offensive material offers the potential for abuse of this clause in order to restrict press freedom and intimidate journalists. The Afghan Press Law does not require information to follow Shari’a law. However, the section on criminal rules states that if no punishment is prescribed in existing legal codes for crimes mentioned in the press law, then the punishment will be in accordance with Shari’a (Hanafi school). At the end of the period covered by this report [2003], this Afghan Press Law was under review by the Ministry of Information and Culture.” [21] (p2)

6.54 According to a UNAMA spokesman on 1 April 2004, President Karzai signed the Media Law, which brought some amendments to the original law approved in 2002, at the end of March 2004. UNAMA reported that “According to this latest media law, the state is to provide support for the freedom and the promotion of the media and is to ensure access to information on government issues for journalists. Based on the new law, print media can start their activities before receiving a license from the government. The law also says issues that are considered to be insulting to Islam and other religions are forbidden, as are any comments or statements considered to be dishonorable to individual personalities.” According to UNAMA the law should come into effect once it has been officially published by the Ministry of Justice.” [40bs]

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Freedom of Religion

Background and Demography

6.55 According to the Europa World Year Book 2003, the majority of Afghans are Muslims of the Sunni sect; there are also minority groups of Shi’ite (Shi’a) Muslims, Hindus, Sikhs, and Jews. [1] (p399) The US Dept of State Report on Religious Freedom in Afghanistan 2003 stated that “Reliable data on the country’s religious demography is not available; a census has not been taken in decades. However, observers estimate that 84 per cent of the population is Sunni Muslim; approximately 15 percent is Shi’a Muslim; and other religions, including Sikhs, Hindus, and Jews make up less than 1 per cent of the population. There also is a small, extremely low-profile Christian community, in addition to small numbers of adherents of other religions.” [21] (p1)

6.56 The US Dept of State Report on Religious Freedom 2003 noted that “In the past, small communities of Hindus, Sikhs, Jews, and Christians lived in the country; however, most members of these communities have left. Even at their peak, these non-Muslim minorities constituted less than one per cent of the population. Most of the country’s small Hindu and Sikh population, which once numbered about 50,000 persons, emigrated or took refuge abroad during the many years of conflict. However, recently some minorities have begun to return. Non-Muslims such as Hindus, Sikhs and Jews are now estimated to number only in the hundreds. [21] (p 2) The US Dept of State Report on Human Rights Practices 2003 noted that “There also were small numbers of Ismailis living in the central and northern parts of the country. Ismailis were Shi’a but consider the Aga Khan their spiritual leader.” [2e] (p10)

6.57 According to the US Dept of State Report on International Religious Freedom 2003, "Several areas of the country are religiously homogenous. Sunni Muslim Pashtuns, centered around the city of Kandahar, dominate the south and east of the country. The homeland of the Shi'a Hazaras is in the Hazarajat or the mountainous central highlands around Bamiyan. Northeastern provinces traditionally have Ismaili populations. Other areas, including Kabul, the capital, are more heterogenous. For example, in and around the northern city of Mazar-i-Sharif, there is a mix of Sunnis (including ethnic Pashtuns, Turkmen, Uzbeks and Tajiks) and Shi'a (Hazaras and Qizilbash), including Shi'a Ismailis." [21] (p 2)

6.58 The US Dept of State Report on International Religious Freedom 2003 stated that "Traditionally, Sunni Islam of the Hanafi school of jurisprudence has been the dominant religion. For the last 200 years, Sunnis often have looked to the example of the Darul Uloom madrassah (religious school) located in Deoband near Delhi, India. The Deobandi school has long sought to purify Islam by discarding supposedly un-Islamic accretions to the faith and reemphasizing the models established in the Koran and the customary practices of the Prophet Mohammed. Additionally Deobandi scholars often have opposed what they perceive as Western influences. Much of the population adheres to Deobandi-influenced Hanafi Sunnism, but a sizable (sic) minority adheres to a more mystical version of Islam, generally known as Sufism. Sufism centers on orders or brotherhoods that follow charismatic religious leaders." [21] (p2)

6.59 The US Dept of State Report on International Religious Freedom 2003 stated that "Under the Taliban, freedom of religion was restricted severely." [21] (p1) The US Dept of State Report on Human Rights Practices 2001 advised that "Custom and law required affiliation with some religion, and atheism was considered apostasy, and was punishable by death." [2b] (p 13)

6.60 According to the US Dept of State Report for 2001, "The country's official name, according to the Taliban was the Islamic Emirate of Afghanistan; according to the Northern Alliance, it was the Islamic State of Afghanistan. These names reflected the desire of both factions to promote Islam as the state religion. Taliban leader Mullah Omar carried the title of Commander of the Faithful. The Taliban ruled strictly in areas that it controlled, establishing ad hoc and rudimentary judicial systems. The Taliban established Islamic courts to judge criminal cases and resolve disputes. Taliban courts imposed their extreme interpretation of Islamic law and punishments following swift summary trials. The Taliban sought to institute its extreme interpretation of Islamic observance in areas under its control and declared that all Muslims in areas under Taliban control must abide by the Taliban's interpretation of Islamic law...In practice the rigid policies adopted both by the Taliban and by certain opposition groups had a chilling effect on adherents of other forms of Islam and on other faiths." [2b] (p 13)

6.61 The US Dept of State reported that "In March 2001 the Taliban, acting on what it claimed to be religious grounds, completely destroyed two giant statues of the Buddha dating from pre-Islamic times which were carved into the cliffs near Bamiyan... The destruction of the statues received worldwide criticism, including from numerous Islamic authorities. The Taliban also claimed to have destroyed statues and images in the collections of the Kabul Museum and elsewhere dating

from the pre-Islamic period. There are reportedly no practicing Buddhists in the country; however the Bamiyan statues and the collection of pre-Islamic images...are widely considered to be important cultural artifacts and religious symbols.” [2b] (p13)

6.62 Sources, including UNHCR and the Co-operation Centre for Afghanistan (CCA), consulted during a September 2002 Danish Fact Finding mission to Afghanistan had no knowledge of the possible existence of Bahais or a Bahai community in Afghanistan.[8c] (p 52)

6.63 A Danish fact finding Mission to Afghanistan in September/October 2002 reported the views of several sources: “The coordinator of UNAMA’s Civil Affairs Branch believed that Muslims behaving in a secular manner are in latent danger of reprisals. Non-Islamic/secular conduct is not acceptable in Afghanistan today...UNHCR-Kabul found that compared to the Taliban period, there has been some secularisation. Currently there is room for religious minorities such as Shias, Hindus and Sikhs...According to CCA (Co-operation Centre for Afghanistan), no steps have been taken towards the secularisation of the Afghan society at this stage. It is a Muslim society, and Islamic groups are in power, but religious tolerance towards Shias, Ismaelis as well as Hindus and Sikhs is greater than in the past. Alcohol is still prohibited.” [8c] (p 51)

6.64 In August 2002 it was reported by Reuters News Service that an Accountability Department similar to that of the notorious religious police of the ousted Taliban regime, but with less draconian powers had been established. According to Reuters, Deputy Chief Justice Manawi explained that the Accountability Department was tasked with ensuring that Afghan Muslims refrained from crimes such as drinking alcohol, fornication and sodomy. Manawi was reported as saying that accountability employees were trying to persuade people not to pursue vice and unlawful acts. Manawi also stressed that offenders would face gentler punishments than under the Taliban. The new punishments would depend on the crime, but included fines, imprisonment and some lashings. The Supreme Court would have the final say in the administering of punishments, which would not be carried out in public, as they were under the Taliban. [24b]

6.65 The US Dept of State Report on Human Rights Practices for 2003 reports that “The 1964 Constitution, in effect under the Bonn Agreement, states that Islam is the “sacred religion of Afghanistan” and states that religious rites of the state shall be performed according to the Hanafi doctrine. The Constitution also states that “non-Muslim citizens shall be free to perform their rituals within the limits determined by laws for public decency and public peace.” The Government continued a policy of religious tolerance during the year; however, custom and law required affiliation with some religion.” [2e] (p10)

6.66 According to the US Dept of State Report 2003, “Licensing and registration of religious groups do not appear to be required by the authorities in any part of the country. The small number of non-Muslim residents may practice their faith but may not proselytize. Blasphemy and apostasy were punishable by death. In the spring, a journalist in Mazar-i Sharif was accused in a local newspaper affiliated with the Jamiat-i-Islami Party of insulting Islam in an article she had written about the formation of the country’s next constitution. The journalist, Mariya Sazawar, was

accused of writing that Islamic rules were oppressive to women. The local religious scholars recommended that she be sentenced to death. In March [2003], a local court acquitted her; allegations of blasphemy were not confirmed.” [2e] (p10)

6.67 The Institute of War and Peace Reporting (IWPR) reported on 26 January 2004 that the final version of the new Constitution was passed on 4 January 2004. Commenting on the role of religion in the Constitution, the IWPR said that the discussion of religious roles throughout the three week Loya Jirga in December 2003 was heated. According to the IWPR, “The final document states explicitly that “The religion of the state of the Islamic Republic of Afghanistan is the sacred religion of Islam”, thus putting the faith at the heart of the state as well as its people. Whilst Islamic law is given an explicit place in the final draft it is at least on the face of it, a limited role. Article 130 says that Hanafi jurisprudence – the school of Sunni law that prevails in Afghanistan – should provide a guide when no explicit laws apply. At the same time, Article 131 says Shia jurisprudence should be used in personal matters affecting the minority religious community, or when no other laws apply...But much could depend on Article 3 – “In Afghanistan, no law can be contrary to the sacred Islamic beliefs and commands” which some say could, in the hands of a conservative Supreme Court, open the back door to Sharia law.” [73b] (p4-5)

6.68 In the final adopted version of the new Constitution, Article 2 states that “The religion of the state of the Islamic Republic of Afghanistan is the sacred religion of Islam. Followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law.” Article 3 states that “In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam.” [15c]

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Religious Groups

Shia Muslims

6.69 The UNHCR noted in January 1999 that “The Shi’a (about 15% of the population), mostly belonging to the Hazara ethnic group, occupied the bottom of the social hierarchy in Afghanistan. Concentrated in Central and Western Afghanistan, the Shi’a have long maintained religious links with Iran, where their ‘ulema’ [senior religious scholars] studied at the famous seminaries in Qum and Mashad.” [11b] (p 24-25)

6.70 The US Dept of State Report on Human Rights Practices 2003 noted that “Shi’a, including the predominately Hazara ethnic group, were among the most economically disadvantaged persons in the country. Relations between the different branches of Islam in the country were difficult. Historically, the minority Shi’a faced discrimination from the majority Sunni population. The Shi’a minority advocated a national government that would give them equal rights as citizens... Before the December 2001 collapse of the Taliban, repression by the Taliban of the Hazara ethnic group, which is predominantly Shi’a Muslim, was particularly severe. Although the conflict between the Hazaras and the Taliban was political and military as well as religious, and it was not possible to state with certainty that the Taliban engaged in its campaign against the Hazaras solely because of their religious beliefs, the religious affiliation of the Hazaras apparently was a significant factor leading to their

repression.” [2e] (p10)

6.71 According to the US Dept of State Report on International Religious Freedom in 2003, “In September 2002, the Shi’a community in Kabul was able to openly celebrate the birthday of Imam Ali, one of the most revered figures in the Shi’a tradition. Shi’a also celebrated without incident the 10th of Muharram (Ashura), which marks the murder of the Prophet Mohammad’s grandson, Hussein. Under the Taliban, Shi’a could not openly celebrate their holy days, though they were able to do so in prior years. There were no reported incidents surrounding Shi’a religious celebrations during the year and a half following the Taliban’s fall.” [2f] (p3)

6.72 The US Dept of State Report on Religious Freedom in 2003 also noted that “Most Shi’a Muslims are members of the Hazara ethnic group, which traditionally has been segregated from the rest of society for a combination of political, ethnic, and religious reasons. Throughout the country’s history, there have been many examples of conflicts between the Hazaras and other citizens. These conflicts often have had economic and political roots but also have acquired religious dimensions. The treatment of Shi’a varied from locality to locality. However, the active persecution of Afghanistan’s Shi’a minority, including Ismailis, under the Taliban regime has ended and, although some discrimination continues at the local level, Shi’a generally are once again free to participate fully in public life.” [2f] (p5)

6.73 According to the Institute for War and Peace Reporting (IWPR), Shia Muslims made important gains in the new constitution passed on 4 January 2004 at the end of the Loya Jirga. The IWPR reported that “Unlike the previous constitution of 1964, when the king who then ruled Afghanistan had to be a follower of the Hanafi Sunni school of Islam, a Shia Muslim can now become leader of the country. The qualifications for the president under the new constitution only require a candidate to be a Muslim. It recognises in Article 131 that Shia – who represent perhaps 15 per cent of the population – can use their own school of law in court cases involving personal matters... The Shia have their own school of law, Jafari.” [73c]

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See also [Hazaras](#) paragraphs 6.136 - 6.151

Ismailis

6.74 The UNHCR noted in a paper dated June 1997 that “The Ismailis, a Muslim minority group that split from the Shi’a in [the year] 765, have been regarded as “non-Muslims” by radical elements of the Muslim population, as Ismailis believe that their spiritual leader, Karim Aga Khan, is a direct descendant of the Prophet Mohammad.” [11a] (p 21).

6.75 According to the US Dept of State Report on Human Rights Practices for 2001, “The Ismaili community fought for the Northern Alliance against the Taliban and suffered when the Taliban occupied territories once held by Ismaili forces. There were reports of mistreatment of Ismailis at the hands of the Taliban and destruction of some of their cultural monuments.” [2b] (p 14) The Co-operation Centre for Afghanistan told a

Danish Fact Finding Mission to Afghanistan in September 2002 that religious tolerance towards Ismailis was greater than in the past. [8c] (p 51)

6.76 The US Dept of State Report on Religious Freedom in 2003 noted that “The treatment of Shi’a varied from locality to locality. However, the active persecution of Afghanistan’s Shi’a minority, including Ismailis, under the Taliban regime has ended and, although some discrimination continues at the local level, Shi’a generally are once again free to participate fully in public life.” [2f] (p5)

Sikhs and Hindus

6.77 The Foreign and Commonwealth Office advised in January 1999 that “Afghan Sikhs comprise descendants of traders drawn to Afghanistan through Afghan intervention in northern India and British-Indian intervention in Afghanistan, plus some whose emigration was stimulated by the upheaval of 1946-47 that accompanied partition of the Indian Empire. The Afghan Sikhs retain the use of Punjabi amongst themselves; given their involvement in trade, Dari/Farsi is probably the most important additional language for them.” [15b]

6.78 In September 2001, it was reported by IRIN, a UN humanitarian information unit, that “Sikhs left Afghanistan en masse, along with thousands of Hindus, after Hindu extremists destroyed the Babri Mosque in Ayodhya, India in December 1992. Seeking revenge, radical Muslims in Afghanistan saw their countrymen of Indian origin as soft targets and engaged in large-scale looting of Hindu and Sikh temples countrywide. Whereas both communities had already suffered from the war in Afghanistan, it was this event that struck them hardest.” [36f] The British High Commission in Islamabad advised in October 1997 that although all Sikhs fled from Kabul in 1996 when the Taliban assumed control, it had been reported that there were still up to 200 shops in Jalalabad. [15a]

6.79 In 1998 the Director of the Centre for Afghanistan Studies (CAS) at the University of Nebraska in Omaha, Canada advised that Hindus had been an integral aspect of the economic and social life in Afghanistan for a long time and they showed signs of integration as their children attended the same schools as other Afghans. Since the Taliban took control of Kabul and the major cities of Afghanistan, the financial base of Hindu businessmen had been eroded under the dire economic situation that prevailed in Afghanistan. The director was unaware of any case of Hindus being mistreated by the Taliban and added that they were not targeted because the community was very small and did not threaten the Taliban. [3b]

6.80 In April 2001, a Christian Science Monitor Report stated that a leader of the Sikh community in Jalalabad said that he and his fellow Sikhs felt safe in Afghanistan despite Taliban rule. The Report noted that “In Jalalabad, there are 100 Sikh families, about 700 Sikhs in all, who come to worship at two large Sikh Gurdwaras, or temples...While Sikhs dominate the textile market in retail shops, Muslims are the ones who bring the fabric into the country...It’s a system of commerce built on a foundation of communal coexistence and mutual reliance.” [35a] (p2)

6.81 The US Dept of State Country Report on Human Rights Practices for 2001 stated that “On May 23 [2001], the Taliban decreed that Hindus and Sikhs would be required

to wear a piece of yellow cloth attached to their clothing to identify their religious affiliation. The Taliban purportedly imposed this system of identification to spare non-Muslims from the enforcement of rules mandatory for Muslims and from harassment by agents of the PVSF. The requirement later was suspended and an identity card was to be issued instead. On July 3 [2001] the Taliban announced that Hindus would be consulted before ordering them to wear any distinctive mark to differentiate themselves from Muslims.” [2b] (p 13)

6.82 In May 2002, the Tribune, an Indian newspaper reported that Afghanistan's Deputy Minister of Transport, said during a visit to India, that the interim Government had decided to grant full protection to Afghan Sikhs and Hindus who had fled from the country following the policies of the Taliban. Most of these Afghan Hindus and Sikhs had migrated to Pakistan and India. [37] In June 2002 a report in the Tehran Times indicated that there were 30,000 Afghan Hindus and Sikhs. It was reported that Sikhs and Hindus, united in diversity, were close in Afghanistan, unlike their counterparts in India where the faiths are clearly separate. In predominantly Muslim Afghanistan, they shared the same temples as well as many religious ceremonies. The report said that four Hindu and Sikh representatives were appointed to attend the Loya Jirga in June 2002. [49]

6.83 A report in June 2002 from the UN Office for the Coordination of Humanitarian Affairs indicated that only about 1,000 Sikhs remained in the country, half of which were concentrated in Jalalabad. The report also stated that there were four or five Hindu families and about 15 Sikh families in Kandahar city and a further 15 to 20 families in Helmand province. [40]

6.84 The EU's special representative and UNHCR-Kabul told a Danish Fact Finding Mission to Afghanistan in September 2002 that they believed the situation for non-Muslim groups such as Hindus and Sikhs was generally good. The Co-operation Centre for Afghanistan said that there was religious tolerance towards Hindus and Sikhs as well as the right to practice their religion. [8c] (p 52)

6.85 A report by the Afghan Professional Alliance for Minority Rights (APAMR) on 22 May 2003 stated that following the fall of the Taliban, some Sikhs and Hindus, mostly from India returned to Afghanistan to see if they could rebuild their lives again in Afghanistan. Many of their houses and temples were found to be totally ruined and many of their shops, houses and lands were being occupied by some powerful commanders and armed groups. [64] (p3) The report noted that in 2002 some 50 Hindu/Sikh families returned from India. “The returnees who have found their houses totally ruined have neither shelter of their own nor the capability to even rent a house.” The Hindus and Sikhs who have returned to Afghanistan are reported to be mostly living in temples (Daramsals) in Kabul and other provinces, as they do not have a house or job to support themselves. [64] (p6) Some of the returnees were too afraid to attempt to repossess their properties for fear of reprisals from the present occupants. [64] (p7-8) The APAMR report estimated that 1200 Hindu and Sikh families were living in Afghanistan including 350 families in Kabul. [64] (p 4)

6.86 According to the APAMR report, in March 2003 representatives of the Hindu/Sikh community in Helmand province visited APAMR saying that their community was experiencing problems in Helmand province. It was alleged that the governor of the

province had demolished their shops in the centre of the province and allocated some lands for the Muslims whose shops were demolished but refused to allocate lands for Hindus. The representatives alleged that "As a policy people leasing their houses to the Hindus were pressurized by the governor to expel the Hindus from their houses. There was a policy of [the] governor to compel the Hindus to leave the province." APAMR referred the case to the Ministry of Interior and the ministry promised to solve the problem, however at the time the APAMR report was published the problems had not yet been resolved. [64] (p9-10) Representatives of the Hindu and Sikh community emphasised to APAMR that they had not been consulted about the selection of a member for the Constitution Commission to represent their community and they have not been consulted about the difficulties and problems their community face. [64] (p11)

6.87 In July 2003 the UNHCR reported "There are some 3,500 Sikh and Hindu families in Afghanistan, mainly living in the Kabul, Ghazni, Kandahar, Helmand and Nangahar provinces. Until 1992, they had not suffered from discrimination and could exercise their religion freely in the urban centres where they predominantly lived. During the civil war and the Taliban rule, many of their temples were destroyed or used as military bases. The community still suffers from the consequences of a more rigorous and less tolerant application of Islamic values by the State and the various factions in power during the last 14 years. As a result, the community still faces various forms of intimidation in public places and children cannot attend earlier existing Sikh/Hindu schools. Some of the Sikh and Hindu returning families from India have claimed that they have not been able to recover their property." [11i] (p37-38)

6.88 In the Afghan Professional Alliance for Minority Rights (APAMR) report of May 2003, it was reported that in some provinces, including Kandahar, Helmand, Khost, Nangahar and Ghazni there is either no school for the Sikh and Hindu community, or their schools are effectively poor and destroyed and need to be supported and reconstructed. [64] (p5-6). Representatives of the Hindu and Sikh community advised APAMR that people are unwilling to send their children to other Afghan schools for fear of mistreatment. [64] (p4)

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

6.90 The 2003 US Dept of State Report on Religious Freedom in Afghanistan states that "Most of the country's small Hindu and Sikh population, which once numbered about 50,000 persons, emigrated or took refuge abroad during the many years of conflict. However, recently some minorities have begun to return. Non-Muslims such as Hindus, Sikhs, and Jews are now estimated to number only in the hundreds." [2i] (p2) According to the US Dept of State Report "The fall of the Taliban and the subsequent

establishment of the AIA and TISA resulted in a major improvement in religious freedom. Sikh and Hindu representatives at the Emergency Loya Jirga in June 2002 reported that they no longer were repressed and felt free to practice their religions.” [21] (p4)

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

6.92 In the final version of the Constitution adopted in January 2004, Article 2 states that “The religion of the state of the Islamic Republic of Afghanistan is the sacred religion of Islam. Followers of other religions are free to exercise their faith and perform their religious rites within the limits of the provisions of law.” Article 3 states that “In Afghanistan, no law can be contrary to the beliefs and provisions of the sacred religion of Islam.” [15c]

Converts

6.93 A Danish fact finding mission in September/October 2002 reported that “According to CCA, [Co-operation Centre for Afghanistan] it is not permitted to convert from Islam to Christianity, and to do so carries the death penalty. CCA would not rule out that NGOs might have converted Muslims to Christianity, but if so this has not been discovered and any converts would have fled the country.” According to UNHCR, there were currently no Christians in Afghanistan. According to the source, there may be Christian Afghans who have fled from Afghanistan or who have converted abroad, but officially there was no Christian community in Afghanistan. UNHCR-Kabul pointed out that at the time of the interview it would not cause problems in itself to be working for a Christian NGO, contrary to the situation during the Taliban. However, Afghans, who were working for Christian NGOs, should be careful not to cause suspicion that they sympathised with Christian beliefs. The EU’s special representative confirmed that Afghans who were working for foreign NGOs with a Christian background were accepted but Afghan Christians were not. [8c] (p52)

6.94 In a report dated July 2003, UNHCR Geneva reported that “The risk of persecution continues to exist for Afghans suspected, or accused, of having converted from Islam to Christianity, or Judaism. Conversion is punishable by death throughout Afghanistan.” UNHCR reported that the Chief Justice Fazul Hadi Shinwari, in an interview with Reuters on 24 January 2002, confirmed that “Proselytising Christians may face the death penalty and Muslims who drink alcohol could be given 80 lashes...He also warned foreigners against trying to convert Afghans from Islam: ‘The Islamic government, according to Sharia, is bound to punish those who get involved in anti-Islamic activities...We can punish them for propagating other religions – such as threaten them, expel them and, as a last resort, execute them, but only with evidence.’

Nevertheless, at the time of writing of the report, no such harsh punishment was reported.” [11i] (p38)

6.95 In August 2003, Amnesty International published their report, “Afghanistan Re-establishing the rule of law” in which it was reported that President Karzai had imposed a moratorium on the death penalty. The report called for the provision for the imposition of the death penalty to be removed from the Criminal Code. [7d] (p25)

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

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Freedom of Assembly and Association

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

6.98 The US Department of State also reported that “Police used harassment and excessive force against demonstrators during the year [2003]. For example, in May, Kabul police arrested and beat several students for protesting against nepotism in Kabul University’s grading system. No action was taken against security forces who forcibly dispersed demonstrations or meetings in 2002 or 2001. The Government allows for freedom of association; however, there were reports of harassment by local officials during the year [2003]. For example, in Herat, Ismail Khan’s officials harassed and interfered with the Professionals’ Shura, the Herat Literary Society, and the Women’s Shura.” [2e p9] According to a Human Rights Watch report published in November 2002, no organisations in Herat may be started without Ismail Khan’s permission and in those organisations he has allowed he has handpicked the leadership or strongly pressured the leaders to follow his orders. [17j] (p 30)

6.99 Article 35 of the new Constitution adopted in January 2004 states “The citizens of Afghanistan have the right to form social organizations for the purpose of securing material or spiritual aims in accordance with the provisions of the law. The citizens of Afghanistan have the right to form political parties in accordance with the provisions of the law, provided that:

1. The program and charter of the party are not contrary to the principles of sacred

religion of Islam, and the provisions and values of this Constitution.

2. The organizational structure, and financial sources of the party are made public.
3. The party does not have military or paramilitary aims and structures.
4. Should have no affiliation to a foreign political party or sources.

Formation and functioning of a party based on ethnicity, language, Islamic school of thought (mazhab-I fihi) and region is not permissible.

A party set up in accordance with provisions of the law shall not be dissolved without lawful reasons and the decision of an authorized court.” [15c]

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

Employment Rights

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

6.101 The US Department of State Report for 2003 noted that “Current law is not fully in compliance with internationally recognized workers rights to form free trade unions. The country lacks a tradition of genuine labor-management bargaining. There were no known labor courts or other mechanisms for resolving labor disputes. Wages were determined by market forces, or, in the case of government workers, dictated by the Government. There were no reports of labor rallies or strikes.” [2e] (p15)

6.102 Article 48 of the new Constitution adopted in January 2004 states “Work is the right of every Afghan. Working hours, paid holidays, right of employment and employee, and other related affairs are regulated by law. Choice of occupation and craft is free within the limits of law.” [15c]

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People Trafficking

6.103 A report by the International Organisation for Migration [IOM] in October 2003 concluded that “Trafficking in Afghanistan includes many forms, including forced marriages through abduction and for debt release; early marriages; the exchange of women for dispute settlement; abductions of women and children, including boys, for sexual and domestic servitude; situations of forced labour; forced prostitution and sexual exploitation of children...Other human rights abuses with trafficking-related elements are also being inflicted upon Afghans. These include forced recruitment into armed groups, forced labour for poppy cultivation activities, such as harvesting and transportation, hostage-taking of smuggled persons subjected to forced labour and other forms of exploitation, and the abduction or deception used for forced religious training of minors.” [38] (p65)

6.104 The IOM report also stated that “Over 22 years of internal conflict, the continued presence of armed militias across the country, the present stage of national reconstruction, and lack of central government authority in the provinces, are all factors and security concerns that have a direct impact on the prevalence of trafficking in Afghanistan.” [38] (p 66)

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

6.106 The US Department of State report noted that “Although prosecutions of traffickers increased, and the Government devoted greater attention to trafficking in persons during the year, prosecution of perpetrators continued to be inconsistent. In October, 42 children trafficking victims were rescued and taken to a shelter operated by a local NGO. Trafficking victims, especially those trafficked for sexual exploitation, faced the risk of contracting sexually transmitted diseases, including HIV/AIDS. Trafficking victims, especially those who were exploited sexually, also faced societal discrimination, particularly in their home villages and within their own families, as a result of having been trafficked.” [2e] (p16)

6.107 According to the UN Secretary-General in a report to the Security Council on 19 March 2004, “Trafficking in women and children is a matter of serious concern. Although the exact number of children being trafficked from Afghanistan is unknown, the Afghan Independent Human Rights Commission has documented over 300 cases of people who disappeared in the last five months of 2003. Efforts to end this degrading and illegal trade are being lead by the Ministry of Labour and Social Affairs with assistance from the Ministries of the Interior, Foreign Affairs, Justice, and Religious Affairs, UNAMA, UNICEF, UNHCR, international and local non-governmental organizations, and the Afghan Independent Human Rights Commission.” [39o] (p13)

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Freedom Of Movement

Current Situation

6.108 According to the US Department of State Report on Human Rights Practices

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

6.109 A number of sources were consulted, during the course of a Danish Fact Finding mission in September 2002, on the need for personal and social networks in areas people wish to move to. UNHCR Kabul advised that the availability of personal and social networks was vital for a person’s ability to live in a given area. UNHCR Kabul said that “In larger cities the need for relatives in the area where people wish to live is not quite as strong. But the source stressed that generally speaking, it is necessary for Afghans to have relatives in the area where they wish to settle. This is even more so for women. Women are unable to move without having male relatives.” [8c] (p43) Other sources, including the Danish Committee for Aid to Afghan Refugees (DACAAR), the Cooperation Centre for Afghanistan (CCA) and the International Crisis Group (ICG), confirmed the need for networks particularly in rural areas and for more vulnerable groups. [8c] (p 44)

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

6.111 However, a UNHCR report issued in July 2003 stated that “UNHCR continues to advise against resort to the notion of an internal flight or relocation alternative in the Afghan context. This advice takes into account that the traditional family and community structures of the Afghan tribal system constitute the main protection and survival (coping) mechanism. The protection provided by families, extended families and tribes is limited to areas where family or community links exist, in particular in the place of origin or habitual residence.” [11i] (p 41)

6.112 According to a Human Rights Watch (HRW) report published in July 2003 on human rights abuses in southeast Afghanistan, there were no longer government regulations barring women from studying, working, and going outside without

wearing a burqa or without a close male relative (a mahram). However, in practice many women and girls were not going out, particularly in rural areas, due to fear of being targeted by armed men. [171] (p 12) According to HRW, many of the abuses of women and girls such as kidnapping, rape, armed robbery, and extortion have devastating consequences for the liberty of movement of women and girls. The report notes that “These abuses severely restrict their ability to leave home, seek education, access health care, visit family members, buy food, or to do anything else that requires leaving their compounds and moving in a public place.” [171] (p 73)

6.113 In a report to the United Nations Economic and Social Council on 19 December 2003, the Secretary-General reiterated that “The insecurity and increasing incidence of sexual violence threaten to reverse the gains made especially for girls and women as many are afraid to venture out of their homes to attend school or go to work for fear of abduction or rape by armed groups.” [391] (p19) The Secretary-General also advised that women in Afghanistan continued to face significant obstacles, including restrictions on movement. [391] (p20)

See also Women paras 6.174 – 6.190

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6 B Human Rights Specific Groups

Ethnic Groups

Introduction

6.114 According to the UNHCR, Afghanistan is largely a tribal society divided into many tribes, clans and smaller groups. Considerable variation in the types of terrain and obstacles imposed by high mountains and deserts account for the country's marked ethnic and cultural differences. [11a] (p4) UNHCR advised in July 2003 that “The Pashtuns are the largest group (about 38%) and are divided into two main subgroups: Durrani and Ghilzai (as well as other sub-groups and tribes). While most of the Pashtuns are settlers, some of them, the Koochis [Kuchis], lead a semi-nomadic or nomadic life based on animal husbandry.” Tajiks, who are Persian-speaker Afghans, are estimated to form about 25% of the population, Hazaras 19% and Uzbecks 6%. Turkmen, Aimaks, Baloch and other smaller ethnic groups make up the remaining 12%. [111] (p 5)

6.115 In November 1999 Amnesty International reported that “During the Soviet occupation of Afghanistan, the political and military objectives of the Mujahideed largely overrode their different backgrounds. Even in the early years following the collapse of the pro-Soviet government, alliances between armed groups – which were short-lived at any rate – were based on loosely shared struggles for power and not on ethnic identities. Since 1995, tension along ethnic lines appears to have sharpened.” [71 p 11] Amnesty International reported in 1999 that they had received reports of atrocities committed against members of the ethnic groups after their areas had been captured and re-captured by rival factions. [71] (p 1-3) According to the US Department of State Report on Human Rights Practices 2003, “Before the December 2001 collapse

of the Taliban, repression by the Taliban of the Hazara ethnic group...was particularly severe.” [2e] (p10)

See also Hazaras paragraphs 6.136 - 6.151

6.116 According to the US Department of State Report on Human Rights Practices for 2003, “The 1964 constitution, in effect under the Bonn Agreement, states that “the people of Afghanistan, without any discrimination or preference, have equal rights and obligations under the law.” At year’s end [2003] local custom and practices generally prevailed in much of the country.” [2e] (p12) Article 22 of the new Constitution adopted in January 2004 states that “Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited. The citizens of Afghanistan –whether man or woman- have equal rights and duties before the law” [15c] The Institute for War and Peace Reporting (IWPR) noted that the final document named fourteen different ethnic groups as comprising the nation of Afghanistan. The IWPR reported that the national anthem will be in Pashtu, but will include the phrase “Allah-o-akbar” – the jihadi rallying cry - and mention all the names of Afghanistan’s ethnic groups. [40be]

6.117 BBC World News reported in December 2001 that the Interim Administration included representatives from Pashtun, Hazara and Tajik ethnic groups. [25ab] The Foreign and Commonwealth Office advised in July 2002 that the Transitional Administration inaugurated following the Loya Jirga in June 2002 was ethnically mixed and included; 13 Pashtuns (including Hamid Karzai); nine Tajiks; three Uzbeks; three Hazaras; and one Turkmen. [48b] On 1 March 2004, the current Administration reflected a similar ethnic mix, according to the Afghan Ministry of Foreign Affairs. [67]

6.118 In July 2003 UNHCR reported that “Ethnic discrimination has occurred in some parts of the country, often affecting different groups perceived within the community as linked to a particular political/military faction. A particularly serious feature of the security situation are confirmed reports about serious human rights abuses against members of the Pashtun ethnic minority communities in the northern and western regions of Afghanistan by local commanders.” [11i] (p 19)

6.119 According to UNHCR, the situation since April 2002 had progressively improved for Pashtun minorities in the North and West and the major party leaders in the North had given assurances that their rights would be respected. Nevertheless, UNHCR further noted that, “Although the situation has calmed in certain regions, in particular in Badghis as well as in the North-East where there have been larger Pashtun refugee and IDP returns, the situation of Pashtun communities remains precarious in the North West, where harassment and opportunism by local commanders have not ceased.” [11i] (p 19)

6.120 A report published in September 2003 by the International Crisis Group stated that “Ethnic polarisation has increased over the last 25 years, particularly in areas like Hazarajat where successive power shifts have displaced Hazaras and Pashtuns alike. But despite the long history of violent conflict and the wide rifts in the country, Afghans have a strong a sense of national identity, and many dispute that ethnicity is important. However, it clearly is a factor in both national and local divisions that those who oppose peace exploit. Long-standing discrimination and inequalities have prepared the ground for many of these problems but they are also being deliberately

fanned by commanders, particularly in the north where conflicting ethnic groups have been relocated over the years on contested land.” [26c] (pi)

See Pashtuns paragraphs 6.125 – 6.132

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Pashtuns

6.121 According to the World Factbook 2002, Pashtuns [Pathans] are the largest single ethnic group, constituting some 38% 44% of the population. [23] (p 4) The World Directory of Minorities (1997) records that Pashtuns are Sunni Muslims, living mainly in the east and south of the country adjacent to Pakistan. Pashtuns have always played a central role in Afghan politics, and their dominant position was a major catalyst in triggering the civil war. President Rabbani's regime represented the Tajik minority, whereas troops led by Gulbuddin Hekmatyar (and later those of the Taliban) were mainly Pashtun. [27] (p 539)

6.122 The World Directory of Minorities (1997) notes that “The social structure of the Pashtuns is based on the Pashtunwali (or Pukhtunwali) code. This requires the speaking speaking of Pashtu and adherence to established customs. Hospitality is an important principle, as are a reliance on the tribal council (jirga) for the enforcement of disputes and local decision-making, and the seclusion of women from all affairs outside the home. A major aspect of the Pashtunwali code emphasizes personal authority and freedom. Political leadership is based on personalities rather than on structures or ideologies. Economically, the majority of Pashtuns survive on agriculture and animal husbandry, with some involved in trade.” [27] (p 539)

6.123 The World Directory of Minorities further notes that “Despite the dominant position they have held, Pashtuns do not form a homogeneous group, and many have fallen victim to oppression at the hands of their own elites. The power and leadership of individuals are perhaps what divides Pashtuns, not only into different tribes but also into numerous sub-tribes, each isolated within its own borders. Interference in one another's affairs has caused conflicts among sub-tribes throughout their history. Yet external interference, or interference by the central government, has usually resulted in a unified response.” [27] (p 539)

6.124 In 1997, a UNHCR background paper on refugees and asylum seekers from Afghanistan noted that Pashtuns made up the great majority of the refugees in Pakistan. The Pashtun tribal population of Pakistan's North-West Frontier Province (NWFP) still had much in common in terms of culture, language and traditions with their fellow Pashtu-speakers across the border (the 'Duran Line') in Afghanistan. The Duran Line of 1893 demarcated the border of modern-day Pakistan and Afghanistan. There is a long tradition of mobility among the Pashtuns who live in the NWFP and those of eastern Afghanistan. Notably, some 60,000 nomads ('kuchis' or 'powindahs' as they are respectively known in Afghanistan and Pakistan) were accustomed to moving annually with their herds between summer pastures in Afghanistan and winter pastures in Pakistan. Others were merchants or businessmen with interests in Kabul, Kandahar and Jalalabad in Afghanistan and Peshawar in Pakistan, who moved regularly between the two countries. [11a] (p 5)

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6.125 A report of the findings of Human Rights Watch (HRW) researchers who visited northern Afghanistan in February and March 2002 was issued in April 2002. The report detailed abuses suffered by ethnic Pashtuns in northern Afghanistan since the fall of the Taliban in November 2001. The abuses included killings, sexual violence, beatings, extortion, and looting. HRW noted that, "Pashtuns are being targeted as their ethnic group was closely associated with the Taliban regime whose leadership consisted mostly of Pashtuns from southern Afghanistan. Directly implicated in many of the abuses are the three main ethnically-based parties and their militias in northern Afghanistan – the predominantly ethnic Uzbek Junbish-I-Milli-yi Islami, the predominately ethnic Tajik Jamiat e- Islami and the ethnic Hazara Hizbi-I Wahdat – as well as non-aligned armed Uzbeks, Tajiks and Hazaras who are taking advantage of the vulnerability of unprotected and selectively disarmed Pashtun communities." [17e] (p 1)

6.126 The HRW report also advised that Hamid Karzai had taken some positive steps to address the situation and had appointed a three-person independent commission to investigate the claims of anti-Pashtun violence in northern Afghanistan. However, his capacity for addressing the violence was limited due to real power in Afghanistan resting with commanders who were associated with the three main parties, including those implicated in the abuses. Nevertheless, according to HRW, "Leaders of those parties who hold positions in the interim government have on occasion taken corrective action. For example, General Abdul Rashid Dostum has removed some abusive Junbish commanders from power, most noticeably in Faryab province, and has placed new commanders among threatened Pashtun communities to protect them - but other Junbish commanders continue to carry out abuses with seeming impunity." [17e] (p2)

6.127 In a paper dated July 2002 UNHCR Geneva stated there had been confirmed reports of persecution of ethnic Pashtuns where they were an ethnic minority in the North and parts of the Western region of Afghanistan. In particular in Faryab, Jawzjan, Baghlan, Kunduz, Takhar, Sar-I-Pul and Samangan and in addition around Herat mainly among displaced persons. In response to these reports the Interim Administration sent an official mission to the North which confirmed the reports and recommended the establishment of a commission against ethnic violence in the North. The commission is tasked to investigate reports of violence and encourage dialogue between the communities. [11g] (p13-14)

6.128 Most sources consulted during a Danish Fact Finding mission in September 2002 pointed out that ethnically based persecution of Pashtuns was still continuing particularly in northern regions and in some districts in Herat. [8c] (p 46) According to UNHCR Mazar-i-Sharif, although there was considerable discrimination against Pashtuns in terms of access to resources and there were incidents of certain forms of persecution, generally the situation had improved since March 2002. UNHCR said that a large number of Pashtuns had returned to the northern area in June, July and August 2002, whereas earlier in the year only Tajiks, Hazaras and Uzbeks had returned. [8c] (p 48)

6.129 In November 2002 HRW issued a report on the situation in western Afghanistan and reported that, in Herat, "Members of the Pashtun minority are specially targeted for abuse. UN and nongovernmental organization (NGO) staff

estimate that even as other refugees have returned, tens of thousands of Pashtuns have fled western Afghanistan to Kandahar, Iran and Pakistan in the last nine months to escape persecution.” [17] (p 5) A Swedish fact finding mission in November 2002 reported that Pashtuns were still considered by some to be traitors. For example, by Ismail Khan in Herat. [61] (p 18)

6.130 In early March 2003 it was reported by the BBC World News that the main local leaders in Afghanistan had agreed to bring an end to factional fighting and help thousands of Afghans return to their homes. UN officials said that the agreement had been secured by Ruud Lubbers, the UN High Commissioner for Refugees. [25bK]

6.131 According to a UNHCR report issued in July 2003, “Since April 2002, the situation for Pashtun minorities in the North and West has progressively improved. UNHCR has been actively supporting initiatives to prepare for the voluntary, safe and dignified return of displaced Pashtuns to the North, and the major party leaders in the North have given assurances that their rights will be respected. Although the situation has calmed in certain regions, particularly in Badghis as well as in the North-East where there have been larger Pashtun refugee and IDP returns, the situation of Pashtun communities remains precarious in the North West, where harassment and opportunism by local commanders have not ceased.” [111] (p 19)

6.132 On 21 March 2004, a UNAMA spokesman announced that “Go and See” visits were underway in the Northern Provinces. According to the spokesman, “The Ministry of Refugees and Repatriation (MoRR) and UNHCR have organized the second “go and see” visit by leaders of internally displaced people (IDPs) as well as refugee representatives from Balochistan Province in Pakistan... (As you know,) the first “go and see” visit organized last month to Faryab Province has proven very useful in helping IDPs make decisions about their possible return back to their places of origin... Many of these families had fled the northwestern province nearly three years ago and were staying in Zar-e-Dasht camp in Kandahar Province. They are of Pashtun ethnicity and had left their homes due to conflict and human rights violations after the fall of the Taliban regime. The return momentum is picking up, taking advantage of improved conditions in the Northwest. About 100 more internally displaced families have expressed their willingness to return to their places of origin in Badghis Province and another 40 families are eager to return back to Faryab Province.” [40p]

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Tajiks

6.133 According to the World Factbook 2002, Tajiks constitute about 25% of the population. [23] (p 4) The World Directory of Minorities (1997) records that “Most [Tajiks] are Sunni Muslims and speak a form of Farsi close to the national language of Iran. Tajiks are of Central Asian origin and 4 million of this ethnic group live in the neighbouring Central Asian state of Tajikistan. Tajiks have significant political influence in Afghanistan because of their level of education and wealth. Unlike in the case of Pashtuns, there is no specific Tajik social structure. They are divided between the north, the west and Kabul and have adopted the social and cultural patterns of their neighbours.” [27] (p 540) According to a UNHCR paper published in June 1997, Tajiks are the second largest ethnic group in Afghanistan. Most of them are Sunni Muslims,

but Shia Muslim Tajiks are also found in the west of the country (in and around the city of Herat) and in Kabul. [11a] (p 5)

6.134 In May 2002 a Danish fact finding mission reported that “UNHCR-Afghanistan stated that there are problems in Bamian province between Tajiks and Hazaras... The director for Cooperation Centre for Afghanistan (CCA) also stated that there have been violent attacks directed against Tajiks in the town of Bamian, based on disagreements between the current occupiers (Hazaras) of properties, and former owners (Tajiks), who are returning. The attacks have not, according to CCA, been of a life-threatening nature... The director for ICG (International Crisis Group) stated that Tajiks are safe in Kabul but not in the northern areas due to clashes between Tajiks and Uzbeks around Mazar-I-Sharif.” [8b] (section IV.2.1)

6.135 A Danish Fact Finding Mission in September/October 2002 reported that “CCA (Cooperation Centre for Afghanistan) advised that, generally speaking, there were no ethnic relationship problems between the Uzbeks, Tajiks and Hazaras, but that relations between the commandants cause problems. E.g., in the northern areas, there are power struggles among three ethnically different commandants, Atta (Tajik), Dostum (Uzbek) and Mohaqqueq (Hazara).” [8c] (p 46)

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Hazaras

6.136 According to the World Factbook 2002, Hazaras constitute 10% of the population. [23] (p 4) The World Directory of Minorities (1997) records that “Economic pressures and social and political repression have resulted in Hazaras combining with other Shi’a minority groups during the 1960s and 1970s and playing a prominent role in the prolonged civil war...Hazaras have always lived on the edge of economic survival...Having lost most of their fertile land to the Pastuns...and to the nomads...Hazaras were forced to occupy the dry mountains of the central highlands.” [27] (p 540) A Danish fact finding mission in 1997 reported that “Both in their physical appearance and in their cultural customs, Hazaras show their Asian origins, but they speak a variant of Persian and most of them are Imami Shia Muslims.” [8a] (p 74)

6.137 According to a Minority Rights Group (MRG) briefing in November 2003, Hazaras have been traditionally marginalised in Afghan society. MRG report that “The Hazaras are thought to be descendants of the Mongol tribes who once devastated Afghanistan, and are said to have been left to garrison the country by Genghis Khan. The Hazaras have often faced considerable economic discrimination – being forced to take on more menial jobs – and have also found themselves squeezed from many of their traditional lands by nomadic Pashtuns. Starting at the end of the nineteenth century, successive Pashtun leaders pursued active policies of land colonization, particularly in the northern and central regions, rewarding their supporters, often at the expense of the Hazaras. This policy was partially reversed during the Soviet occupation, but started again under the Taliban.” [76] (p6)

6.138 The MRG Report of November 2003 also notes that a Hazara-backed political party/militia group, Hisb-e-Wahdat, had sought to expand its influence when the Mujahidin captured Kabul in 1992. Hisb-e-Wahdat had been formed as a result of an initiative by the Iranian government. According to the MRG report “They were opposed

on this occasion by a Saudi-backed Pashtun militia, Ittihad-I-Islami, and eventually driven back from the city after suffering heavy casualties. Five years later [1997] the Hazaras helped to inflict a significant defeat on the Taliban in the northern town of Mazar-e-Sharif. Thousands of Hazara civilians were systematically murdered in retaliation when the Taliban finally recaptured Mazar in 1998.” MRG also reported that Hazara civilians were massacred by the Taliban at Robatak Pass in 2000 and Yakawlang in 2001. [76] (p6)

6.139 According to an Amnesty International report of November 1999, when the Taliban captured Bamian on 9 May 1999 from the Hizb-i-Wahdat, the majority of the Hazara people fled to the surrounding mountains with whatever belongings they could take with them. Many of those who stayed behind were later reported to have become the targets of systematic killings by the Taliban guards arriving in the city. Kuchi Nomads (from the Pashtun tribes) were reportedly encouraged to settle there. [71] (p 5-6)

6.140 On 7 April 2002 BBC World News reported that three mass graves had been discovered in the central Afghan region of Bamiyan. It was reported that the graves contained at least 35 bodies thought to be those of local Hazaras killed a month before the fall of the Taliban in late 2001. [25b6] A further BBC report on 11 April 2002 stated that a joint UN-Afghan investigative team had gone to the area. The team reported that it had examined two sites in Daudi village, and a UN spokesman, Manoel de Almeida e Silva said they had ascertained that at least four people were buried there. Forensic teams were to be called in to carry out a more thorough examination of the sites and according to the report “Mr Silva also said there were strong indications of other sites yet to be uncovered.” [25b7]

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6.141 In September 2002 a Danish fact finding mission reported that UNHCR Kabul and the EU’s special representative found that discrimination against Hazaras still occurred. According to the EU’s special representative the discrimination took the form of being refused access to high positions and in access to education. However, the Cooperation Centre for Afghanistan (CCA) and the Agency Coordination Body for Afghanistan (ACBAR) stated there were no problems for Hazaras based on their ethnicity. [8c] (p 49)

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

6.143 USCIS noted that “Given that security is fragile in much of Afghanistan, it is possible that individual Hazaras could be harassed by Taliban members, yet it is unlikely that Hazaras as a group are being targeted, according to the Dean of International Studies and Programs at the University of Nebraska at Omaha who is a longtime Afghanistan observer... This is particularly true for those living in the traditional Hazara stronghold in mountainous central Afghanistan, known as

Hazarajat, and in Kabul, where many Hazaras work (Dean 3 Apr 2003). Nevertheless, reports emerged in late 2002 of harassment of Hazaras by Taliban allies in a remote part of central Afghanistan, though U.S.-led forces have since taken control of the region." [30] (p2)

6.144 According to a Swedish fact finding mission in November 2002, the Director of Field Coordination Division at UNAMA said that no Hazaras, in Kabul, would be at risk due to ethnicity. The source advised "However, Hazaras in western Kabul could be at risk because the area is controlled by a Pashtun leader, Sayyaf. Hazaras who in any way have a high profile could be seen as a threat and could be at risk even from their own leaders." [61] (p 19) Amnesty International reported in June 2003 that some Hazara returnees in western Kabul had been targets of violence and petty crime in that area, some of which was carried out by rival ethnic groups. Returnees alleged that the police usually made no attempt to investigate their complaints. [71] (p24)

6.145 In a paper dated July 2003, UNHCR reported that Hazaras from the Kamard district of Bamian had complained of persecution by Tajik or Tatar commanders, including extortion, beating and intimidation and this had caused population movements throughout 2002 and into 2003. [111] (p 20)

6.146 On 12 November 2003, BBC News reported that "The central Afghanistan region of Bamiyan became the focus of world attention in February, 2001, when the ruling Taleban destroyed two giant statues of the Buddha there that were 1,800 years old. The bitter international condemnation of the Taleban also brought to light the suffering of the local Hazara people at the hands of the Taleban. Now the people are getting much better food, health and education. And officials say that much of the thanks for that goes to the international troops now stationed there. "The people of Bamiyan are very happy with this force" Muhammad Raheem Aliyah, governor of Bamiyan province, told the BBC World Service's Assignment programme. "Its presence here is a big help both for security and for the economy." [25ap]

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

6.148 On 7 January 2004, Reuters reported that unidentified gunmen had killed 12 ethnic minority Hazaras in southern Afghanistan. It was reported that "The Hazaras were travelling in a vehicle when they came under attack in Baghran district of Helmand province on Tuesday night [6 January], said Haji Mohammad Wali, spokesman for the province's governor." According to Reuters, the victims were residents of neighbouring Uruzhan province, where tension had reportedly erupted recently between some Hazaras and ethnic Pashtuns. [40bd]

6.149 In a report on land issues published in September 2003, UNHCR noted

examples of land tenure problems in Kabul. According to the report, "One such example can be found in sub-district 3 of Kabul province, where 153 families live at the building of the Chaplq shoe factory. They are originally from various provinces such as Parwan, Logar, Kunduz, Kabul and Bamyan. They claim that their land in their areas of origin is still occupied by families of Hazara ethnicity...Along the same lines, in sub-district 8 and 10 of Kabul City, a number of Hazara families from Sharistan, have claimed that persons affiliated to two major commanders Toran Abdiul Ali and Arif Dawari had occupied their houses and land." [11m] (p4)

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

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

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Uzbeks and Turkmen

6.152 According to the World Factbook 2002, Uzbeks constitute 8% of the population. Turkmen together with all the other minor ethnic groups including Aimaks and Baloch constitute 13%. [23] (p 4) According to the World Directory of Minorities (1997) "Uzbeks and Turkmen are Sunni Muslims. They are ethnically and linguistically Turkic, closely

related to the people of modern Turkey to the west, and identical to the majority Muslim population of Central Asia across the border to the north. They occupy the greatest share of Afghanistan's arable land in the north. In addition, the production of carpets by Uzbek and Turkmen women has brought considerable supplementary income. Cotton production has added significantly to the wealth of these two groups. Because of their relative prosperity, Uzbeks and Turkmens have not been dependent on the central government and not attempted to gain political influence." [27] (p 540) A UNHCR background paper recorded in June 1997 that "The Far Eastern Economic Review also reported that a significant Turkoman population in Western Afghanistan has historically been victimised by the Pashtuns." [11a] (p 21)

6.153 According to the UNHCR background paper of 1997 "Uzbekistan's President Islam Karimov had clandestinely supported his fellow Uzbek, General Abdul Rashid Dostum with tanks, aircraft and technical personnel, with an expectation that Uzbek dominated provinces in northern Afghanistan would provide a buffer against the spread of fundamentalism from Afghanistan." [11a] (p 6) In July 2001, Human Rights Watch reported that in January 2001 Taliban forces summarily executed at least thirty-one ethnic Uzbek civilians while retreating from Khwajaghar in Takhar province, during battles with United Front [Northern Alliance] forces. [17b] (p 20)

6.154 According to the the Institute of War and Peace Reporting (IWPR) in January 2004 arguments took place during the Loya Jirga in December 2003 about which languages should be named "official languages" in the new constitution. The IWPR reported "Where the original draft named Dari and Pashtu, it was eventually concluded that six further languages including Uzbek, widely spoken in the north, should also be official in the areas where they are most widely spoken. The northern leader General Abdul Rashid Dostum was influential in promoting language rights for the Uzbeks – his own group – and the related Turkmen." [73b] (p6-7) Article 16 of the constitution approved in January 2004 states that six additional languages, besides Dari and Pashtu, will be recognised as official languages in the regions where they are spoken by the majority of the population. These include Uzbek and Turkmen. [15c]

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Baluchis

6.155 According to the World Directory of Minorities published in 1997, Baluchis numbered around 384,000 in Afghanistan, around 2% of the population. It is further noted that "They live in the pastoral lands of the south-west and south and practise Sunni Islam. Their language is Baluchi, and their main economic activity is agriculture and animal husbandry. Divided between three countries - Pakistan, Iran and Afghanistan – they have a tradition of rebellion against their respective central governments to maintain their autonomy, and they have also had ambitions to create an independent state of Baluchistan. In the past their demands have faded after they experienced political repression at the hands of all three countries...The Baluchis' struggle for independence has rarely attracted attention in the outside world." [27] (p 541)

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Nuristanis

6.156 The World Directory of Minorities (1997) records that Nuristanis had a population of around 100,000 in Afghanistan residing mainly in the east and the north. The Directory notes that “Their scattered settlement is another result of Amir Abdul Rahman’s late 19th Century expansionism. During his rule, what was then called Karifistan was converted to Nuristan (‘land of light’) by forced Islamization of the tribe. Even in recent times, many other ethnic groups were suspicious of them for still being ‘kafirs’ – a word which can be interpreted as ‘infidel’. Nuristan is located in the middle of the Hindu Kush mountain range in four valleys, with each valley having its own distinct language/dialect: Kati, Waigali, Ashkum and Parsun. Nuristan has very little arable land, the vast majority of the territory being covered by forest. The main base of the economy is animal husbandry – mostly goat herding...Very few Nuristanis have had access to education. Yet, among those who have travelled to Kabul and been able to gain access to schools, some have gained prominence as well-known figures in the army and the government in Kabul.” [27] (p 541)

Panjsheris

6.157 According to a UNHCR background paper of June 1997, “The Panjsheris are a sub-group of Tajiks who also practise Sunni Islam, and speak a language known as Panjeri, a dialect of Dari.” [11a] (p 5) The World Directory of Minorities notes that “They live in the mountainous areas north of Kabul...and traditionally derive their livelihood from animal husbandry.” The Directory further notes that socially and politically, Panjsheris have been as insignificant as Hazaras and Nuristanis, with only a few people in high-ranking positions in the army and government in Kabul. All three groups initially remained independent, without affiliation to any political party, during the war with the Soviet Union, but Panjsheris later achieved prominence under the command of Ahmad Shah Masoud, when their army came to control vast areas of northern Afghanistan.” [27] (p541)

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Kuchis

6.158 According to the Christian Science Monitor in April 2002, Kuchis constituted more than 10% of the population of Afghanistan. [35b] BBC World News reported in May 2002 that Kuchis had been allocated 26 seats at the Loya Jirga in June 2002. [25ag] In December 2003 Refugees International (RI) reported that Kuchis are Pashtuns from southern and eastern Afghanistan. According to RI, “Kuchi means “nomad” in the Afghan Dari language. The livelihood and culture of the Kuchis have been all but destroyed by conflict, drought, and demographic shifts. Some 200,000 Kuchis are displaced in Afghanistan; an equal or larger number are refugees in Pakistan; and hundreds of thousands of others are eking out a precarious existence in urban or rural areas in Afghanistan. Only a small number of Kuchis still follow their traditional livelihood of nomadic herding.” [40bg] (p1)

6.159 According to the RI report, “In the south, Kuchis lost most of their animals due to a severe drought from 1998 to 2002. Pastures and water sources in the drought stricken areas still have not recovered. In the northwest, Uzbeks and Tajiks resent the presence of Kuchis, and have forced them to flee their lands. Many ended up in dismal displaced person camps near Herat or Kandahar or in dangerous and isolated refugee camps in Pakistan. Kuchis who have livestock are often unable to

drive their flocks to their traditional summer grazing pastures in the central highlands. On a visit in June 2003, RI encountered few Kuchis in the highlands, and the local Hazaras were hostile to the Kuchis due to association with the hated Taliban. In some areas, landmines hinder access to grazing land.” [40b9] (p2)

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Women

Overview

6.160 In a report published in October 2003, the International Organisation for Migration noted that “Prior to Taliban rule, Afghan law guaranteed women constitutional rights, although local traditions and customs affecting the role of women in society varied throughout the country. The Taliban enforced gender apartheid, forbidding women’s access to education and restricting access to health care and employment. Women were no longer permitted to leave their homes unless accompanied by a close male relative and the windows of their homes were painted to hide them from view.” [38] (p16)

6.161 Amnesty International (AI) reported in 1999 that a rigid social code was imposed by the Taliban, including severe restrictions on women’s freedom of movement, expression and association. The report noted that a multitude of edicts barred women from employment outside the home except in the health sector, discontinued education for girls and imposed a strict code of clothing for women in public, ordering them to be veiled from head to foot. [71] (p4) The US Department of State noted that “Women in public spaces were required to wear a burqa, a loose head-to-toe garment that has a small cloth screen for vision. While in many particularly rural areas of the country the burqa was the customary women’s outer garment, the requirement for all women to wear the burqa represented a significant change in practice for many women, particularly in urban areas.” [2b] (p18)

6.162 According to Amnesty International in 1999, although female health professionals were given special dispensation to continue working under strict guidelines, the Taleban’s policies relating to the segregation of female patients and workers resulted in women’s access to healthcare, which was already inadequate being further reduced. [71] (p4) AI advised that most armed groups had imposed restrictions on women in the name of religion and culture as a means of consolidating their own position and legitimacy. [71] (p6)

6.163 According to the US Department of State Report on Human Rights Practices 2001, “Discrimination against women in areas under Taliban control was particularly harsh.” [2b] (p18) The report noted that “As lawlessness and interfactional fighting continued in some areas, violence against women occurred frequently including beatings, rapes, forced marriages, disappearances, kidnappings and killings. Such incidents generally went unreported and most information was anecdotal. It was difficult to document rapes, in particular, in view of the social stigma that surrounds rape. Although the stability brought by Taliban rule generally may have reduced violence against women, particularly rapes and kidnappings, Taliban members threatened or beat women to enforce the Taliban’s dress code for women and the

Taliban imposed wide-ranging and even life-threatening restrictions on women's mobility and their ability to obtain gainful employment.” [2b] (p17)

6.164 According to the US Dept of State, women were expected to leave their homes only while escorted by a male relative, or run the risk of beatings by the Taliban, further curtailing the appearance and movement of women in public even when wearing approved clothing. The Taliban's restrictions regarding the social behavior of men and women were communicated by edicts and enforced mainly by the PVSV [Religious Police]. [2b] (p19)

6.165 A Human Rights Watch (HRW) Briefing Paper issued in May 2002 stated that since the fall of the Taliban in November 2001, “Women and girls in Afghanistan have gained greater freedom to participate in public life and access to education, health care and employment. This is the case particularly in the capital, Kabul, where the deployment of foreign military forces under the International Security Assistance Force (ISAF) has helped bring much needed security. Even in Kabul, however, many Afghan women still face constant threats to their personal security from other civilians or armed men belonging to various political factions.” The HRW report indicated that outside Kabul (where there is no ISAF presence) women continued to face serious threats to their physical safety. [17g] (p1) HRW reported that they did not learn of any physical attacks having recently taken place but they were told of a number of incidents of harassment when women attempted to discard particular aspects of the former dress code mandated by the Taliban. [17g] (p7)

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6.166 HRW reported in May 2002 that “Although the Interim Administration has publicly endorsed the right of women to obtain an education and employment, the lack of an official repeal of Taliban edicts by the Justice ministry is a significant concern for many women Human Rights Watch interviewed. Women felt that an official and public rescinding of all the Taliban edicts would go a long way in fostering their confidence in the government and in providing them with the legal ability to challenge gender-specific discriminatory attitudes.” [17g] (p2-3) HRW reported that, in Mazar-i-Sharif, fears for personal security restricted Afghan women's ability to function and participate in public life. They felt compelled to abide by Taliban edicts or risk abuse or even assault. [17g] (p6) Even in Kabul women were reported by HRW to be hesitant about participating in public life, their fears stemming mainly from their personal experience of violence and discrimination since 1992. [17g] (p7)

6.167 In June 2002, journalists from the BBC and the Times newspaper commenting on the changes in Kabul since the fall of the Taliban, reported seeing women on the streets of Kabul in dresses either with headscarves or with their heads uncovered. [25an] (13b)

6.168 In an interview with IRIN, a UN humanitarian information unit, in September 2002, Sima Samar, the chairwoman of Afghanistan's Human Rights Commission said that the Commission would work on the advancement of women and children. According to the report “She stressed that the inclusion of two women as ministers in the cabinet did not mean that all Afghan women were emancipated.” [36d]

6.169 According to a Human Rights Watch (HRW) report issued in December 2002, “Ismail Khan's abuses of women and girls' rights [in Herat] are particularly severe.”

The report continued, however, "Over the last twelve months Human Rights Watch has itself documented serious human rights abuses against women and girls by warlords all over Afghanistan. In Kabul a reconfigured Vice and Virtue Squad (renamed "Islamic Teaching") is now operating. A team of some ninety women under the Ministry of Religious Affairs harasses women in Kabul's streets for "un-Islamic behaviour", such as wearing make-up, and, in some instances, follows them home to castigate their parents or spouses. Women have reported being harassed and threatened by unidentified men for discarding particular aspects of the Taliban-mandated dress code." [17i] (p6-7)

6.170 In the course of a Danish fact finding mission to Afghanistan in September 2002 several sources, including UNHCR, emphasised the need for women to have networks including male relatives in order to obtain protection. [8c] (p43-44) According to the Danish report "The head of the UNHCR office in Mazar said that women are unable to protect themselves without the assistance from male relatives. A woman must have social networks and many male relatives to achieve protection." [8c] (p 55)

6.171 A UN Commission on the Status of Women report dated January 2003 reported that "Afghanistan's emergence from 24 years of conflict has led to significant achievements and progress for women who went from complete marginalization and denial of rights to participation in several key institutions for the reconstruction of their country, including the emergency Loya Jirga, the Afghan Transitional Administration, the Ministry for Women's Affairs, the Afghan Independent Human Rights Commission and Judicial and Constitutional Drafting Commissions. One of the major changes has been the re-emergence of women in urban areas with relatively better access to employment, healthcare, and education." [6b] (p4)

6.172 The UN Secretary-General pointed out, however, that women's progress was determined by the post-conflict characteristics and complexities of Afghan society with its patriarchal values and traditions which are deeply ingrained. Women were reported to have restricted their participation in public life to avoid being targets of violence by armed factions and elements seeking to enforce the repressive edicts of the previous regime. The report stated that "Despite positive developments regarding women's rights, intimidation and violence by regional and local commanders continue unabated. In rural areas, especially the more conservative tribal belt, the situation of women has not changed to any great extent since the removal of the Taliban. The prevalence of conservative attitudes limits the full, equal and effective participation of women in civil, cultural, economic, political and social life throughout the country at all levels of society." [6b] (p4)

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

have been forced to beg on the streets of Kabul as their only means of survival.” Amnesty International advised that they had received reports of verbal and physical harassment of women returnees to Kabul. [71] (p24)

6.174 Human Rights Watch (HRW) reported in July 2003 that almost every woman and girl interviewed in southeast Afghanistan said that life now was better than it was under the Taliban. Many women told HRW that there were no longer any government regulations barring them from studying, working and going outside without wearing a burqa or without a close male relative (a mahram). It was reported that in practice, however, many did not go out, especially in rural areas, for fear of being targeted by armed men. According to the report “Men and women told Human Rights Watch that women and older girls could not go out alone and that when they did go out they had to wear a burqa for fear of harassment or violence, regardless of whether they would otherwise choose to wear it. And in Jalalabad and Laghman, certain government officials have threatened to beat or kill women who do not wear it.” [171] (p12)

6.175 In July 2003, according to a Human Rights Watch report, “Human Rights Watch interviewed some women and girls, especially in Kabul, who enjoyed considerable autonomy and liberty of movement. Some women said they enjoyed more autonomy when they were in Kabul and less when they were in rural areas. One woman from Paghman district noted: “We can go with the men to shop in Kabul but not to Paghman town. If we want something from Paghman, the men will bring it”. Even among these women and girls, some families imposed conditions on them, such as wearing a burqa and taking an escort.” [171] (p 74)

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

6.177 UNHCR also reported in July 2003 that, despite the encouraging developments, the persistence of discrimination and conservative cultural practices, at times leading to acts of violence including death (honour killing), meant that the following categories of women should be considered to be at risk and exposed to possible persecution, if they returned to Afghanistan:

- a) “Women without effective male and/or community support; and
- b) Women perceived as or actually transgressing prevailing social mores. This latter group may include 1) Afghan women who have married foreign nationals in countries of asylum; this would particularly concern women who have married non-Muslims and are perceived as having thus violated tenets of Islam; and 2) Afghan women who have adopted a Westernised behaviour or way of life which (i) would be perceived as transgressing social mores in Afghanistan and (ii) has become so fundamental a part of their identity that it would be persecutory for them to have to suppress it.” [111] (p35) The UNHCR report also included women’s associations in the

category of vulnerable groups who may be particularly exposed to acts of political intimidation. [11i] (p36)

6.178 The BBC correspondent in Kabul reported on 9 August 2003 that “A thousand women protesters have gathered in the Afghan capital Kabul to call for action to improve security in the country...The women gathered in the Women’s Park - a walled garden reserved for women and children only – to voice their concerns about continuing insecurity in Afghanistan. A declaration was read out calling for international troops and the new Afghan National Army – now being trained by several western nations - to be sent to cities throughout the country. It also called for all militias and fighters outside central government control to be disarmed...The protest organisers had originally wanted to hold a march through the streets of Kabul. But in a country where such political gatherings by women are still very rare, they decided such a public display would be too risky.” [25at].

6.179 According to the US Department of State Report on Human Rights Practices 2003, “The 1964 Constitution, in effect under the Bonn Agreement, states that “The people of Afghanistan, without any discrimination or preference, have equal rights and obligations under the law.” At year’s end, [2003] local custom and practices generally prevailed in much of the country. Discrimination against women was widespread. However, its severity varied from area to area, depending on the local leadership’s attitude toward education for girls and employment for women and on local attitudes.” [2e] (p12)

6.180 The US Dept of State reported that “Most in the international and domestic community noted improvement in the status of women since the Taliban’s fall from power, despite the persistence of certain areas of concern. The central Government named several women to cabinet positions and other areas of responsibility. The Ministers of Health and Women’s Affairs, as well as the Chairwoman of the Afghan Independent Human Rights Commission were women. Women in a number of places regained some measure of access to public life, education, health care, and employment; however, the lack of education perpetuated during the Taliban years and limited employment possibilities continued to impede the ability of many women to improve their situation.” [2e] (p12-13)

6.181 In October 2003, Amnesty International (AI) published a paper on women in Afghanistan, which stated that “Two years after the ending of the Taleban regime, the international community and the Afghan Transitional Administration (ATA), led by President Hamid Karzai, have proved unable to protect women. Amnesty International is gravely concerned by the extent of violence faced by women and girls in Afghanistan. The risk of rape and sexual violence by members of armed factions and former combatants is still high. Forced marriage, particularly of girl children, and violence against women in the family are widespread in many areas of the country. These crimes of violence continue with the active support or passive complicity of state agents, armed groups, families and communities. This continuing violence against women in Afghanistan causes untold suffering and denies women their fundamental human rights.” [7c] (p1)

6.182 The Amnesty International report continued, “The criminal justice system is too weak to offer effective protection of women’s right to life and physical security, and itself subjects them to discrimination and abuse. Prosecution for violence against

women, and protection for women at acute risk of violence is virtually absent. Those women who overcome powerful barriers and seek redress are unlikely to have their complaints considered, or their rights defended.” [7c] (p1) According to AI “Significant numbers of underage marriages, incidents of physical abuse in the family and other forms of violence were reported to Amnesty International. The vast majority had not been reported to the criminal justice system, and almost none had been subject to investigation or prosecution. Women were largely unsupported when suffering violence, and had very few means to leave violent situations. Amnesty International’s research indicates impunity for such violence on a vast scale. Such impunity perpetuates violence since perpetrators are free to consider their actions as normal and acceptable.” [7c] (p7-8)

6.183 According to the October 2003 report, “Amnesty International research indicates a failure on the part of the state to investigate fully serious crimes against women and to protect women at risk. Prosecution for crimes of violence against women including rape and domestic violence is extremely rare. Amnesty International was not informed of any instances of prosecution for either forced marriage or the exchange of women or girls... Some judges interviewed by Amnesty International delegates stated that the practice of using any form of physical violence against a woman, violated the Shari’a. However, the failure to criminalize the practice or offer any form of support to women victims of violence makes it almost impossible for women to bring cases before the courts.” [7c] (p22)

6.184 In a report to the UN Economic and Social Council on 19 December 2003, the Secretary-General advised that “In the two years since the fall of the Taliban regime, the Afghan Transitional Administration supported by the international community has focused considerable attention on the plight of Afghan women and girls. Despite many obstacles, women are playing a crucial role in building a new Afghanistan both politically and economically. They have participated throughout the country in the consultative process in drafting the new constitution. Women continue to return to the workforce in modest numbers, gain access to education and health services and...are being chosen in significant numbers to represent their concerns and interests in the Constitutional Loya Jirga.” [39I] (p4-5)

6.185 The Secretary-General also noted, however, that “In spite of this progress, the fact that women in many parts of the country continue to face gross violations of their rights, is a matter of concern.” [39I] (p5) The Secretary-General said that “The insecurity and increasing incidence of sexual violence threaten to reverse the gains made especially for girls and women as many are afraid to venture out of their homes to attend school or go to work for fear of abduction or rape by armed groups.” The Secretary-General noted reports of a wide range of violations against women and girls in the name of social norms, traditions and protection. These included domestic violence, early and forced marriages, death threats against women activists, intimidation, restrictions on movement, honour killings and “protective” incarceration, particularly in rural areas, where conservative social attitudes prevailed. In rural areas women were threatened by local commanders who violated women’s rights and committed sexual abuse with impunity. It was also noted that “Refugee women and widows also face specific risks associated with lack of security, as well as physical and psychological hardship.” [39I] (p19-20)

6.186 On 19 December 2003, the UN Secretary-General reported to the Economic and Social Council that the Gender Advisory Group, which was established in December 2002 as a support structure to the Ministry of Women's Affairs, had established two working groups to assist in coordinating women's participation in the on-going constitutional reform process and in ensuring that gender perspectives are integrated into the 2004 National Development Budget public investment programmes. According to the report "It is envisaged to establish a policy unit in the Ministry of Women's affairs, with both international and national experts. The unit will work closely with the gender focal point of the policy management unit in the Office of the President." [391] (p31-32)

6.187 According to an article by an independent journalist in the New York Times on 8 March 2004, doctors and human rights workers have reported cases of young women who have set themselves on fire. The report stated that "Doctors and nurses in Kabul and Jalalabad say they have seen more cases recently, partly because the population has been swollen by the return of two million refugees and because cases are being tracked for the first time by rights groups, hospitals and the government. But the trauma and social upheaval of decades of war, poverty and illiteracy in Afghanistan have also intensified the traditional pressures on young women, they say." [28]

6.188 The article in the New York Times stated that "The recently formed Afghan Independent Human Rights Commission recorded 40 such cases in just the past six months in Herat, a western city of half a million people. Karima Karimi, one of the commission's officers, says she suspects that the actual figure is higher, and President Hamid Karzai has ordered an investigation. Officials at the commission said it was reasonable to estimate that Afghanistan had hundreds of such cases in a year. "It is not only in Herat; it is in all of Afghanistan," said Dr. Soraya Rahim, deputy minister of women's affairs, on her return from a government investigative trip to Herat. "It takes different forms in different provinces," she said in a telephone interview. "Some take tablets. Some cut their wrists. Some hang themselves. Some burn themselves. "But the reason is very important. The first reason is our very bad tradition of forced marriage. Girls think this is the only way, that there is no other way in life." [28]

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

6.190 According to Amnesty International in March 2004, "Women and girls in Afghanistan continue to be threatened with violence in many aspects of their lives both in public and private. Violations of the rights of women and girls, including physical abuse, underage marriage, exchange of girls to settle feuds were widely reported to Amnesty International during the recent visit. Amnesty International also

received reports of several women burning themselves in order to avoid forced marriages and physical violence, especially in Herat province... Protection for women and girls who have suffered violence to date remains extremely limited. In Kabul, the numbers of shelters for victims of violence are limited but such facilities do not exist in most areas outside the capital. The scale of the problem in the provinces remains largely unknown. Despite some international resources being donated to the growth of women's civil society groups attempting to combat violence against women, women remain largely unsupported with very few means to seek community and state support. A select number of both Afghan and international non governmental organisations (NGOS) are working to address this issue but they remain in need of further international and Afghan government support.” [7a] (p3)

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Legal Provisions

6.191 A UN Commission on the Status of Women report dated 28 January 2002 stated that “In January 2002, the head of the Interim Administration, Mr. Karzai, demonstrated his support for women's rights by signing the "Declaration of the Essential Human Rights of Afghan Women", which affirmed the right to equality between Afghan men and women.” [6c] (p14) The US Department of State Report on Human Rights Practices 2003 reported that “In 2002 President Karzai decreed that women have the right to choose whether to wear the burqa. However, credible sources reported that women and older girls could not go out alone and that, when they did go out, they wore a burqa for fear of harassment or violence.” [2e] (p14)

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

6.193 In a report published in October 2003, Amnesty International noted that “The ratification of CEDAW was a major development. Afghanistan has made a specific commitment to address women's rights in law and practice; in public, political, social and cultural life; as well as in personal status laws, education, health and work. The ATA has also ratified the Rome Statute for the International Criminal Court (ICC), which contains gender sensitive definitions of crimes and procedures to protect vulnerable victims and witnesses. This constitutes a model for domestic legal reform. Amnesty International recognizes the difficulties facing Afghanistan as it seeks to recover from over 23 years of conflict. However, it is vital that measures to protect the rights of women are built into legal and constitutional reform, and integrated into policing and criminal justice processes.” [7c] (p2)

6.194 In November 2002, the International Commission of Jurists (ICJ) reported that “There appears to exist a large degree of confusion over the exact rights of women and their legal status. In June 2002 there were about 30 women confined in Kabul

jail. Some of them were accused of criminal offences but the majority were, according to the Law Section of the Ministry of Women's Affairs...detained for a variety of offences related to family law such as refusing to live with their husbands, refusing to marry a husband chosen by their parents, or for having run away from either the parental or the matrimonial home. It appears that these women have no access to lawyers, have no information on their rights, if any, and are generally left in jail until their respective relatives intervene." The ICG noted that the most surprising finding of their report was the- profound uncertainty regarding the legality of the detention of these women. [57] (p 25)

6.195 In November 2002, the Australian Broadcasting Corporation (ABC) reported that "President Hamid Karzai has pardoned 20 women from a jail in Kabul where they were imprisoned for minor violations of Islamic law. Some were locked up for minor theft, others for having forbidden relationships...the release of the women...came after mounting international pressure on the Afghan Government to improve conditions for prisoners. Some of the women were jailed with their children, in conditions marked by low hygiene and inadequate medical care. President Hamid Karzai has ordered an investigation into the cases of 11 women still in the prison." [62]

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

6.197 The US Department of State reported on 8 January 2004 that "The new constitution [approved on 4 January 2004] affords all "citizens of Afghanistan - men and women - equal rights and duties before the law." The new Constitution also reserves 25% of its seats in the lower house of Parliament for women. More than 200 women participated in the 2002 Constitutional Loya Jirga that establishes the current government. Two of the nine members of the Constitutional Drafting committee and seven of the 35 members of the Constitutional Review Commission are women. Afghan women will have the right to vote and run for office in the Summer 2004 elections." [2d] (p1) According to the US Department of State "The Minister of Foreign Affairs has created an Office of Human Rights, Health and Women's Affairs in the Ministry of Foreign Affairs to monitor women's programs. The Ministry of Commerce set up a department to help women establish their own businesses." [2d] (p1)

6.198 In January 2004, the Institute for War and Peace Reporting (IWPR) reported that "The final constitution produced by the Loya Jirga provides for better political representation for women in Afghanistan than they have had in the past. The document was amended to state explicitly that the term "citizen" in the phrase "The citizens of Afghanistan have equal rights and duties before the law" applies to both

men and women, an important revision in a country where women have in the past been denied civic rights.” [73b] (p5) According to IWPR it is hoped that the new constitution will safeguard women against a number of controversial traditional practices. [73b] (p6)

6.199 In March 2004, Amnesty International reported that “Despite ratification of United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by the government, Afghanistan’s obligations under the treaty are not yet reflected in domestic legislation. Rape is not yet criminalized nor is the giving of girls in marriage as means of dispute resolution or the... forcing [of] women and girls to marry against their consent. In the absence of effective mechanisms to investigate gender related violence, the vast majority of all such violations continue to not be reported to the criminal justice system and almost none are subject to investigation or prosecution... Legal provisions to protect the rights of women remain inadequate. Legal protection despite signing CEDAW is not yet reflected in law or practice.” [7a] (p3-4)

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Women’s Participation in Public Institutions

6.200 According to the Foreign and Commonwealth Office in July 2002, the Transitional Administration announced following the Loya Jirga contained three women, Dr Sohaila Sediq, Minister for Public Health; Habiba Surabi, Minister for Women’s Affairs, and Mahbooba Huqooqmal, deputy Minister for Women’s Affairs. [48b]

6.201 In a report issued in March 2003 the Secretary-General to the UN Security Council reported that “Afghan women, particularly those in urban areas, are slowly reentering public life as professionals, students and active participants in society. Over 3 per cent of the students who returned to school in 2002 were girls and a third of the teachers were women. Women journalists have been able to return to their jobs as radio and television broadcasters and hundreds of women are working as civil servants and professionals in hospitals, courts, other government and non-governmental organizations, the United Nations and the private sector.” [39h] (p 12)

6.202 A Swedish fact finding mission reported in April 2003 that “The Deputy Minister of Women Affairs stated that about 1500 work at the Ministry of Women Affairs in Kabul and about 1500-1600 in the provinces. The role of the ministry is political; they are promoting women’s rights, education, health, work and so forth... Women come directly to the Ministry with their problems and they cannot help all the women that ask for help because they do not have the funding. The ministry has a law group that are focusing on women’s rights and the group consists of six people... Recently the law group succeeded in getting twenty women out of jail. One of the women in the law group is also part of the Constitutional Commission.” [61] (p20)

6.203 The Swedish report stated that according to the Deputy Minister of Women Affairs, “The Ministry of Women Affairs has tried to establish women councils in the different provinces. They have received varied responses in different provinces; in some they were welcomed but not in others. In Kunduz, for example, it worked without any major obstacles, but in Takhar they met hard resistance. The fundamentalists in Takhar said that if any woman tries to participate in the council, or

even go outside at the time the representatives from the ministry were present, they would be shot. In Samangan the ministry was more welcomed...Presently, there are women councils in about fifteen of the largest provinces. The first council established was in Kandahar.” [61] (p20)

6.204 According to the US Department of State Report on Human Rights Practices 2003, “Women actively participated in the Drafting Committee of the Constitutional Commission set up prior to the CLJ and in the presidential elections. Seven out of the 35 members were women. During the year, Massouda Jalal voiced her intention to challenge President Karzai in the presidential elections scheduled for June 2004. Jalal had challenged and lost to Karzai for President during the ELJ in mid-2002. Women also actively participated in the December Constitutional Loya Jirga. Women were able to question leaders openly and discussed inter-gender issues during the CLJ. 89 women were elected or appointed as delegates to the CLJ, constituting approximately 20 percent of the 502 delegates. However, some officials attempted to intimidate female participants. For example, during the CLJ, a delegate from Farah Province, Malalai Joya, received death threats for speaking against mujahideen leaders who held positions in the CLJ. After she questioned why some CLJ delegates with jihadi affiliation were selected as committee chairman, dozens of angry delegates rushed the stage and demanded that she be expelled. She participated fully in the remainder of the Loya Jirga, was provided security protection by the CLJ organizers, and female police officers from the Ministry of Interior, and spoke freely with the local and international press after the incident. Further, some women delegates denounced their colleagues in the CLJ for attempting to shut them out of leadership positions. However, one woman served as Deputy Chairwoman of the CLJ and chaired several sessions of the CLJ, and others held positions of responsibility in the working groups.” [2e] (p13)

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

6.206 The Workplan of the Afghan Government in the Berlin Declaration of April 2004, committed to ensuring that the government’s policies and programmes promote the participation of women in all sectors of the economy and society in accordance with their rights under the new Constitution. A commitment was made to promote increased recruitment and guarantee equal opportunities to women in the Civil Service and to ensure that gender is mainstreamed within all sectors, programmes and policies. [40b] (p7-8)

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Marriage/Divorce/Child Custody

6.207 The International Committee of Jurists (ICJ) following visits to Afghanistan in 2002 issued a report in November 2002, which said that “Whilst the 1964 Constitution contains an equality-before-the-law provision that does not differentiate between men and women, the legal system nevertheless does. Many aspects of Islamic family law as applied in Afghanistan accord differential rights to men and women. A Civil Code promulgated in 1977 did, however, introduce some significant reforms.” [57] (p24) The ICJ report pointed out, however, that “In actual practice the provisions of the 1977 Civil Law no longer appear to be applied. The demise of governmental institutions across Afghanistan means that marriages are generally no longer registered. This would render them void under the 1977 Law. In practice, however, unregistered marriages are regarded as valid. The withering away of the 1977 Civil Law has reintroduced largely unreformed Hanafi family law and customary law into the sphere of family law.” [57] (p25)

6.208 A Danish fact finding mission in September 2002 reported that “The Deputy Minister for Women’s Affairs said that if a woman is beaten by her husband, she can get assistance from a crisis centre in Kabul, which gives advice and refers her to the Ministry, where her case will be prepared and forwarded to the appeals court. There are only 25 places at the crisis centre for women who wish to leave their husband, but the Ministry is in the process of setting up 31 similar centres in the provinces.” [8c] (p58) However, it was also reported that “DACAAR [Danish Committee for Aid to Afghan Refugees] said that there are no organizations, fighting for the rights of women, or any organizations where women can seek protection or assistance against violations by husbands or others. There is nowhere to go for women to seek support and protection, and in reality, they have no chance of getting a divorce from a violent husband, unless he wants a divorce.” [8c] (p59)

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

6.210 The issue of arranged marriages was discussed by several sources during a Danish fact finding mission in September 2002. The report stated that “The Deputy Minister for Women’s Affairs said that the type of arranged marriages, which took place under the Taliban, do not occur any more. The Deputy Minister advised that women who are at risk of being forced to marry or who are already in an arranged marriage can contact the Ministry and get assistance and a lawyer. In general, the Ministry will endeavour to get women out of their homes and onto the labour market and in this way give women more independence. If a woman finds herself in a situation where her family is forcing her into a marriage she does not want, the Ministry of Women’s Affairs will support the girl and explain to the parents that it is important for the girl to be happy. If the family then insists on marrying off the girl, the Ministry can do nothing more, and most will then have to accept the marriage. In this connection the Deputy Minister said that the woman is not allowed to see her

future husband before the wedding. The source also said that the woman can get a divorce if she is able to prove that the husband is violent, but in that case she will lose her entitlement to her share of the dowry as well as any financial support from the husband.” [8c] (p57)

6.211 UNAMA’s Human Rights Advisor and the Political Advisor told the Danish fact finding mission that arranged marriages, where the local commandants were forcing young women to marry them, frequently occurred. The Association of Women of Afghanistan (AWA) said that the local commander or ruler did not use threats but instead offered to pay the family and consequently the girl could not refuse. The sources also said that poverty led to instances where families married off daughters less than 10 years old. UNHCR said that there had been reports of poverty causing families to marry off their 14 year-old daughters to local commandants, particularly in Jalalabad and Mazar. [8c] (p58) The UNHCR reported in July 2003 that “Reports of early and forced marriages, domestic violence, harassment and intimidation of women continue.” [11i] (p23)

6.212 In September 2003, the International Crisis Group (ICG) issued a report, which advised that “Marriage is still mostly a question of relationships between families rather than individuals. Few are free simply to marry whom they please, though the degree of choice can vary from marriage even against wishes, to an (sic) joint agreement between individual and family. Women in particular are seen as the repository of family honour and have even less space than men to follow their own wishes. Those who become widows are often expected to marry their deceased husband’s brother, which may provide for her and her children but often does not accord with her wishes. When an individual transgresses the norms, either by refusing to marry the designated person or by committing adultery, serious conflict can follow...The price to be paid for the resolution of such conflicts is high – in terms of both the monetary compensation involved and the woman’s rights, which are often sacrificed to get a family/community level solution. At their most extreme, such disputes can often involve killings. Once they have reached this level, they are not, according to all interviewees, easily solvable by the elders, and certainly not by official, governmental, processes.” [26c] (p10)

6.213 In October 2003 Amnesty International reported that “The legal age for marriage in Afghanistan for men is 18 and for women is 16 years of age. Clear data on actual marriage age is lacking as provisions to register marriage and birth are absent in many areas, and many people do not know their exact age. Age of marriage varies between urban and rural areas and according to ethnic background and economic circumstances. However, a clear pattern of widespread underage marriage of girls emerges, particularly in rural areas. It appears relatively rare for girls to remain unmarried by the age of 16.” [7c] (p9)

6.214 According to Amnesty International, “In a number of interviews and group discussions, women reported that divorce never or almost never happened, because “it is not an Afghan tradition”. Others spoke of women who sought divorce being perceived by the community as acquiring a negative reputation. Women also indicated that the risk of losing their children following divorce and the absence of provision to seek custody of children prevented them leaving abusive relationships. Non-discriminatory access to divorce is an essential remedy against violence against

women. Its absence contributes to violence against women continuing. In Afghan law, interpretations of which partly constitute custom and tradition, women and men have an unequal right to divorce. Men have the right to divorce their wives, whereas women have only the right to seek divorce on prescribed grounds. Such inequality is a barrier both in the formal justice system and in the community. Women must first negotiate support within their families if they are to seek divorce. However, it should be noted that practices and traditions can change in Afghanistan. For example, it was reported to be more acceptable in communities for women to seek divorce in some areas before the civil war in Afghanistan that started in 1978.” [7c] (p17)

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Situation of Women and Girls in Herat.

6.215 In December 2002 HRW issued a report on the situation of women and girls in Western Afghanistan. HRW reported that “An area of special concern for women's rights is the province of Herat in the west of Afghanistan, which has a liberal literary and cultural tradition and a history of educating girls. But under the rule of the local governor, Ismail Khan, women's and girls' freedom of expression, association, movement, and rights to equality, work, education, and bodily integrity steadily deteriorated throughout 2002. While conditions are undoubtedly better than under the Taliban-girls and women have better access to education and are not beaten by authorities in the streets-many Taliban-era restrictions remain in place... virtually every aspect of women and girls' lives is still policed in Herat.” [17i] (p4) HRW reported that “According to a UN official working with women's groups throughout the country ‘Herat is the worst province for women in Afghanistan.’” [17i] (p6)

6.216 According to the HRW report “A Herati woman has little access to the public sphere, from employment to civic organizations or other forums where she can participate in public debate. In order to leave her home and reach what forums are available-such as school, work (in one of the few jobs open to women), a government-controlled civic organization, or simply to go to the market-she must overcome significant hurdles in the journey, traveling in a way that she will not be harassed, arrested, and taken off to the hospital to be subjected to an abusive "chastity" examination. Once she arrives at her destination, she must conform her speech, behavior, and appearance to Ismail Khan's restrictions and edicts, which she has no way to challenge. When she returns home, she can expect no protection against violent or abusive family members-indeed, as in most parts of the country, fleeing from her home may result in her arrest and prosecution. Nor does she have any way to contest male family members' decisions about whom she will marry or whether she can attend school or work. She is effectively marginalized-politically, economically, and socially.” [17i] (p4)

6.217 In July 2003, UNHCR reported that the Herat government discriminated against women and their right to work. According to UNHCR, “Few jobs are open to women, and those that are come with significant restrictions from the government. Ismail Khan [governor of Herat], has pressured women not to work for international NGOs or the UN.” [11i] (p23)

6.218 In March 2004, the UN Office for the Coordination of Humanitarian Affairs (OCHA) Integrated Regional Information Network (IRIN) reported that, according to

a member of the Revolutionary Association of the Women of Afghanistan (RAWA), “An increasing number of women and even young girls have committed suicide in the Afghan province of Herat, ruled by local strongman Ismail Khan, because of oppressive social conditions that hark back to the time of the fundamentalist Taliban regime.” According to the source, “The leader in power in Herat is just like the Taliban. He is not a democrat and has placed restrictions on women and girls, which is why many women have committed suicide.” [40a0]

6.219 In a report to the Security Council on 19 March 2004, the UN Secretary-General reported that in certain areas of the country strong social and cultural norms continued to limit women’s public role. According to the Secretary-General, “Such limitations are particularly evident in Herat, where in the past several months there have been reports of more cases of forced marriage and female suicide, a ban on the participation of women in public service, and the denunciation of women activists as anti-national and foreign-supported.” [390] (p14)

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Children

6.220 The US Department of State Report on Human Rights Practices for 2003 reported that “Local administrative bodies and international assistance organizations took action to ensure children's welfare to the extent possible; however, the situation of children was very poor. Approximately 45 percent of the population was made up of children age 14 or under. One in 10 children suffered from acute malnutrition. The infant mortality rate was 250 out of 1,000 births; the mortality rate for children under the age of 5 was 25 percent. A Management Sciences for Health study also found that only about one-fourth of all health facilities offer basic services for children, including immunization, antenatal care, postpartum care, and treatment of childhood diseases.” [2e] (p15)

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

6.222 According to the US State Department report 2003 “There were credible reports that both the Taliban and the Northern Alliance used child soldiers. In previous years, Northern Alliance officials publicly said that their soldiers must be at least 18 years of age, but press sources reported that preteen soldiers were used in Northern Alliance forces. In May, President Karzai issued a decree that prohibited the recruitment of children and young persons under the age of 22 to the Afghan National Army.” [2e] (p15) In January 2004, the United Nations estimated that “97 percent of children under 16 have witnessed violence and 65 per cent have experienced the death of a close relative.” [39n]

6.223 On 10 November 2003 in a report to the UN Security Council, the Secretary-General confirmed that “In Afghanistan, factional fighting groups continue to recruit

and use children. The National Security Council issued a decree in early 2003 instructing the military not to recruit persons younger than 22 years of age. Over the past year, efforts by the United Nations country team have focused on supporting a child-specific component as part of the Afghanistan New Beginnings Programme.” [39m] (p8)

6.224 A UNICEF press release of 9 February 2004 stated that “An initial group of 2,000 former underage soldiers associated with Afghanistan’s fighting forces will benefit from a UNICEF supported reintegration and rehabilitation programme. The programme, which follows a successful pilot project in 2003, begins on February 10 [2004] in the north-eastern province of Badakhshan and will be followed by similar exercises in Kunduz, Taloqan, Baghlan and the Central Highlands region throughout February. A total of 5,000 underage soldiers are expected to receive assistance from the programme by the end of 2004. The programme has been established in consultation with the Afghan New Beginnings Programme (ANBP) which is leading on the disarmament of former combatants across Afghanistan...UNICEF estimates that there are a total of 8,000 former child soldiers in Afghanistan, many of whom have already left the fighting forces informally over the past year. All are in urgent need of assistance to fully reintegrate to civilian life, especially in the area of education and sustainable income-generation.” [44d]

6.225 In a donor update of February 2004, UNICEF advised that, in 2003, “The demobilization process of underage soldiers, established in coordination with the Afghan New Beginning Programme (ANBP), started in the northeast, central highlands, and eastern regions with support from UNAMA and four NGOs and five provincial demobilization and reintegration committees. 2,000 underage soldiers were identified, verified and registered to date, and are soon to be demobilized. Reintegration support has been provided to 1,500 of these war-affected youth, including 800 underage soldiers. New opportunities and alternatives to military life will be provided through a community based reintegration support process to demobilized underage soldiers and other war-affected youth. The programme offers education, skills training, apprenticeships and livelihoods support, and psychosocial and medical support.” [40bk] (p4)

6.226 In May 2003 UNICEF reported that President Karzai had designated 20 May 2003 as “National Day of Unity for Children”. The National Day of Unity for Children commemorated the work accomplished so far on immunization, education and other child rights and committed to several important initiatives for children. The initiatives included the government’s decision to pioneer a collaboration between the polio “National Immunization Days” campaign and the first ever national birth registration programme. Afghanistan is one of only seven countries in the world where polio remains endemic but it now stands on the verge of stopping transmission of the virus through the immunization initiative. However, the executive director of UNICEF reported that there was some way to go to ensure that access to basic rights and services were actually delivered for all Afghan children, especially for girls. [40aq]

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

and diarrhoea. [111] (p29) In August 2003 UNICEF reported that progress was being made in the fight against measles which in 1999 claimed the lives of 875,000 children worldwide. More children in Afghanistan were protected against the disease following a campaign in June 2003 when 5 million children aged between nine months and five years were vaccinated. UNICEF also noted that “In 2002, more than 11 million children were immunized against measles in Afghanistan...Prior to these campaigns, measles was estimated to contribute to up to 15-20% of deaths among children under five in Afghanistan.” [44e]

6.228 In a donor update report of February 2004, UNICEF reported that “During 2003, every household in Afghanistan was reached using 30,000 volunteers for immunization, birth registration, vitamins A and C, and distribution of messages on nutrition, hygiene and mines. Schools were promoted as a center for change through increasing enrolment, provision of materials on mine risk, hygiene and nutrition, provision of safe water and sanitation and advocacy on the inclusion of girls in schools. The overall environment for children was also improved through advocacy on child rights, media briefing, judicial review, prevention of child trafficking, and support to research.” [40bk] (p2)

6.229 In February 2004, UNICEF also reported that a draft Juvenile Code was being reviewed by the Ministry of Justice. UNICEF noted that “The Juvenile Code, which is expected to be approved by the Afghanistan Council of Ministers in March 2004, would be the first revised law in the Transitional Government of Afghanistan concerning children. The first draft of the comparative legal study between the Convention on the Rights of the Child (CRC) and the Afghan laws was completed, and the recommendations will form the basis for initiation of a legal reform process in Afghanistan with regards to the rights of the children.” [40bk] (p5)

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

For information on [Education System](#) see paragraphs 5.239 – 5.249

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Child Care Arrangements

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

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

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

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

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Homosexuals

6.234 According to the US Department of State Report on Human Rights Practices 2001, "The stipulated punishment for those found guilty of homosexual acts was to have walls toppled on them. Although there were no known instances of such punishment during the year [2001], this punishment was carried out on at least one occasion in 1999, and seven times in 1998 (resulting in five deaths)." [2b] (p 6)

6.235 The International Lesbian and Gay Association (ILGA) reported in 1999 that Sharia law forbids homosexual relationships for both men and women. According to the ILGA, in February 1998 a stone wall was felled by a battle tank on three men convicted by an Afghan Shari'a court of committing sodomy with young boys. The punishment took place in front of thousands of spectators including the Taliban leader Mullah Omar who ordered that they remain buried for 30 minutes and then extracted if they were still alive. Two men died in hospital the next day and the third survived. In March 1998, two men from Herat province were sentenced to death by a Shari'a court for sodomy. By way of punishment they were crushed to death by a wall of dried mud being bulldozed on to them. [41] In April 2002, the chief of Afghanistan's Supreme Court was reported by the Washington Blade as saying that, although these punishments could still be implemented, they would only be carried out following a detailed legal process during which the accused could contest the charges and appeal for clemency through measures such as paying restitution to avoid harsh sentences. [60]

6.236 In April 2002, a news report from Kandahar by a journalist from the Los Angeles Times, published on the Sodomy Laws website, indicated that sexual activity between Pushtun men in that area was far from uncommon. According to a local mullah, between 18% and 45% of men in Kandahar engaged in homosexual acts. A professor at Kandahar Medical College estimated that about 50% of the city's male residents had sex with men or boys at some point in their lives. A psychiatry professor compared Afghan men to prison inmates saying that they had sexual relations with men because men were more available than women. [31] (p2-4)

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KhAD (former State Security Services)

Background

6.237 In April 2001 a situation report by a Netherlands delegation to the European Union on the security services in Afghanistan between 1978 and 1992 was published. According to the report, the Khadimat-e Atal'at-e Dowlati (meaning "State Intelligence Service" in Dari) was set up in 1980 and transformed into a ministry in 1986. [34] (p4) The secret service became notorious and feared under its acronym "KhAD" and soon came to embody the highly repressive communist regime. [34] (p9) The first head of the KhAD was Dr Najibullah one of the former leaders of the Parcham faction of the Communist People's Democratic Party of Afghanistan (PDPA). As a result of his post as head of KhAD he rose rapidly in the hierarchy of PDPA. In November 1985 he left to devote himself to work for the party and handed over responsibility to Major-General Ghulam Faruq Yaqubi. In May 1986 Dr Najibullah became Secretary-General of the party and, in November 1987, he became President of the country, a post he retained until 1992. On 9 January 1986 the KhAD was transformed into a separate ministry under the name of Wazarat-e Amaniati-e Dowlati or "Ministry of State Security". According to the report "Although the official abbreviation was henceforth to be WAD, the secret service continued to be popularly referred to as the KhAD." [34] (p10-11)

6.238 The Netherlands delegation reported that "It was the task of the KhAD and of the WAD to ensure the continued short and long-term existence of the Communist regime, which had already been exposed to strong pressure shortly after the Great Saur Revolution. In practice, this meant that the KhAD and the WAD had a licence to track down and fight the regime's external and internal enemies as they saw fit... In practice, the slightest sign of disloyalty or opposition provided a pretext for being branded an enemy... Persons branded enemies of the PDPA could be eliminated in many ways. Thus, KhAD leaders could instruct their subordinates to carry out arrest, detention, judicial sentencing, exile, torture, attempted murder and extra-judicial execution of real or alleged opponents of the Communist regime. If required, KhAD and WAD agents also attempted to murder persons outside Afghanistan, especially in Pakistan. Through their ruthless and mostly arbitrary behaviour the KhAD and WAD deliberately created a climate of terror aimed at nipping any opposition among the civil population to the Communist regime in the bud." [34] (p12-13) According to the report, "There was precious little support for the Communist Party among the population." [34] (p31)

6.239 According to the report produced by the Netherlands delegation to the European Union, all KhAD and WAD NCO's and officers were guilty of human rights violations, however they could not be promoted to officer until they had proved their

unconditional loyalty to the Communist regime. During their trial periods officers had to pass a severe loyalty test. On first assignment NCO's and officers were transferred to KhAD and WAD sections actively engaged in tracking down subversive elements. Only those who proved their worth were transferred to sections with more administrative or technical activities. In practice this suggests that all KhAD and WAD NCO's and officers took part in the arrest, interrogation, torture and even execution of real and alleged opponents of the Communist regime. [34] (p28-29) The report considered that it was inconceivable that anyone working for the Afghan security services, regardless of their status, was unaware of the serious human rights violations that were taking place, which were well known both within and outside Afghanistan. [34] (p31)

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Treatment of former KhAD members

6.240 A report by a Netherlands delegation to the European Union in April 2001 stated that after the fall of the Communist regime in 1992 many KhAD and WAD agents went to work for the new rulers' intelligence services. The Taliban intelligence service [Estikhabarat] was partly manned by former KhAD and WAD agents. Despite their reputation, former members of the Communist security services and their relatives were not automatically at risk of Taliban persecution. Their attitude towards the Taliban combined with what was known about them and the extent to which they made enemies was considered to be more important than the position they previously occupied. [34] (p33)

6.241 In 1997 a Danish fact finding mission to Afghanistan reported that "The Kandahar head of the KhAD, which now serves as the Taliban security service under the name of Estikhabarat, said that the Taliban have detained people from the PDPA and former members of the KHAD." They were particularly interested in apprehending former KhAD members who had been guilty of widespread torture and killings. However, it was reported that many of them had left the country or changed their place of residence and possibly their appearance. There was also very little archive material available on the KhAD, partly due to much having been destroyed even before Najibullah fell from power and partly because members of the Rabbani regime were still in possession of most of the rest. The Cooperation Centre for Afghanistan (CCA) were reported as saying that they had no specific knowledge of persecution or harassment of PDPA or KhAD members, apart from dismissal from public employment, but they also pointed out that most high-ranking PDPA and especially KHAD personnel had already left the country. [8a] (p70)

6.242 In May 2002 a Danish fact finding mission reported the views of a number of sources on the conditions for people affiliated to the former communist regime. The director for the International Crisis Group stated that any risk would depend on whether or not the surrounding community identified the person with communism. UNHCR stated that the level of risk to those affiliated to the former communist regime would depend on the area from which they came and whether family relationships could provide them with protection. UNHCR also stated there would be problems for high-ranking former communist military officers (including KhAD members) and their families. The Coordinator for UNAMA stated that there were former KhAD officers working in the Afghan community today. [8b] (section 11.3)

6.243 A Danish fact finding mission to Afghanistan in September 2002 reported the view of UNAMA that KhAD people who were involved in torture in the prisons were risking persecution but this was not the position for KhAD people who were employed in administrative positions. Local conditions, such as network and family, were vital considerations. [86] (p20) According to a Swedish Fact finding mission of November 2002, "UNHCR Islamabad assured that due to the recruitment methods used, no one in Khad can claim that they only had an innocent desk job." [61] (p 21)

6.244 The November 2002 Swedish fact finding mission reported that "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. Anders Fange [Director of the Field Coordination Division UNAMA] 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. 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." The Deputy Minister for Return and Repatriation was reported as saying "Afghanistan's biggest enemies were the communists but they are now living in the Afghan society." [61] (p 21)

6.245 In a paper issued in July 2003, UNHCR stated that Members of the following groups if without any links with existing Islamic/political parties or tribal protection, would require a careful risk assessment:

- Some of the former military officials, members of the police force and KhAD (security service) of the communist regime also continue to be generally at risk, not only from the authorities but even more so from the population (families of victims), given their identification with human rights abuses during the communist regime." [11] (p35)

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Former Members of the PDPA

6.246 In May 2002 a Danish fact finding mission reported the views of several sources. It was reported that "UNHCR-Afghanistan commented that former PDPA members are working within the interim administration, and this is possible for them due to family relations... The leader of OXFAM was of the opinion that there is no risk associated with PDPA members with no profile if they return to Afghanistan [but] it is too early for high-ranking communists to return...Oxfam stated that it is generally known that two people who were previously communists are working today for Afghan radio." The United Nations Assistance Mission Afghanistan (UNAMA) confirmed that former members of the People's Democratic Party of Afghanistan (PDPA) regime were holding positions on the commission preparing the Loya Jirga process and that there would be no problems for low-profile former members of PDPA in returning to Afghanistan. DACAAR further confirmed that the situation in

May 2002 was unchanged from that under the Taliban, when there was hardly any persecution of those at a low level, rather of members with a higher profile. DACAAR said that the situation could be unpredictable as to who would have problems as the crucial factor was what social relations they had. [8b] (section 11.3)

6.247 In September 2002 a Danish fact finding mission reported that “UNHCR, the Deputy Chief of Mission in Kabul, stressed that UNHCR knows of only a few former communists who have returned to Afghanistan, and he continued, that as long as such strong polarisation exists between the different groupings in Afghanistan, former members of the PDPA might also experience problems. It was also the opinion of UNHCR that the picture is blurred – it can be quite difficult to distinguish between private acts of revenge and the acts of revenge which are related to activities which the person concerned carried out for the communist government...In the opinion of the source it is clear that not all former members of PDPA are able to return to Afghanistan, just as it is not all former PDPA members that risk persecution, if they return. The more purely technical-administrative the position occupied during the communist regime, the safer the person would be...Some former communists would receive protection through their clans. In the towns, former communists would be more exposed, as the protection through clans is not as strong in town as it is in the rural areas.” [8c] (p19)

6.248 The Danish fact finding mission reported in September 2002 that “The coordinator of UNAMA’s Civil Affairs Branch said about the situation for former communists, that in general, the picture is not consistent. For instance, there are several high-ranking former communists who are doing well under the new government. The deciding factor is the person’s own network – whether a person has connections in the current power circles. It is predominantly the high-profile ex-communists who need connections to the current rulers in order for them to manage.” [8c](p20)

6.249 According to the same UNAMA source the situation of local-profile communists depended on their actual work and actions under the communist regime. According to the source, “People who as communists had been involved in injustices, violence, torture or killings, would have problems today. The source also said that the Taliban took a tough line against former communists, but those who survived the Taliban - and the Northern Alliance in 1992-1996, would have nothing to fear from the current rulers because of a communist past. If, however, the person concerned had been “away”- away from Afghanistan - since the fall of the communists and now wanted to return, then it would depend on a very careful assessment -of the person’s actual activities for the communist party as well as the person’s own network – whether the person concerned would be able to return without risking reprisals. A large proportion of the urban population fleeing in 1992-94 were communists.” [8c](p20)

6.250 In a paper dated July 2003, UNHCR stated that “Members of the following groups, if without any links with existing Islamic/political parties or tribal protection, would require a careful risk assessment.

- High ranking members of the People’s Democratic Party of Afghanistan (PDPA), irrespective of whether they belonged to the Parcham or Khalq faction of the party.

Most PDPA members lived in Kabul or other cities during the communist regimes. They will be at risk only if they are known by armed factions as such and this includes:

- i) Members of Central, Provincial Cities and Districts Committees of the PDPA and their family members;
- ii) Some of the heads and high-ranking members of social organisations such as the Democratic Youth Organisation and the Democratic Women Organisation at the level of country, province, city and districts.”

According to UNHCR, five former members of the PDPA were ministers in the Transitional Authority. [11i] (p34)

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Intellectuals

6.251 According to an Amnesty International Report published in November 1999, “Thousands of university educated Afghans fled after the communist take-over of power in April 1978 and the occupation of the country by Soviet forces in December 1979.” Amnesty International reported that the Afghan intelligentsia (consisting of various religious and political groups) were scattered around the world. Some supported the Taliban, while others backed the opposing United Front (Northern Alliance). Others generally favoured an end to the conflict and working towards a negotiated peace. It was this latter group that was the particular target of assassination attempts, within the last decade or so and especially in the previous two years, both inside Afghanistan and in Pakistani refugee camps. The most common destination for fleeing Afghan intellectuals was the North West Frontier Province city of Peshawar in Pakistan. [7h] (p2)

6.252 In an October 1999 presentation to the European Council on Refugees and Exiles, the Information Coordinator of the British Agencies Afghanistan Group confirmed that “Educated Afghans were targeted by the PDPA regime in 1978-79, by the Soviet-backed Government between 1979 and 1992 and by radical Islamist parties in Pakistan and Afghanistan from the mid 1980s onwards. Some “purges” have seen people killed or imprisoned in their thousands.” Afghan intellectuals at that time felt insecure in Pakistan as well as in Afghanistan. The presentation paper also advised, “As in other parts of the world increasing radicalism results in a targeting of educated people, who not only represent a threat to the potential or actual power base of the radicals but also, by virtue of their moderate or liberal views, are seen as insufficiently Islamic or even secular.” [32] (p2)

6.253 In a report of November 1999, Amnesty International reported that when the armed Mujahideen groups were fighting the Afghan government and Soviet forces, Afghan intellectuals in Pakistan were pressured to support one of these armed political groups. Intellectuals who did not comply with these demands felt marginalised and were at risk of being attacked by members of some of these groups. Those who vocally opposed the policies of the Mujahideen groups were targeted. Hundreds of political personalities including intellectuals, community leaders, former army officers and civil servants of Pushtun ethnic background were also subsequently targeted and

arrested by the Taliban in 1998 and 1999 due to their peaceful opposition to the continued civil war. Some were reportedly tortured and others killed in custody. [7h] (p5)

6.254 In July 2003, a paper by UNHCR advised that, during the Loya Jirga in June 2002, people who questioned the role of Islam in the State, the promotion of women's rights or who were critical of the Mujahidden time were intimidated in particular by members of the intelligence service. [11i] (p21) In a press release of 2 January 2004, Amnesty International reported that during the Constitutional Loya Jirga (CLJ) a petition was circulated suggesting that the country's official name should be changed from the 'Islamic republic of Afghanistan' to the 'republic of Afghanistan'. According to Amnesty International, "The petition gained over 151 signatures, but the chair of the CLJ, Sebghatollah Mojadedi, refused to allow a vote on the issue, publicly calling those who had sponsored the petition 'infidels'." [7b]

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6 C Human Rights Other Issues

Mines and Unexploded Ordnance

6.255 According to the US Department of State Report on Human Rights Practices 2003, "The U.N. estimated that there were 5 to 7 million landmines and more than 750,000 pieces of unexploded ordnance throughout the country, planted mainly during the Soviet occupation. However, some NGOs estimated that there may be fewer than 1 million mines. The most heavily mined areas were the provinces bordering Iran and Pakistan. The landmines and unexploded ordnance caused deaths and injuries, restricted areas available for cultivation, and impeded the return of refugees to mine-affected regions. The Red Cross estimated that 200,000 persons were killed or maimed by landmines over the last two decades of warfare. In 2002, the Red Cross recorded 1,286 landmine deaths and numerous other deaths were believed to have gone unreported. Injuries continued to occur during the year from landmines previously laid by Northern Alliance forces, Taliban fighters, and fighters during the Soviet occupation." [2e] (p8)

6.256 According to the US Department of State Report 2003, "With funding from international donors, the U.N. organized and trained mine detection and clearance teams, which operated throughout the country. Nearly all areas that were cleared were in productive use, and more than 1.5 million refugees and IDPs returned to areas cleared of mines and unexploded ordnance. Nonetheless, the mines and unexploded ordnance were expected to pose a threat for many years. U.N. agencies and NGOs instituted a number of educational programs and mine awareness campaigns for women and children in various parts of the country." [2e] (p8)

6.257 In ~~6.153~~ In July 2002 UNICEF reported that the Government of Afghanistan had decided to accede to the Ottawa Convention banning land mines. UNICEF Executive Director Carol Bellamy said that "Afghanistan contains about 10 per cent of the 60-70 million landmines laid world-wide; close to 5 per cent of households across Afghanistan have at least one person who has been affected by a landmine or UXO injury; children are the most vulnerable victims, affected while playing, tending animals, or collecting firewood. Children represent half of all injuries and

deaths from landmines in Afghanistan; growing numbers of returning populations are also at risk as they resettle across the country.” [44b]

6.258 In May 2003, the International Committee of the Red Cross (ICRC) reported that it was interviewing victims and collecting data in almost 400 health-care facilities throughout Afghanistan about the accidental detonation of mines and other unexploded ordnance [UXOs]. The information obtained would provide reliable statistics for those working to eradicate these dangers and help to improve the ICRC’s mine awareness programme. The ICRC reported that its mine awareness programme aims to change people’s behaviour but economic necessity often forces people to return to dangerous areas. [42g]

6.259 The UNHCR reported in July 2003 that “Afghanistan is the most mine- and unexploded ordnance (UXO)- affected country in the world with 732 square kilometres of known mined area... UN reports indicate that over 100 square kilometres were cleared during 2002 and that almost 40,000 mines and over 890,000 UXOs were destroyed, allowing Afghans to return home in relative safety. Mine awareness instruction has been provided to several thousand Afghan civilians. Nevertheless, an estimated 3,000 cases of injuries from landmines and UXOs are reported every year and approximately 4-5% of the Afghan population are disabled, many by mines and UXOs.” [11i] (p31) In September 2003, the United Nations Mine Action Service (UNMAS) reported that “Mines and UXO contaminate 850 square kilometres of Afghanistan. Most mines were laid between 1979 and 1989, but additional ones were deployed during recent internal conflicts, particularly in and around Kabul. Combat in 2001 exacerbated the UXO problem.” [14]

6.260 In February 2004, the UN Office for the Coordination of Humanitarian Affairs (UNOCHA) reported that “As part of its commitment under the Mine Ban Treaty, Afghanistan completed a pilot phase of destroying stockpiled landmines, which started last May in the capital Kabul. In a UN-Government-ISAF (International Security Assistance Force) joint venture, some 1,300 anti-personal mines (APMs) were detonated in three massive blasts on Thursday in northern outskirts of the city. The APMs were collected from 49 stockpiles of the Afghan Ministry of Defence (MoD) in Kabul. It was reported that, according to the Ministry of Defence, the project is so far centralised in and around Kabul and there remains a need to identify and destroy hundreds of thousands of land mines stockpiled elsewhere in the country. Afghanistan became a party to the 1997 Ottawa Convention on banning the use, production, stockpiling and transfer of landmines in March 2003.” [40b1]

6.261 The February 2004 UNOCHA report noted that “Over the last year mine incidents have fallen from 600 to 100 per month, according to the UNMACA [United Nations Mine Action Centre for Afghanistan] and the International Committee of the Red Cross. The UNMACA is implemented by 15 national and international organisations and with 7,200 Afghans working in mine-clearance programmes, the campaign requires a budget of around US \$60 million per year to clear the country of mines in 10 years as required by the Ottawa treaty. One hundred mine-clearance operatives have been killed and 500 injured since operations started in Afghanistan 13 years ago.” [40b1]

6.262 On 21 March 2004 a UNAMA spokesman announced that “The International Campaign to Ban Landmines (ICBL) is holding its annual regional meeting for Asia in Kabul from 26-30 March at the Kabul Intercontinental Hotel. Participants from across the region, including experts and campaigners from mine-affected countries like Cambodia and Sri Lanka, are expected to plan and coordinate efforts to secure a total ban on the use, production, stockpiling and trade of antipersonnel mines in Asia.” [40p]

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Humanitarian Situation

6.263 In January 2002 the Asian Development Bank, the United Nations Development Programme and the World Bank prepared a Needs Assessment Report on Afghanistan. The report judged that “More than two decades of conflict and three years of drought have led to widespread human suffering and massive displacement of people in Afghanistan. Many parts of the country are vulnerable to famine, the infrastructure base has been destroyed or degraded, and human resources have been depleted. State institutions have become largely nonfunctional and the economy increasingly fragmented.” [41] (p1) In January 2002, the Department for International Development noted that at an international conference in Tokyo, donors pledged \$4.5 billion for reconstruction and humanitarian assistance over the next 5 years; \$1.8 billion of which was to be committed within the next year [2002]. [46] (p1) In early June 2002 the Deputy Special Representative of the Secretary General for Afghanistan estimated that between \$1.3 billion and \$1.4 billion of the aid promised for 2002 had been received. [40x]

6.264 The United Nations Development Programme (UNDP) reported in March 2002 that it had set up a special fund, the Afghan Interim Authority Fund (AIAF), to support government activities in Afghanistan. The fund received more than \$26 million from international donors during its first three months, which enabled the Interim Authority to pay civil service salaries and cover crucial administrative costs. [47] (p1) The UNDP was succeeded by the Afghanistan Reconstruction Trust Fund (ARTF), jointly managed by the Asian Development Bank, Islamic Development Bank, UNDP, and the World Bank (administrator of the ARTF). The ARTF aims to meet serious funding shortfalls for salaries of civil servants, funds development of priority projects which would otherwise go unfunded and acts as one of the funding sources to facilitate the return of skilled Afghans interested in helping to rebuild Afghanistan. [69] (p1)

6.265 The ARTF Report to Donors for the period September to December 2003 stated that “The Afghanistan Reconstruction Trust Fund (ARTF), operational for over eighteen months, has demonstrated itself to be a vital mechanism for financing the country’s recurrent budget and supporting priority investment and technical assistance programs. With support from 24 donors, the ARTF provides a mechanism for coordinated funding of reconstruction activities in line with agreed priorities of Government. Since its establishment in May 2002, the total paid in contributions to the fund total over US\$408 million... Looking ahead, the success of the ARTF has demonstrated its value in Afghanistan’s reconstruction program and Government is committed to continue using this mechanism as it simplifies management and oversight of donor resources.” [59] (piv)

6.266 In a report issued in April 2002, covering the period October 2001 to April 2002, Action Against Hunger (AAH) warned that “After 23 years of war the country is in ruins: its infrastructure is destroyed, its minimal public services are now non-existent and the consecutive droughts afflicting the country have led to serious food shortages.” The report stressed that the situation for Afghanistan’s population had barely improved from how it was prior to 11 September 2001. [40e] (p1) UNHCR reported in May 2002 that a report by a Tufts University famine expert, commissioned by the US Agency for International Development and based on interviews with over 1,100 households in Afghanistan found that the number of households with a secure source of food and water had plummeted compared to figures for 1999-2000. The report found that the level of diet security, a measurement of vulnerability to famine, had fallen from 59 percent in 1999-2000 to 9 percent at the time of the report. Water security had fallen from 43 percent to 15 percent. [53] (p1)

6.267 In a report to the UN Economic and Social Council issued in January 2003 UN Special Rapporteur Kamal Hossain reported that “Despite a good harvest in 2002, the effects of years of conflict, drought, isolation and impoverishment still affect millions of Afghans. Some 2.2 million Afghans are highly vulnerable to the expected effects of the harsh winter weather and are receiving emergency food aid and support for shelter and warmth to combat the cold. In 2003, some 4.1 million Afghans are expected to need emergency food aid.” [6a] (p12)

6.268 The UN Special Rapporteur noted in the same report that “The 2003 Transitional Assistance Programme for Afghanistan (TAPA) is being completed by the Transitional Government of Afghanistan and the United Nations...The TAPA prioritizes integrated United Nations agency action in communities of return to help assure sustainable livelihoods, essential community services, potable water supply and sanitation, and to address problems of debt and asset depletion...TAPA will address the survival, shelter and livelihood needs of Afghanistan’s growing urban population, supporting urgently needed sites and services development as well as longer-term urban planning.” [6a] (p12)

6.269 On 29 July 2003, BBC News reported that, in June 2003, President Karzai appealed for an additional \$15-20 billion for reconstruction in Afghanistan. A spokesman for the US State Department was reported as confirming that the US was preparing an aid package worth about \$1 billion, reportedly for reconstruction projects, such as building roads and schools, police training and the development of the army. [25bm] On 31 July 2003, The European Commission reported that as part of its 400 million euro package to Afghanistan for 2003-04 it had adopted a proposal to finance a Third Reconstruction Programme for Afghanistan with a total budget of 79.5 million euros. [40aj]

6.270 In July 2003, the World Bank Group reported that Afghanistan had become a member of the World Bank’s Multilateral Investment Guarantee Agency (MIGA). It was reported that “The membership allows MIGA to provide political risk insurance for investments going into and out of Afghanistan, as well as to help the country develop its ability to attract investment.” The Afghan Finance Minister said that membership of MIGA would help the country to attract and retain more foreign investment, promote economic growth and ultimately benefit the Afghan people. The World Bank reported that “After 23 years of conflict, the Afghan people are working

to restore peace and prosperity. But daunting challenges remain: 7 percent of the population is malnourished, and only 23 percent have access to safe water, 12 percent to adequate sanitation and just 6 percent to electricity. More than 70 percent of schools need repairs, as do most of the country's primary roads. Reconstruction alone is expected to cost about \$15 billion over the next decade, underscoring the need for private sector help in meeting the challenge." [40ay]

6.271 In July 2003, the UNHCR reported that "There is also a dire need for wage-labour and cash as an increasing number of Afghans are indebted and unable to buy food even when it is available. Drought and poverty have contributed to further population movements during 2002. Food insecurity and lack of income have exacerbated existing land problems that have arisen due to destruction or illegal occupation of property. The presence of landmines in land surrounding villages has, in some areas, rendered farmland unusable." [11ij] (p29) UNHCR reported that, by the end of July 2003, they had contracted with NGOs to help Afghans construct more than 41,000 shelters, of which half were under construction or completed. [11ij] (p1)

6.272 Amnesty International reported in June 2003 that "Most of the returnees interviewed by Amnesty International asserted that they had been unable to find jobs in an overcrowded job market...Others spoke of having been forced to take jobs that were not commensurate with their skills level...Sharecroppers returning to the land on which they had worked previously have found that the landlord had employed other labourers in their absence. Due to the fact that there is less land being cultivated in Afghanistan at the moment, on account of the drought as well as persistent insecurity, returnee sharecroppers have in many cases been forced to move to IDP camps or to urban centres in search of alternative employment." [7ij] (p24)

6.273 A Food and Agriculture Organisation of the UN (FAO) and World Food Programme (WFP) mission visited Afghanistan in June/July 2003 and reported that "Agricultural production in Afghanistan continued its strong recovery for the second consecutive year in 2003 due mainly to improved and well distributed precipitation in major agricultural areas... Aggregate 2003 cereal production, estimated at 5.37 million tonnes, is the largest harvest on record." [65j] (p1) The report noted, however, that "In conclusion, despite significant improvements in overall food security prospects in Afghanistan, a considerable part of the Afghan population will remain dependent on targeted food assistance in 2003/4." Vulnerable groups included the unemployed, landless and near-landless rural poor. [65j] (p21) It was also reported that "In the south, food insecurity is expected to improve only marginally due to continued conflict, slow recovery from drought and high cereal prices." [65j] (p20) The FAO/WFP announced that "A multi-agency National Risk and Vulnerability Assessment (NRVA) is currently underway throughout the country to estimate the level and geographic distribution of humanitarian assistance requirements in 2003/04." [65j] (p1)

6.274 In September 2003, the World Food Programme (WFP) mission reported that "Humanitarian operations in the southern and southeastern provinces continue being hampered because of military operations." [40az] In January 2004, an overview of the human rights issues in Afghanistan by Human Rights Watch pointed out that attacks on humanitarian workers in 2003 and early 2004 in the south and southeast by suspected Taliban remnants and other anti-government forces had resulted in international agencies suspending many of their operations in the affected areas. As

a result, development and humanitarian work had suffered. [17n] (p2)

6.275 According to a country update report by the World Bank Group in January 2004, "Since April 2002, the World Bank has committed \$281.8 million in grants and an additional \$221.4 million in no-interest loans, known as a "credits," for development projects which are helping to meet urgent needs by providing jobs; improving roads; increasing the power supply in Kabul; cleaning up municipal waste; repairing schools, and improving health services. They are also building a foundation for the future, helping to mobilize communities; strengthen public administration, and develop the national highway and civil aviation programs." [69b] (p2)

6.276 The January 2004 World Bank Group report commented on the Labour Intensive Municipal Public Works Programme. The report stated "Launched in December 2002, this program is implementing over 100 labor-intensive projects for infrastructure improvement and repair in the five main cities in Afghanistan. Project and municipal staff met with local communities in Kabul, Kandahar, Jalalabad, Mazar-i Sharif, and Herat to identify priority public infrastructure works. As of September 2003, the cash-for-work projects had generated approximately 3,000 person months of employment. The works will make much-needed repairs, while providing short-term employment, and will include demolition of damaged buildings, recycling of rubble, the recovery of useable building material, clearing of drains, reconstruction of schools and clinics, and the revitalization of urban parks." [69b] (p2-3)

6.277 In January 2004, a report published by the British Agencies Afghanistan Group (BAAG) stated that "Lack of clean and adequate water supplies in Afghanistan is one of the most pressing problems to tackle for the government. The Ministries of Agriculture and Animal Husbandry (MAAH), Irrigation, Water Resources and Environment (MIWRE) and Ministry of Rural Rehabilitation and Development (MRRD) are all involved in addressing the problems. UNICEF's statistics for 2002 showed that only 35% of the urban population and 19% of the rural had access to potable water and only 23% of the urban and 8% of the rural populations had adequate sanitation." [71] (p44)

6.278 The BAAG report advised that NGOs are some of the major players in providing potable water and adequate sanitation for Afghanistan's population. [71] (p45)

Major programmes for urban regeneration in water supply and sanitation were being undertaken by UN agencies and NGOs and thousands of households had been connected to clean water supplies. [71] (p8) The report noted that "The Danish Committee for Aid to Afghan Refugees (DACAAR) is one of the major suppliers of safe water and sanitation in Afghanistan and in 1999 had the capacity to provide 700,000 more Afghans with safe water and sanitation every year. They installed, renovated and maintained wells and water supplies in 17 provinces and since 1990 rural communities in southern, eastern and western Afghanistan were provided with 24,000 wells. It is estimated by DACAAR that over the past decade they have provided safe water facilities to over 3,000,000 people. One of DACAAR's main aims is to contribute to the provision of a sustainable supply of clean water in Afghanistan." [71] (p45)

6.279 According to BAAG, Tearfund's Food Security and Community Development programme in Kandahar Province is repairing water resources in addition to

providing agricultural, health and nutrition training. Tearfund's Disaster Response Team is improving water supplies and sanitation to 30,000 displaced people in camps near the Pakistan border. Safe water has also been provided to 150,000 people by the IFRC. New wells or deepened existing ones have been constructed in Kandahar and Zabul provinces, which has greatly improved the health of the population. In addition three agricultural self-help groups were initiated that have resulted in improved irrigation systems and thus greater efficiency in water use. The BAAG report noted, however, that no progress was possible during the first three months of 2003 due to the lack of security in that area. [71] (p46)

6.280 According to a UNAMA spokesman in a press briefing on 21 March 2004, "In Afghanistan, approximately 65 percent of the population in urban areas and 81 percent of rural communities do not have access to safe water, according to UNICEF. Primary responsibility for water resource management in Afghanistan rests with the Ministry of Irrigation, Water Resources and Environment with support from UN agencies and non-governmental organizations." [40p]

6.281 In February 2004, UNICEF noted in a Donor Update that "The latter part of 2003 to January 2004 has seen increasing violence and targeting of UN and humanitarian workers severely hindering the UN and NGO partners' operation in some areas. In addition, insecurity, drought and economic hardship have been threatening the sustainability and coverage of interventions. Consequently, Afghan people, in particular children and women, are in many cases still caught in a vicious cycle of factional violence, disease and degrading poverty, despite the many achievements of the past two years." [40bk] (p1)

6.282 UNICEF further noted that "In spite of these challenges, the formal governance of Afghanistan is gradually taking its shape. The Constitution had been finalized following intensive debates at the Constitutional Loya Jorga (the Grand Council) in early January 2004. The voter registration is in progress for the national election in June 2004 [now scheduled for September 2004]. Starting November 2003, the Afghan Transitional Government has been formulating the National Development Budget for the next Afghan fiscal year 1383 (March 2004 - March 2005), in partnership with donors, UN agencies and NGO partners. Currently the budget hearing is in progress and the final budget will be in place by March." [40bk] (p1)

6.283 In March 2004 the World Bank congratulated the Government of Afghanistan on the release of a report called 'Securing Afghanistan's Future: Accomplishments and the Strategic Path Forward' which outlined a comprehensive development agenda for the next seven years. The World Bank noted that the plan is designed to lift the living conditions of all citizens as their nation changes from conflict. According to the World Bank, "The Government report, prepared in collaboration with the Asian Development Bank, the International Monetary Fund, the United Nations Development Program, the United Nations Assistance Mission for Afghanistan and the World Bank, sets out a comprehensive framework for the country's development. The report goes beyond economic and human development issues such as health, education, infrastructure and private sector development, and also, for the first time, integrates issues related to security, justice, counter-narcotics efforts and human rights. The report outlines costs for 7 years to support a 12-year investment program. The costs of the seven-year program laid out in the report total US\$27.5

billion.” [40g]

6.284 According to the World Bank, ‘While forward-looking, the report also notes the many achievements accomplished over the last two years in Afghanistan. "The Government should be commended for the impressive progress made in the reconstruction of Afghanistan," said Wolfensohn [World Bank President]. "In a very short space of time they have articulated a clear development framework, taken ownership of their development agenda with a profound conviction and rapidly brought about meaningful and visible change. This is testament to the very hard work of many in both Government and their partners in the international community. But a huge amount remains to be done and Afghanistan must continue to be a major focus of the international community.”’ [40g]

6.285 On 1 April 2004, CARE International reported that the \$8.2bn pledged by international donors at a two day Berlin conference had brought a welcome increase in funding but fell short on long-term commitment. CARE noted that “According to a recent needs assessment prepared by the Afghan government, reconstruction will require \$27.5 billion over the next seven years.” According to CARE, the pledge of \$4.5 billion in the first year slightly exceeds the amount requested. However, only \$1.4 billion in firm commitments - just 36% of the requested amount - has been made for the third year. [40bp]

6.286 On 29 March 2004, BBC News reported that “The UN Food and Agriculture Organisation is appealing for \$60m to help Afghanistan's farmers combat hunger and deter opium production...The Rome-based agency said despite a record harvest in 2003, millions of people still have no access to food. It said rehabilitating the agricultural sector was also essential to curbing the cultivation of opium...Eighty-five percent of the country's 25 million people depend on agriculture for their survival. Yet despite an excellent harvest last year, millions of refugees, displaced people and even farming families still have no access to food.” [25h]

6.287 In Annex 1 of the April 2004 Berlin Declaration, the Afghan Government committed to preparing a Poverty Reduction Strategy Paper, a Government-led process in partnership with international organizations and donors, which will build on the National Development Framework and the recent report, "Securing Afghanistan's Future", to prepare a medium-term strategy for poverty reduction. The strategy will include an approach to asset-creation for the poor, especially the rural population who are dependent on agriculture for their livelihoods and the development and implementation of an affordable social policy that attends to the needs of vulnerable groups affected by war including refugees, internally displaced people (IDPs), the disabled, orphans and single-headed households. [40br] (p6)

See also [Refugees outside Afghanistan/Returnees](#) paragraphs 6.329 - 6.344 for details of recent refugee returns.

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Humanitarian Situation Kabul

6.288 News reports in June 2002 suggested that the situation in Kabul had greatly

improved and journalists reported seeing the return of normal life to the city of Kabul. A reporter from the Times newspaper noted in June 2002 the reappearance of a “rush hour” and traffic jams, the reopening of restaurants, and the availability of food, alcohol (often hidden from view) and luxury commercial items, including DVD's. [13b] BBC World Affairs correspondent John Simpson noted that the streets of Kabul were crowded and the shops full, in contrast to the city under Taliban rule when the streets were quiet in the daytime and empty and silent at night. [25a] The Frontier Post, a national daily newspaper published from Peshawar and Quetta in Pakistan, noted signs of improvement with reconstruction underway and new businesses opening. This newspaper report also noted, however, that Kabul was still in ruins, with municipal officials estimating that up to 70 percent of buildings had been destroyed. [40i]

6.289 In June 2002, a report from the Humanitarian Advisor in the Department for International Development confirmed the availability of food and water in Kabul. However, food was available only to those who could afford it, which was not everyone. The report stated that “75% of water in Kabul is contaminated and not fit to drink. Most people rely on wells, many of which are running dry with the water table still low after 4 years of drought. There is no urban sanitation system, no sewage treatment, and pit latrines are the norm.” [51] According to the report, housing was increasingly limited as more families arrived. Two to three families living in a house or flat for one was normal. [51]

6.290 In June 2002, a report from the Humanitarian Advisor in the Department for International Development stated that In May 2002, a BBC News correspondent in Kabul reported that aid agencies in Kabul had raised concerns that the huge influx of returning refugees was putting increasing pressure on the city's housing and infrastructure. [25a] In late July 2002 it was reported by the Institute for War & Peace Reporting (IWPR) that land was at a premium in Kabul and the capital couldn't meet the demands placed upon it. The problem was exacerbated by the return of over a million refugees which had swollen the city's population to the extent that it was not known how many people were now living in Kabul. The IWPR reported that, as a result, thousands of Afghans get by as best they can -in tents pegged on empty plots of land, inside commercial containers with squares cut out for windows, but mostly through extended family networks. [40i]

6.291 In June 2002, the Humanitarian Advisor at the Department for International Development advised that skilled labour was in demand in Kabul but it was assumed that unskilled labour was in surplus. Daily rates of pay were approximately \$2-3 and many men and almost all women were unemployed entirely. [51] In July 2002, UNAMA announced the expansion of the Recovery and Employment Afghanistan Programme (REAP). UNAMA stated that REAP, which had been operational in Kabul since February 2002, would expand its operations to Kandahar and Jalalabad where it expects around 30,000 unemployed Afghans in those areas to benefit from the programme. It was reported that the REAP programme “provides quick impact assistance to municipalities and local communities throughout Afghanistan in carrying out labour intensive public works projects in the employment, infrastructure and environment sectors.” [40i]

6.292 In July 2003, UNHCR reported that “In Kabul, increased urbanisation has

placed a burden on water and electricity resources. Many returnees and IDPs are squatting in tents and partially destroyed public buildings, while others are sharing apartments.” [111] (p29) In August 2003, UNHCR reported that “the Minister of Urban Housing and Development had said in July [2003] that half of the 20,000 low-cost housing units planned for the capital would be set aside for returnees.” [111] (p1)

6.293 In September 2003, a BBC correspondent in Kabul reported that President Karzai had sacked Kabul’s security chief, Basir Salangi. According to the report, Mr Salangi had ordered the partial bulldozing of more than a dozen homes belonging to the poor in order to clear the way for the construction of luxurious compounds for Kabul’s new elite. Mr. Salangi was replaced by General Baba Jan and President Karzai set up an independent commission to investigate the scandal. [25n] In December 2003, the UN Secretary-General confirmed this account of events and added that the incident had involved the forced eviction of families in Shirpur village in Kabul. The land had been distributed by the Ministry of Defence and the municipality for the private use of government officials and their associates. [39k] (p12)

6.294 In January 2004, a report by the British Agencies Afghanistan Group (BAAG) stated that “The Government is meeting the challenge of creating fully functioning and adequate urban services by tackling housing needs first and foremost. The large number of returnees have swollen urban populations and further overstretched inadequate services resulting from the consequences of war damage, lack of maintenance and drought. In May 2003, for example, the Ministry of Urban Development and Housing estimated that there was an average of 18 people per house in Kabul therefore preparation for housing, sanitation and water supply projects need urgent implementation. Lack of housing is not only the cause of human discomfort and misery but, coupled with the land rights issue, is also contributing to lack of security and instability in the country. One measure the Government has taken to address the problem is the development of a National Housing and Land Policy to assist in resolving land disputes. At the beginning of December 2003 more than 52,000 homes (i.e. more than 65% of the target) were completed with another 16,000 under construction and on schedule for completion by the end of the year (95% of their goal). The remaining 2,000 are expected to be finished early in 2004.” [71] (p34)

6.295 According to a report published in January 2004 by the British Agencies Afghanistan Group (BAAG), “CARE’s water and sanitation project in Kabul has benefited over 500,000 people by rehabilitating the municipal water supply, improving street drainage and urban sanitation. This has been done by employing 4,000 local men on a food-for-work basis.” [71] (p45) The BAAG report noted that “SCA, UNICEF, German Agro Action (GAA), Solidarite, the ICRC and Norwegian Church Aid are some of the other major organisations that continue to play a significant role in provision of potable water supplies. [71] (p46)

6.296 On 22 February 2004 Canoe World News, a Canadian internet network, reported the Afghan Minister for Irrigation and the Environment, Yusuf Nuristani, as saying that ensuring a stable and secure water supply was one of the biggest obstacles to economic development in Afghanistan. The report noted that estimates of Kabul’s population were as high as 3.5 million and it was growing rapidly. The Minister was quoted as saying “We are just around the corner from disaster. Our

system was designed for 300,000 residents, and that was before the wars. We have no ability to store water, to recharge our reserves." It was reported that, although the area around Kabul had suffered through a long-term drought, the country was rich in water resources but the problem was moving the water to more arid, populated areas like Kabul. Minister Nuristani was reported as saying he is confident that new projects will come about if the peace and security brought by international troops can be maintained. [77]

6.297 In a report on land issues published in September 2003, UNHCR noted that a substantial number of refugees had been displaced upon return as a result of land tenure problems in their areas of origin, calling into question the sustainability of return for many of them. According to UNHCR, "Though the majority of the people constituting the "squatters" in Kabul are urban poor, some of them are also returnees who have become displaced upon return because their land has been occupied while they were in exile, and who were unable to reclaim it. One such example can be found in sub-district 3 of Kabul province, where 153 families live at the building of the Chaplq shoe factory. They are originally from various provinces such as Parwan, Logar, Kunduz, Kabul and Bamyan. They claim that their land in their areas of origin is still occupied by families of Hazara ethnicity. There were also 60-70 families from the same province and with the same problem residing in several partially destroyed houses in Karte Se. Along the same lines, in sub-district 8 and 10 of Kabul City, a number of Hazara families from Sharistan, have claimed that persons affiliated to two major commanders Toran Abdiul Ali and Arif Dawari had occupied their houses and land. In a third case, 10 Pashtoon IDP families residing in rental houses in Qalacha area of sub-district 8 claim to have come to Kabul when their village became the frontline between the Taliban and the Northern Alliance about 6 years ago. Later on, when the Taliban were defeated, the Pashayee commanders took control of the area and continue to occupy it." [11m] (p4)

6.298 In February 2004, Terre des hommes (Tdh), an organisation working for the rights of the child, commented on the conditions in Kabul in which the women and children they targeted lived. According to Tdh, "Many mothers and children of the target group are living in extreme states of impoverishment. Still, in many areas the homes of clients are, in fact, remnants of bombed buildings, without any access to potable water." [40h]

6.299 On 16 March 2004, the Asian Development Bank (ADB) reported that it had opened a new resident mission office in Kabul, which renewed the bank's commitment to work with Afghanistan in its rebuilding efforts. It was reported that "Mr. Jin [ADB Vice President] also underscored the importance of stabilizing Afghanistan's security situation to ensure that rebuilding efforts are not hampered. "The revival of Afghanistan's economy and prospects for continued growth depend on rebuilding key infrastructure that creates jobs, boosts incomes, accelerates the rehabilitation of displaced people, and promotes greater stability and unity," he said." [40bm]

6.300 According to the ADB, "The rebuilding and reconstruction efforts will promote trade, growth, and poverty reduction, directly benefiting about 9 million people in seven provinces, including the capital, Kabul. Some 45% of the populations in these areas subsist on less than \$0.25 per day. ADB Country Director, Afghanistan Resident Mission, Mr. V.N. Gnanathurai said while the issue of achieving peace and stability is

pivotal for Afghanistan, much progress had been made in the last two years in developing the country's economy and the picture is improving.” [40bm]

6.301 According to a report by the International Peace Research Institute in Oslo in early 2004, Kabul has the looks of a boom town with attendant large-scale poverty and squalor. There is rebuilding on a large scale and streets with shops selling building equipment are congested with traffic. The foreign presence has visibly increased in step with the inflow of aid money. The bustling activity has attracted numerous internal migrants and returning refugees, who have decided go to the capital rather than their home areas. Over one-third of Kabul’s population is estimated to be returning refugees and IDPs. The population of Kabul province has grown to 2.8 million as compared to 1.78 million in 1999. Real estate prices in the best areas of the city approach those of downtown New York, but a few blocks away there is squalor. Trading and movement of people has visibly increased over the past year. Five airlines now serve Kabul International airport, while the national airline, Ariana, flies regularly to the provinces and is heavily booked.” [19] (p24)

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Taliban

6.302 On 10 December 2001 the Irish Examiner reported that, “~~Several~~ officials of the defeated Taliban, including their envoy to the United Nations, yesterday formed ~~members of the~~ a new political party to “help bring peace to Afghanistan”. Although ~~the~~ Khudamul Furqan Jamiat (~~KFJ~~) -~~Association of~~ Servants ~~Society of~~ ~~Furqan the~~ (~~Koran~~)-~~Society~~ – is headed by Ahmad Amin Mujaddidi, a spiritual figure widely respected in Afghanistan, the other six officials at the news conference in the Pakistan capital Islamabad previously held posts with the Taliban...Mr. Mujadidi said his party would cooperate with the new interim government headed by Hamid Karzai, who had called him from Afghanistan, despite describing the country as returning to the lawless state that existed before the Taliban came to power.” [12]

6.303 According to a Danish fact finding mission in May 2002, “Most sources stated that the Taliban, as a political movement, does not exist any more. At the same time, most sources were of the opinion that many former members of the movement are in particular in the southern and south-eastern Pashtun areas of Aghanistan, but that there are also former Taliban in other areas of the country.” Some sources, including UNAMA, Medecin Sans Frontieres (MSF) and the Cooperation Centre for Afghanistan (CCA), were of the view that the Taliban did not constitute a political threat or a threat to civilian life at that time but a Pashtun movement may possibly mobilise again. Several sources interviewed in May 2002, including the director for CCA and the coordinator for UNAMA’s Civil Affairs department, confirmed that the Taliban generally cannot constitute a risk for people who fled from the Taliban’s forced recruitment of soldiers. The director for CCA commented, however, that it cannot be completely excluded that such people may have problems. [8b] (section 11.2.1)

6.304 In September 2002 a Danish fact finding mission reported that “The UNHCR-Kabul also emphasized that at present the Taliban does not exist as a powerful movement, bu that there are groups who have been closely associated with the movement and who now constitute a security problem and engage in activities, particularly in the provinces of Zabul, Paktia and Khost, in the southern and south-

eastern regions of Afghanistan.” [8c] (p15) In July 2003, UNHCR advised that “There are, reportedly, still pockets of resistance of al Qa’ida and Taliban forces and indications that some Taliban forces might be regrouping. Since August 2002, the extremist and Anti-Western mujahideen commander, Gulbuddin Hekmatyar, and his followers have become notably more active, being linked to sporadic bombings in Kabul city and insecurity in parts of the Eastern, Central and Northern regions.” [11i] (p15-16)

6.305 In August 2003, Agence France-Presse (AFP) reported that suspected Taliban fighters were believed to be responsible for the increase in attacks on police, soldiers and aid workers in the southern and south-eastern regions. It was reported that “The incidents are the latest in a string of attacks on Afghan and Western government, military and humanitarian targets believed to have been launched by insurgents loyal to the Taliban, its al-Qaeda allies and Islamist rebel leader Gulbuddin Hekmatyar, and by warring factions.” The report noted that coalition troops, led by the US military, were continuing to search for al-Qaeda and Taliban remnants, mainly in the militia’s former strongholds in the east and southeast of the country. [40av]

6.306 In October 2003, Reuters published a Pakistan-based Afghan news agency’s report that “In a pamphlet to authorities and residents of eastern Laghman province, the Taliban said a jihad, or holy war, against American forces in Afghanistan was the duty of every Muslim. It also warned Afghan drivers against carrying foreigners and their belongings on highways.” The Taliban also warned that women found working with foreign NGOs would be killed, as would any foreigner travelling on roads in the province. The pamphlet was also reported to threaten severe punishment for Afghans who brought dancing girls to festivals or marriage celebrations. [40bi]

6.307 On 19 November 2003, the South Asia Correspondent of The Times newspaper reported that “A resurgent Taleban threatened to attack foreign aid workers and journalists in Afghanistan yesterday and admitted responsibility for the killing of a French United Nations employee.” [13a] On 12 February 2004, UNHCR reported that an Afghan court had sentenced to death two suspected members of the former Taliban regime who had assassinated a French United Nations worker in November 2003. According to UNHCR, the convicted men were arrested by police shortly after the murder and identified as members of the Taliban regime. It was reported that they had lived in Ghazni province since the fall of the Taliban government. [11j] (p1-2)

6.308 On 30 December 2003, the Secretary-General to the UN Security Council reported that “The infiltration of elements hostile to the Afghan Government across the border from Pakistan to Afghanistan has remained a serious concern. To deter this infiltration Pakistan has deployed and maintained troops along its border with Afghanistan. Such operations along the border are an important part of the effort to deter Taliban and other anti-Afghan Government activity. However, there remain persistent reports of Taliban leaders operating inside Pakistan as well. The tripartite commission formed by Afghanistan, Pakistan and the United States of America is working to address the issue of cross-border security and other mutual security concerns, and it is hoped that through this mechanism and other, bilateral contacts, the problem of cross-border destabilizing activities will be effectively contained.” [39k] (p11)

6.309 In January 2004, an overview of the human rights issues in Afghanistan by

Human Rights Watch (HRW) detailed problems caused by suspected Taliban remnants. The report stated that “In the south and southeast of the country, Taliban remnants and other anti-government forces outside Afghanistan's political framework have further aggravated security conditions by attacking humanitarian workers and coalition and Afghan government forces. In 2003 and early 2004, numerous humanitarian workers in the south and southeast have been kidnapped, beaten up, shot at, and even killed. Over thirty-five schools in the south and southeast, mostly for girls, have been rocketed or burned since August 2002. As a result of attacks, international agencies have suspended many of their operations in the affected areas. As a result, development and humanitarian work has suffered.” [17n] (p2)

6.310 According to HRW, the Pashtuns’ sense of marginalisation due to political developments in Afghanistan had led to the upsurge in activity in the Pashtun areas of southern and southeastern Afghanistan by the Taliban and forces under the command of Gulbuddin Hekmatyar. HRW reported that “The result of this upsurge has been an absolute breakdown in security in the Pashtun areas and increasing human rights violations. The United Nations and international non-governmental organizations now consider nearly two-thirds of the Pashtun-belt as no-go areas...The targeting of foreign and local humanitarian groups suggests a troubling change in tactics by the Taliban and other groups opposed to the central government in Afghanistan.” [17m] (p8)

6.311 On 8 January 2004 the Guardian newspaper reported that “A Taliban commander in Afghanistan yesterday apologised for a bomb attack in the southern city of Kandahar on Tuesday which killed 16 people, including many children, and said it had been a botched attempt to target US troops.” According to the source, a Taliban commander, Mullah Sabir Momin, told Reuters by satellite telephone that they wanted to target the provincial reconstruction team [PRT] office in the city, but because of a mistake the plan had failed. Mr Momin had said that US and allied forces regularly passed along the route where the explosion occurred. [18b]

6.312 On 25 January 2004, BBC News reported that “Police in Pakistan have arrested a former Afghan provincial chief and ally of Taleban leader Mullah Mohammad Omar. Maulvi Abdul Mannan Khawajazai, ex-governor of the western Badghis region, was captured near the Afghan border. Afghan officials welcomed the arrest, saying Mr Khawajazai was connected to continuing violence in Afghanistan even if he had no direct links to terrorism.” [25e]

6.313 On 6 March 2004, the Daily Telegraph newspaper published a report from a reporter in Shah Joy, a village 180 miles south-west of Kabul. It was reported that the Taliban were regrouping in about a third of Afghanistan’s southern regions and waiting for the spring in order to launch attacks against the central government and its allies. According to the report, about 70% of Zabul province was either controlled by Taliban supporters or was completely lawless. The report states “It is estimated that about 700 armed Afghan Taliban who are ethnic Pathans have crossed the border from the Pakistani cities of Peshawar and Quetta where they are trained and funded.” It was also alleged in the report that Taliban commanders were offering motorcycles, weapons and satellite telephones to anyone willing to rob or bomb a government target. Cash bonuses were reportedly paid for successful hits and killings of enemies. [78]

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Former Taliban Members

6.314 According to a BBC World News report in January 2002, thousands of Taliban fighters were captured during the US led coalition military action against Al Qa'ida and their Taliban supporters, which started in October 2001. Many were believed to remain at large in isolated pockets throughout the country. The BBC report stated that in early January 2002 more than 260 Taliban prisoners had been freed from Kabul prison. President Karzai was reported as saying that he planned to release all prisoners who held no senior position in the Taliban. Moreover, the Taliban rank and file would not be punished, only their leadership, including Mullah Mohammad Omar. [25au] A later BBC report on 9 February 2002 stated that a further 300 captured Taliban soldiers were released in February 2002 and were described by Hamid Karzai as innocent, having been conscripted by the Taliban. The report also noted that the former Taliban foreign minister Wakil Ahmad Mutawakil had surrendered to the US in the southern city of Kandahar. [25av]

6.315 A Danish Fact Finding mission to Afghanistan in September/October 2002 reported that according to international aid workers many Pashtuns were in prison in Afghanistan suspected of having served the Taliban. These sources together with the Norwegian charge d'affaires and the Cooperation Centre for Afghanistan (CCA) confirmed that no legal proceedings had been initiated against the prisoners. According to the source, "The head of the UNHCR office in Mazar-i-Sharif said that the issue of being suspected of having served the Taliban continues to be a major concern for many Pashtuns who fled the northern regions and are now living as internally displaced persons in camps around Kandahar (Spin Boldak). Many of these internally displaced persons are still not willing to return to the northern regions of Afghanistan for fear of reprisals from the local population." [8c] (p16-17)

6.316 The Danish fact finding mission reported that "The co-ordinator of UNAMA's Civil Affairs Branch explained that former Taliban people, who previously held high positions and were leaders in the provinces or the central region, are now risking persecution - in Kabul as well as in the northern regions - unless they are part of a powerful network. If they return to the villages, where they are known to be part of the Taliban, rank and file Taliban members may have problems. According to the source, the Taliban was an organized group with a clearly defined structure. It was obvious who gave the orders, and people who were actively involved in the movement – often against their own groups – are known locally. According to the source, they should stay away from their area of origin, but may return to other regions." [8c] (p16)

6.317 The Danish fact finding mission reported that "The Director of the Cooperation Centre for Afghanistan (CCA) reported that a large number of people in Afghanistan have served the Taliban, including large groups of the population who were not directly involved in the Taliban movement. According to CCA such persons do not have problems in Afghanistan today. However, for those who were commandants and leaders and who participated in mass murders and injustice against the population, the situation is different. As for the forced recruitment under the Taliban, CCA said that in the non-Pashtun areas, the Taliban demanded money instead of people, because in those areas they were not convinced of the loyalty of the people. CCA stressed that the current authorities have not initiated any legal proceedings

against persons who are known to have committed injustices under the Taliban. It was the opinion of ICG (International Crisis Group) that the population of Afghanistan have had to change sides and loyalties several times under successive leaders, and that the question whether or not a person served the Taliban, would not form the basis of conflict. A significant number of people had been more or less forced to be loyal to the Taliban movement, and according to the source taken on its own, this fact would not cause any problems today.” [8c] (p17)

6.318 According to the the Danish fact finding mission, “The coordinator of ACBAR advised that many former Taliban, employed in administrative positions, have “changed hats” today and are now occupying the same positions as they did during the Taliban regime.” This view was confirmed by a DACAAR project worker who said that in many areas in the southern belt the people employed in the local administration today are the same as those before and under the Taliban rule.” [8c] (p18) According to a Swedish Fact Finding Mission to Afghanistan in November 2002, most sources interviewed said that hardly anyone risked persecution because of being a former Taliban and most of the Taliban had been integrated into Afghan society. [61] (p21)

6.319 In a paper dated July 2003, UNHCR Geneva reported that “It is generally presumed that most of the “rank and file” Taliban have already returned to their communities of origin, either in Afghanistan or in Pakistan. Some hundreds of Taliban fighters have been released from detention by the Interim Administration on grounds that they were conscripts and therefore “innocent”. Nevertheless, there are reports of accusations, discrimination and threats against civilians who have worked in the administration during the Taliban regime. The likelihood that they could rise to the level of persecution is greater where rank and influence within the movement was more significant.” [11i] (p37) UNHCR stated that the risk to individual members and military commanders of the Taliban movement required careful assessment, given the amply documented records of deliberate attacks on civilians, summary executions, massacres and deliberate and systematic destruction of livelihoods by Taliban forces. [11i] (p40)

6.320 On 19 January 2004, Afghan News Net reported that President Karzai had ordered the release on Sunday of more former Taliban fighters. According to the report, “Karzai issued a decree saying all Afghans detained at the northern Sheberghan prison and not considered dangerous should be set free immediately. It was unclear how many inmates were affected. Local officials said the jail holds more than 400 suspected Afghan Taliban.” A Presidential spokesman was reported as telling the Associated Press, “They are Afghans. They have every right to a peaceful and respectable life in the new Afghanistan... The time for making people suffer and jailing them without reason is over.” It was also reported that “Karzai has said repeatedly that only a handful of Taliban leaders were to be regarded as terrorists, appealing to rank-and- file supporters to throw their energy into reconstructing the impoverished country.” [79]

6.321 On 30 January 2004, the internet edition of the Dawn newspaper, published in Pakistan, reported that “Afghan authorities on Thursday [29 January] freed 21 Pakistanis captured while fighting alongside the former Taliban regime and its Al Qaeda allies during the US-led war in Afghanistan in late 2001. The release, the

second this month, is being portrayed as a gesture of goodwill on the occasion of Eidul Azha, and follows repeated appeals by family members.” It was also reported that, two weeks ago, the Afghan authorities had freed 49 Pakistani militants, following an agreement between Afghanistan and Pakistan to free each other’s prisoners. The report noted that many of the hundreds of Taliban, Al Qaeda and allied militants captured following the ousting of the Taliban in late 2001 had already been freed. [20a]

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Hisb-e-Islami

6.322 According to Peter Marsden in the 2002 edition of his book “The Taliban - war and religion in Afghanistan”,

“Hisb-e-Islami (Hekmatyar) arose out of a split, in 1979, within Hisb-e-Islami, which had come into being because of the split within Jamiat-I-Islami. Its leader, Gulbiddin Hekmatyar, an engineering student at Kabul University during the formative years of the Islamist movement, is from Kunduz in northern Afghanistan. He is an ethnic Pushtun, possibly descended from the Pushtuns relocated to northern Afghanistan at the end of the last century by Abdur-Rahman. In Hisb-e-Islami he adopted the Soviet organisational model, creating a movement based on a cell structure with a pyramidal chain of authority. Potential members were carefully vetted and had to undergo a probationary period... Hekmatyar never had much of a geographical base within Afghanistan and relied heavily on the refugee camps, on Nangarhar Province in eastern Afghanistan, and on Kunduz as recruiting grounds. Hisb-e-Islami (Hekmatyar) tended to appeal to relatively well-educated young radicals, many of whom have benefited from a technical education. It regarded education as an important means of transmitting its ideology and operated a number of schools in Pakistan, including schools for girls.” [52] (p30) According to the source, Hekmatyar sought to eradicate existing customs, practices and structures and to replace them with a new, highly organised structure geared specifically to the creation of an Islamic state.

“Hisb-e-Islami (Khalis) emerged as a splinter movement from Hisb-e-Islami in 1979 after Younis Khalis, a tribal leader from Paktia Province with radical Islamic leanings opted to pursue his own directions. Khalis was trained in Islamic theology at the Deoband School in Delhi, which produced several generations of Afghan Ulema [senior religious scholars]...His style of leadership is that of the tribal patriarch and his following has been largely based on traditional religious leaders and local commanders in south-eastern Afghanistan.” [52] (p30)

6.323 In December 2002 BBC News reported that “An Afghan rebel leader, opposed to the government in Kabul, has warned that a holy war would be stepped up against international troops based in Afghanistan...Gulbuddin Hekmatyar, a former Mujahideen leader, issued the threat in a message distributed among his supporters in Pakistan...He fled into exile in Iran when the Taleban came to power, but is now said to have returned to rebuild a powerbase in his native country. Mr Hekmatyar’s message has been distributed among his followers in the conservative tribal lands on the border between Pakistan and eastern Afghanistan. “Hizbi-e-Islami (his forces) will fight our jihad until foreign troops are gone from Afghanistan and Afghans have set up

an Islamic government,” the message said...Iran asked Mr Hekmatyar to leave Tehran when the United States launched its war on terrorism and his exact whereabouts are unknown. The United States considers Mr Hekmatyar a further destabilising element in Afghanistan’s still fragile peace...But it is not clear how many fighters actually support him now.” [25u]

6.324 According to a BBC News report on 28 January 2003, “In February last year [2002], the Iranian authorities expelled Mr Hekmatyar and closed down the offices of his Hezb-e-Islami in Tehran...He returned to an undisclosed location in Afghanistan following threats by the Afghan Government to arrest him and try him for war crimes...A spokesman for Hezb-e-Islami in Pakistan said Mr Hekmatyar was now giving full support to the Karzai administration, although the warlord’s whereabouts remained a mystery. Soon after, however, the Afghan administration arrested 160 people in Kabul in a suspected anti-government plot. The government said the detainees had been conspiring to plant bombs in Kabul and that most were members of Hezb-e-Islami.” [25ax]

6.325 On 19 February 2003, the US Department of State designated Hekmatyar a terrorist. A press statement advised that “The U.S. Government has information indicating that Gulbuddin Hekmatyar has participated in and supported terrorist acts committed by al-Qa’ida and the Taliban. Because of his terrorist activity, the United States is designating Hekmatyar as a Specially Designated Global Terrorist under the authority of Executive Order 13224.” [2c]

6.326 In December 2003, BBC News reported that “A message attributed to rebel Afghan warlord Gulbuddin Hekmatyar says he has managed to escape arrest by US forces several times this year. The message came in a video-tape and cassette delivered to offices of the BBC and the Associated Press news agency in Pakistan... They contain a long statement by Mr Hekmatyar narrating his close encounters with US troops in Afghanistan... Earlier this week, US Defence Secretary Donald Rumsfeld said he was unable to comment on reports that US officials were trying to persuade Mr Hekmatyar’s supporters to disarm. But he said such a move would be worth pursuing.” [25ba]

6.327 In March 2004 a Human Rights Watch report noted that “In Afghanistan, United States and coalition forces, allied with local Afghan forces, are fighting armed groups comprised of members of the Taliban, the mujahidin group Hezb-e Islami, and a relatively small number of non-Afghan fighters, some of whom are associated with al-Qaeda. For their part, these groups have shown little willingness to abide by international humanitarian law or human rights standards: they have carried out abductions and attacks against civilians and humanitarian aid workers and detonated bombs in bazaars and other civilian areas.” [17o] (p1)

6.328 An International Crisis Group (ICG) Asia Briefing published on 30 March 2004 stated that, “In the weeks since the Constitutional Loya Jirga, the president has appointed a number of former Hizb-i Islami (Hikmatyar) commanders and political figures to high-level posts, including Bashir Baghlani as governor of Farah, Khyal Mohammad as governor of Zabul, and Sabawoon as minister-adviser in the Ministry of Border and Tribal Affairs.” According to ICG, “The incorporation of former Hizb-i Islami personalities into the government has accelerated since the Constitutional Loya Jirga, an indication that the support extended to Karzai by the party’s erstwhile

members may be more than a short-term alliance.” [26e] (p8)

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Refugees Outside Afghanistan/Returnees

6.329 BBC World News reported on 10 March 2002 that recent events in Afghanistan had swollen the already huge number of refugees and internally displaced Afghans. It was reported that since the events of 11 September 2001 it was estimated that about 250,000 Afghans had fled to Pakistan and tens of thousands more may have been smuggled to Iran. Prior to these new arrivals there were already around 3.5 million Afghans in these two countries. Following the fall of the Taliban thousands of refugees continued to flee mostly from food shortages in their home regions. However, it was reported that large numbers were also returning home. By March 2002 an estimated 250,000 had returned since November 2001. [25as]

6.330 UNHCR reported on 3 April 2002 that assisted repatriation from Pakistan began on 1 March 2002 and by early April a total of 160,000 had returned to Afghanistan. On 3 April 2002 UNHCR, Iran and Afghanistan signed a repatriation agreement for the assisted voluntary return of Afghan refugees from Iran. [11c] On 10 July 2002 UNHCR advised that “As the current changes are indeed generally conducive to the safe return of a broad spectrum of Afghans, the Office advises that asylum-seekers be actively counselled about the situation, as well as on possibilities for assisted return.” [11f]

6.331 In June 2003, Amnesty International published a report based on interviews conducted in April 2003 with over 100 returnees and internally displaced persons (IDPs) throughout Afghanistan. The report stated “Amnesty International is concerned that, under current conditions, the inability of many refugees and IDPs to sustain their return to their places of origin or preferred destination is leading to destitution and renewed cycles of displacement. This is being exacerbated by the fact that many instances of return, of both IDPs and refugees, are taking place in less than voluntary circumstances. The sustainability of return is further hindered by insufficient aid and reconstruction assistance from the international community.” [7f] (p3)

6.332 In July 2003, Human Rights Watch (HRW) reported on human rights abuses in southeast Afghanistan. The report stated that some of the human rights abuses they had documented in the report had caused returning refugees to decide against returning to their places of origin. According to the report, “Human Rights Watch interviewed several refugees returning from Iran and Pakistan who had decided to stay in Kabul city and not return to their places of origin because of human rights abuses in their home provinces. In the southeast, the problems seemed to be especially serious for refugees seeking to return to Ghazni province, Paghman district in Kabul, and Nangarhar.” [17f] (p44)

6.333 In a position paper published in July 2003, UNHCR stated that “By the end of 2002, Government and UNHCR sources reported the presence of Afghan refugees in some 50 non-industrialised countries.” According to UNHCR, Afghan refugees were mostly residing in Iran (2.0 million) and Pakistan (1.8 million). Smaller groups of refugees were located in India (11,400), Uzbekistan (5,700), Tajikistan (3,400), Ukraine (1,600), Russian Federation (1,500) and Turkmenistan (1,300). [11i] (p45)

6.334 The UNHCR paper also noted that “At the end of 2002, UNHCR estimated the number of internally displaced Afghans at some 665,000 down from 1.3 million a year earlier. During 2002, UNHCR Afghanistan reported the return of 1.5 million refugees from Pakistan, 250,00 from Iran and some 9,000 returning from Tajikistan. In total, an estimated 1.8 million Afghan refugees returned home during 2002. In addition, some 750,000 internally displaced Afghans are estimated to have returned to their place of origin during the year. During the year, no prima facie outflows of Afghan refugees were reported, although 84,000 Afghans became internally displaced during the year.” UNHCR reported that they had facilitated the resettlement of some 4,200 Afghan refugees in 2002, primarily from Pakistan, Iran, India, Uzbekistan, Russian Federation and Turkmenistan. [111] (p45)

6.335 In July 2003, UNHCR noted that “The largest groups of returnees go back to the Central region (Kabul province) and to the province of Nangarhar in the East. Some 40% of returnees are, regardless of their origins, moving into urban areas. Even though most returns have been based on purely voluntary decisions, more recent interviews of returnees from Pakistan and Iran have shown that many of them decided to leave because of the harsh and hostile behaviour of local authorities in urban areas. UNHCR and the Afghan Government have repeatedly stated that involuntary return could hamper the sustainability of return for such groups.” [111] (p31) A report by Amnesty International on the fate of Afghan returnees published in June 2003 concluded that “Many of the return movements from Iran and Pakistan in 2002 and 2003 were not an act of free will on the part of the refugees, who were constrained by explicit or implicit pressures emanating from the local or national authorities.” [71] (p8)

6.336 UNHCR reported in August 2003 that some 390,000 Afghans had returned home so far in 2003 and that Afghanistan was on course to see one of the largest repatriations in 11 years, second only to the 1.8 million who returned in 2002. More than 2.3 million Afghan refugees had returned since 2001 under the joint UNHCR/Afghan government programme, leaving a similar number of refugees in Pakistan and Iran. According to the report, “The UN Refugee Agency does not promote repatriation due to the lack of security in some areas of Afghanistan, as well as the country’s dependence on food and other humanitarian aid, but it aids those who wish to return.” [111] (p1) UNHCR emphasised the link between relief assistance and security and stated that “Afghanistan’s economic and social problems are very much linked to insecurity in some rural areas where needs are greatest, but also where aid workers face serious security problems.” UNHCR pointed out that “The success of the massive repatriation has been marred by a spate of attacks that have killed aid workers and scores of other Afghans, hindering the delivery of relief aid to some areas of the country.” [111] (p1-2)

6.337 In a UNHCR position paper July 2003, it was stated that “UNHCR considers that persons finding themselves in particularly vulnerable circumstances should not be required to return. Instead they should be allowed to prolong their stay on humanitarian grounds until special and co-ordinated arrangements can be put in place, on a case by case basis, to facilitate their safe and orderly return and appropriately receive them in Afghanistan. This includes individuals in the following categories:

- handicapped and ill individuals, or families with handicapped or ill members;
- unaccompanied elderly;
- unaccompanied minors; and
- landless, destitute Afghans, particularly those originating from food-insecure areas and drought-affected areas.” [11i] (p40-41)

6.338 In a report on land issues within the repatriation process of refugees published in September 2003, UNHCR advised that “Throughout the returnee monitoring exercise conducted countrywide, land related issues were identified as one of the main problems that refugees and IDPs were facing upon return, and that hampered their sustainable reintegration into their societies. Land problems have affected both individuals and groups alike. Conflicts among individuals and groups can be found in almost every district, serving as a reminder of the seriousness of the problem, and involving a high level of violence and manipulation.” [11m] (p1)

6.339 According to the UNHCR report, “The occupation of houses and property by commanders is one of the most widespread features country wide, affecting groups and individuals alike... Commanders have used their occupation of the land of returnees as a tool to pressurise their victim in order to reach a political end. Weaker members of the society, such as female heads of households are particularly vulnerable to abuse [and] illegal confiscation of their property. In the Istilaf district of Kabul province, the house of a pashtoon widow was unlawfully occupied by a Tajik commander from another village. This is not to say that vulnerable individuals always lose out to the powerful. In some cases though few, the vulnerables’ right to property was effectively protected. In Deh Yak district of Ghazni province; a returnee widow faced difficulties upon return to access her land. The local court investigated the merits and ruled in the widow’s favour. The caretaker of her land accepted the decision, signed it in the presence of the villagers and the head of the village.” According to UNHCR “Extortion and illegal levying of taxes are features that go hand in hand with overall abuse and control that local commanders practice on the village and district level. These abuses do not target necessarily any particular ethnic groups.” [11m] (p6)

6.340 Commenting on the difficulties faced in recovering property, the UNHCR report of September 2003 notes that “The process of recovery has been complicated by the fact that the illegal occupants have often sold the property that they had occupied to others... There are also more complicated cases of members of ethnic and religious minorities who forcibly sold their lands/property during the Mujahideen or Taliban regimes, and who now wish to recover their properties. Their only legal claim is that they had been coerced to sell their land at the time, which would be difficult to prove... Other complications concern the questionable way in which those who currently perceive themselves to be the victims of an unlawful act acquired this land in the first place. Many of these groups were given land by previous regimes, without possibly much consideration for legality.” [11m] (p8)

6.341 The UNHCR report also notes that “Though exceptional, there have been cases where returnees have been able to recover their property without problems. Generally, this has been the case in those areas where returnees belong to the same ethnic or tribal group as the majority of the residents, or are supporters of the same political party or commander.” [11m] (p8) UNHCR further noted, however, that

disputes were also found among members of the same tribe or ethnic group. Other cases were noted in which returnees had to pay bribes to occupying commanders in order to secure their rights. [11m] (p9)

6.342 According to UNHCR “It is worth mentioning in this regard that military and political figures have sometimes assisted returnee groups to regain their land that had been unlawfully taken from them, which once again highlights the fact that the single determinant factor tipping the balance in these issues is sheer political and military power. In Guldara district of Kabul province for example, only a few houses belonging to Pashtoon returnees are still occupied by Tajiks. The issue has been resolved largely through the intervention of a prominent commander of Shomali, who has assisted the returnees in recovering their property.” [11m] (p9)

6.343 On 17 November 2003 UNHCR announced that it had decided to temporarily close its voluntary repatriation centres for Afghan refugees in Peshawar and Quetta in Pakistan following the murder of a staff member in Ghazni province, 100 km south of Kabul. UNHCR had suspended its activities in Ghazni following the murder and the closure of the repatriation centres in Pakistan was to ensure that Afghan returnees did not arrive at UNHCR offices that were not open. [11k] On 9 March 2004 a UNHCR spokesman announced that “UNHCR resumed assisting refugees return from Pakistan on 1 March [2004]. The decision to resume repatriation came after UNHCR took additional security precautions for its staff and received assurances from the governments of both Afghanistan and Pakistan that they are combating militants who have targeted aid workers, including UNHCR's Bettina Goislard who was killed in the Afghan city of Ghazni last November [2003].” [11n] (p1)

6.344 According to the UNHCR spokesman, “UNHCR today [9 March 2004] began relocating refugees from a remote camp near the Khyber Pass that is slated for closure this month under a plan to help all residents of the two-year-old Shalman Camp return to Afghanistan or move to another refugee camp...About half the refugees in Shalman said during a January [2004] survey that they would rather return to Afghanistan than relocate to another camp inside Pakistan.” [11n] (p1-2)

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Al Qa'ida

6.345 According to the Europa World Year Book 2003, following the attacks on New York and Washington on 11 September 2001, bin Laden and his Al Qa'ida organisation were publicly identified by the US as being principally responsible for the attacks. [1a] (p405) The Europa World Year Book records that “On 2 October [2001] NATO declared that it had received evidence from the USA that confirmed bin Laden's responsibility for the terrorist attacks. Some two days later the Pakistani Government announced that it had seen proof convincing enough to prosecute bin Laden in a court.” [1a] (p406)

6.346 In October 2001 (updated November 2001) a paper was issued by the British Government (Foreign & Commonwealth Office) detailing in full the background of Usama bin Laden and the Al Qa'ida terrorist network, its links with the Taliban and evidence of its involvement in terrorist atrocities. The paper concludes that “The attacks of the 11 September 2001 were planned and carried out by Al Qa'ida, an

organisation whose head is Usama bin Laden...The attack could not have occurred without the alliance between the Taliban and Usama bin Laden, which allowed bin Laden to operate freely in Afghanistan, promoting, planning and executing terrorist activity.” [48a] (p12) The Al Qa’ida organisation is proscribed in the UK under the Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2001. [21]

6.347 In early April 2002 BBC News reported that “The US authorities say they have confirmed that a man captured in Pakistan is a senior member of the al-Qaeda network known as Abu Zubaydah...White House spokesman Ari Fleischer told journalists that Abu Zubaydah was a “key terrorist recruiter and operational planner and member of Osama bin Laden’s inner circle.” If confirmed, this would mean that he was the highest ranking member of Al Qa’ida to fall into American hands since 11 September 2001.” [25b1]

~~The organisation is proscribed in the UK under the Terrorism Act 2000(Proscribed Organisations) (Amendment) Order 2001.[21]~~

6.348 According to a BBC News Timeline, in March 2003 one of Al Qa’ida’s most senior leaders, Khalid Sheikh Mohammed, was arrested in a joint Pakistani-CIA operation near Islamabad. He had long been on the FBI’s most wanted list. [25b6] In August 2003, Agence France-Presse reported that “The US-led military coalition said suspected Taliban and al-Qaeda fighters had stepped up attacks against Afghan forces in the southern and southeastern regions bordering Pakistan, although violence against US-led troops was stable...12,500 foreign combat troops, led by the US military, are hunting al-Qaeda and Taliban remnants mainly in the militia’s former stronghold in Afghanistan’s east and southeast.” [40av]

6.349 On 24 February 2004, BBC News reported that “Pakistani forces have begun a fresh operation along the Afghan border against al-Qaeda and Taleban suspects...US forces in Afghanistan have said they are stepping up the hunt for the al-Qaeda leader [bin Laden] who is believed to be in the border area...Last week the commander of the US-led coalition forces in Afghanistan said an operation was being launched on both sides of the border.” [25m]

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Documents

6.350 In September 2002 a Danish fact finding mission reported that “DACAAR [Danish Committee for Aid to Afghan Refugees] said about documentation in general, that the circulation of false documents is widespread. This particularly applies to examination certificates from universities, and especially small universities. As an example the source mentioned examination certificates from the University in Jalalabad...UNHCR-Kabul said that there are false passports in circulation. A person caught with a false Afghan passport, risks a prison sentence of 3 to 12 months.” [8c] (p59-60) According to the Danish fact finding mission “The Minister of the Interior said that a normal birth certificate is issued by the hospital where the person is born...The Minister of the Interior advised that marriage certificates are issued by the courts.” [8c] (p60)

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ANNEX A: CHRONOLOGY

[25b]

1964 - Constitutional monarchy introduced, which leads to political polarisation and power struggles.

1973 - Mohammed Daud seizes power in a coup and declares a republic. Tries to play off the USSR against Western powers. His style alienates left-wing factions who join forces against him.

1978 - General Daud is overthrown and killed in a coup by the leftist People's Democratic Party. The party's Khalq and Parcham factions fall out, leading to purging or exile of most Parcham leaders. At the same time, conservative Islamic and ethnic leaders who objected to social changes begin armed revolt in the countryside.

1979 - The Power struggle between leftist leaders Hafizullah Amin and Nur Mohammed Taraki in Kabul is won by Amin. Revolts in the countryside continue and the Afghan army faces collapse. The Soviet Union finally sends in troops to help remove Amin, who is executed.

1980 - Babrak Karmal, leader of the People's Democratic Party Parcham faction, is installed as ruler, backed by Soviet troops. Anti-regime resistance nonetheless intensifies with various mujahedin groups fighting Soviet forces. The US, Pakistan, China, Iran and Saudi Arabia supply money and arms.

1985 - Mujahedin come together in Pakistan to form an alliance against Soviet forces. Half of the Afghan population now estimated to be displaced by war, with many fleeing to neighbouring Iran or Pakistan. Soviet leader Mikhail Gorbachev says he will withdraw troops from Afghanistan.

1986 - The US begins supplying the mujahedin with Stinger missiles, enabling them to shoot down Soviet helicopter gunships. Babrak Karmal is replaced by Najibullah as head of the Soviet-backed regime.

1988 - Afghanistan, the USSR, the US and Pakistan sign peace accords and the Soviet Union begins pulling out troops.

1989 - The last Soviet troops leave, but civil war continues as the mujahedin push to overthrow Najibullah.

1991 - The US and USSR agree to end military aid to both sides.

1992 - Resistance closes in on Kabul and Najibullah falls from power. Rival militias vie for influence.

1993 - Mujahedin factions agree on formation of a government with the ethnic Tajik, Burhanuddin Rabbani, proclaimed president.

1994 - Factional contests continue and the Pashtun-dominated Taliban emerge as a major challenge to the Rabbani government.

1996 - The Taliban seize control of Kabul and introduce a hard-line version of Islam, banning women from work and introducing Islamic punishments which include stoning to death and amputations. Rabbani flees to join the anti-Taliban Northern Alliance.

1997 - The Taliban is recognised as the legitimate rulers by Pakistan and Saudi Arabia. Most other countries continue to regard Rabbani as Head of State. The Taliban now control about two-thirds of the country.

1998 - Earthquakes kill thousands of people. The US launch missile strikes at suspected bases of militant Usama bin Laden, accused of bombing US embassies in Africa.

1999 - The UN imposes an air embargo and financial sanctions to force the Taliban to hand over Usama bin Laden for trial.

2001 January - The UN imposes further sanctions on the Taliban to force them to hand over Usama bin Laden.

2001 March - Taliban blow up giant Buddha statues in defiance of international efforts to save them.

2001 May - Taliban order religious minorities to wear tags identifying themselves as non-Muslims, and Hindu women to veil themselves like other Afghan women.

2001 September - Eight foreign aid workers on trial in the Supreme Court for promoting Christianity. This follows of tension between Taliban and aid agencies. Ahmad Shah Masood, guerrilla and leader of the main opposition to the Taliban, is killed, apparently by assassins posing as journalists.

2001 October - USA and Britain launch air strikes against Afghanistan after Taliban refuse to hand over Usama bin Laden, held responsible for the 11 September attacks on America.

2001 November - Opposition forces seize Mazar-i- Sharif and within days march into Kabul and other cities.

2001 5 December - Afghan groups agree deal in Bonn for interim government

2001 7 December - Taliban finally give up last stronghold of Kandahar. Mullah Omar remains at large.

2001 22 December - Pashtun royalist Hamid Karzai is sworn in as head of 30 member interim power-sharing government.

2002 January - First contingent of International Security Assistance Force in place

2002 April - Former king Zahir Sha returns but says he makes no claim to the thrown.

2002- May - UN Security Council extends mandate of the International Security Assisatance Force in Afghanistan until December 2002. Allied forces continue their military campaign to find remnants of Al Qa'ida and Taliban forces in the South East.

2002 June - Loya Jirga elects Hamid Karzai as interim head of state. Karzai picks members of his administration, which is to serve until 2004. Turkey takes over as lead nation in ISAF.

2002 July - Vice President Haji Abdul Qadir assassinated.

2002 September – Karzai narrowly escapes an assassination attempt in Kandahar his home town.

2003 February - Germany and Netherlands take over as lead nations in ISAF.

2003 August - NATO takes control of security in Kabul. It is the organisation's first operational commitment outside Europe in its history.

2004 January – Grand assembly – or Loya Jirga – adopts new constitution which provides for strong presidency.

ANNEX B: POLITICAL ORGANISATIONS AND OTHER GROUPS

Harakat-e-Islami (Islamic Movement of Afghanistan): Led by Ayatollah Muhammed Asif Muhsini; a Shi'a party with a mainly non-Hazara leadership; allied with Jamiat-i-Islami. This faction is represented in the ITAA by Mr. Said Hussain Anwari, Minister of Agriculture and Mr. Said Ali Jawid, Minister of Transportation. [11i]

Hizb-e Islami (Hekmatyar)

Pashtun/Turkmen/Tajik~~en~~/Tajik; led by Gulbuddin Hekmatyar. [1] Radical Islamist, controlled few military or political resources in June 2001. [33] In December 2002 Hekmatyar issued holy jihad against foreign troops. According to reports his whereabouts were unknown after he was expelled from Iran in summer of 2002. [25u] There are however reports that he is in Afghanistan. [25ax] In January 2003 it was reported that the expelled Taliban regime had regrouped and allied itself to Hekmatyar [51]. Reports of an alliance between Hizb-i-Islami and the Taliban were denied by Taliban officials and supporters of Hekmatyar.[25ao] Hekmatyar was designated a terrorist by the US in February 2003. [2c] In August 2003 it was reported that Hizb-i-Islami were one of the groups believed to have been responsible for a spate of attacks on Afghan and Western government, military and humanitarian targets. [40av]

Hizb-e Islami (Khalis)

Pashtun; led by Maulvi Muhammed Yunus Khalis. [1]

See also paragraphs 6.322 – 6.328 on Hizb-e Islami

Hizb-i Wahdat-e-Islami (Islamic Unity Party)

Principal Shi'a party in Afghanistan consisting mainly of Afghans of Hazara ethnic group. Founded under Iranian sponsorship in 1988 as a union of 9 Shi'a parties, led by Abdul Ali Mazari until his death in Taliban custody in February 1995. Split in 1993: Mohammad Karim Khalili led the Hezb-e-Wahdat based in Bamian/Yakawlong, while Mohammad Akbari closely affiliated with the government of Burhanuddin Rabbani, remained in Kabul until the arrival of the Taliban in 1996. In November 1998 Mohammad Akbari surrendered to the Taliban, while the other faction of the Hezb-e-Wahdat, led by Khalili and Haji Muhammed Mohaqeeq (representing the party in Mazar-i-Sharif) actively fought the Taliban in Hazarajat. Mr. Mohaqeeq was Minister of Planning and one of the five Vice-Chairmen in the Interim Administration of Afghanistan. [11i] Mr. Mohaqeeq held the position of Minister of Planning in the ITAA until 7 March 2004 when he was removed from his post. He is standing as a presidential candidate in the forthcoming elections. [26e] (p9) Abdul Karim Khalili, one of the five Vice-Presidents, and Said Mustafa Kazemi, Minister of Commerce, represented this faction in the Interim Transitional Administration. [11i]

Hizb-i Watan (Homeland Party)

Formerly PDPA (changed its name in 1988), party dissolved 1991/2. [11a]

Ittihad -i Islami Bara-yi Azadi (Islamic Unity)

Led by Abdul Rab al-Rasoul Sayyaf; previously reported to be supported by Saudi

Arabia; Anti Shi'a; allied with Jamiat-e-Islami; played a major role in the early fighting in Kabul in 1992-95, but has since faded as a military force; is reported to play an important role in financing the opposition. His faction is represented in the ITAA by Mr. Abdullah Wardak, Minister of Martyrs and Disabled. [111]

Jamiat-i Islami (Islamic Society)

Led by Burhanuddin Rabbani, predominantly Tajik and dominated by Dari (Persian) speakers; founded in 1973; significant player Ahmed Shah Massoud, who was heading a prominent group and party, the "Shura-e-Nazar"; another key player is Ismail Khan, the pre-Taliban and current governor of Herat. This faction is represented in the Islamic Transitional Authority of Afghanistan (ITAA) by Marshal M. Q. Fahim, Vice President and Minister of Defence, Dr. Abdullah Abdullah, Minister of Foreign Affairs, Younus Qanooni, Special Advisor to the President on Internal Security and Minister of Education, Enayatullah Nazari, Minister of Repatriation. Mirwais Saddiq, the Minister of Civil Aviation and Tourism represented both Jamiat-e-Islami and his father, Ismail Khan. [111] Mirwais Saddiq was killed in the western city of Herat in March 2004. [25d]

Jonbesh-e Melli-Islami (National Islamic Movement)

Party of Northern Afghanistan's warlord, General Abdul Rashid Dostum - former leader of a militia allied with Najibullah; dominated by Uzbeks; in May 1997, Dostum's Deputy General Malik defects and helps the Taliban enter the north, resulting in General Dostum's escape from Afghanistan; General Dostum returned in September 1997 after the second Taliban assault on Mazar-i-Sharif, but remained unable to fully re-establish his power in the North; in August 1998 he was defeated and left again, later returned, fighting the Taliban in Northern Afghanistan. With the support of Coalition forces he re-captured and re-established himself in Shibergan and was appointed deputy head of the department of defence of the Interim Administration. Following the Emergency Loya Jirga, he holds no official position in the cabinet, and his faction is represented by Mr. Mohammad Alem Razm, Minister of Light Industry, Noor Mohammad QarQin, Minister of Social Affairs, Mr. Ahmad Saker Kargar, Minister of Water and Power and General Helal, Deputy Minister of Interior. All of them are former PDPA members. [111]

Khudamul Furqan Jamiat (Servants Society of Furqan (Koran); Pashtun; formed in December 2001 by former officials of the Taliban; headed by Ahmad Amin Mujaddedi. [12]

Northern Alliance

See **UIFSA**.

People's Democratic Party of Afghanistan (PDPA)

The PDPA was founded in 1965 and split in to two factions in 1967: Khalq (The People), led by Nur Mohammed Taraki and Hafizullah Amin and Parcham (The Banner), led by Babrak Kamal. Khalq was more rural-based, mostly comprising of members of the Pashtun tribes. Parcham was more urban oriented and was dominated by Dari speakers. In 1977, the two factions reunited under Soviet pressure. In 1988 the name of the party was changed to Watan (Homeland) Party. The PDPA based government collapsed in 1992 when, following the Peshawar

Accords, Mujaheddin troops entered Kabul and the last President of a 'communist' government in Afghanistan, Mohammed Najibullah (previously head of the secret service Khad) had to seek refuge in a UN-building in Kabul where he stayed until he was killed by Taliban troops entering Kabul in September 1996. [111]

Shura-e-Mashriqi (Council of the East): Regrouping of former pre-Taliban members of the Shura of Jalalabad under the leadership of the previous governor Haji Abdul Qadir, reported to be operating in Laghman and Kunar provinces with changing alliances of local commanders. Haji Abdul Qadeer was the governor of Nangarhar province during the Interim Administration and he had been appointed as the Vice-President and Minister of Public Works in the ITAA. He was assassinated in Kabul on 6 July 2002. [111]

Shura-yi Nazar-i Shamali

The Shura-yi Nazar-i Shamali was a regional military and political structure founded by Ahmad Shah Massoud. Its core leaders were Panjshiris associated with the Jamiat-i Islami party of former President Burhanuddin Rabbani. Many key figures in the Shura-yi Nazar now support a political party known as Nizhat-i Milli that is distinct from, but maintains links with, Jamiat-i Islami. [26d] (p1)

Taliban

Islamist fundamentalist group, mainly Sunni Pashtuns. In power 1996 to 2001 until ousted by US led coalition in November/December 2001. Largely disbanded. Leader: (Mullah) Mohammad Omar. [1] First appeared in Afghanistan in late 1994. The core of the Taliban were educated in Pakistan in madrassas (religious schools) that adhere to the Deobandi orthodox legal and state doctrine and promote 'taqlid', the obedience to the Koran in its original letter. [111] Taliban is the plural of 'Talib', meaning 'seeker of religious knowledge'. [1]

United Front

See **UIFSA**

United National Islamic Front for the Salvation of Afghanistan Jabha-yi Muttahid-i Islami-yi Milli bara-yi Nijat-i Afghanistan (UIFSA) /United Front/Northern Alliance Established June 1997, comprising various anti-Taliban groups. Also known as the **Northern Alliance** or the **United Front**. [17b][1] Loose coalition whose membership has varied but includes **Jamiat-i Islami** (Islamic Society), **Hizb-i Wahdat** (Islamic Unity Party), **Jonbesh-e Melli-Islami** (National Islamic Movement of Afghanistan), **Harakat-i Aslami** (Islamic Movement of Afghanistan), **Ittehad-i Islami** (Islamic Unity) and **Shura-e-Mashriqi** (Council of the East) [17b][111]

ANNEX C: PROMINENT PEOPLE

Dr ABDULLAH ABDULLAH

Northern Alliance Foreign Minister. Appointed Minister for Foreign Affairs in the Afghan Interim Administration, 22 December 2001. Tajik [25ab]

DOSTUM (General) Abdul Rashid

Leader of the National Islamic Movement (Jonbesh-e-Melli-e-Islami), Uzbek. [1] Returned to Afghanistan in April 2001 after a three-year exile. Defected to the Mujahideen in 1992, bringing about the fall of the Communist government. Later joined forces with other factions to fight Commander Ahmed Masoud in an attempt to oust him and his government from power. After his return however engaged Masoud due to a common hostility to the Taliban. [25i]

KHAN (General) Mohammed Fahim

Appointed successor of Ahmed Shah Masoud following Masoud's assassination in September 2001. [1] Appointed Vice Chair and Minister for Defence in the Afghan Interim Administration 22 December 2001. Tajik [25ab]

HEKMATYAR (Engineer) Gulbuddin

Leader of Hizb-i-Islami Gulbuddin. Prime Minister 1996. [1] Hekmatyar was at one time supported by Pakistan and Saudi Arabia, but eventually Pakistan turned against him preferring to give support to the Taliban. Hekmatyar fled Kabul when the Taliban swept to power and was given refuge by the Iranians. His vocal opposition to the new president Karzai was an embarrassment to the Iranian government who expelled him in February 2002 and closed his offices in Tehran. A number of his supporters were detained in Kabul in April 2002 accused of conspiring to plant bombs. Hekmatyar himself remains elusive although there are reports that he is in Afghanistan. [25ax] Hekmatyar was designated as a terrorist by the US on 19 February 2003. [2c]

KARZAI Hamid

Pashtun leader of Interim Administration from 22 December 2001. [1] Leader of Transitional Administration and President of the Islamic Transitional Administration from June 2002. [40s] Chief of Popolzai tribe. Describes himself as moderate Muslim. Initially supported Taliban but feared overt Pakistani influence over the regime. Returned from exile in Pakistan shortly after start of US led military action. [25bb]

KHALILI (General) Abdol Karim

Represents the Hizb-i-Wahdat (anti-Taliban faction) in the ITAA. One of the Vice Presidents. [11i]

KHAN Ismail

Major figure in Herat since 1978 when he led an uprising against the new communist government. Came to power in Herat in 1992 following Soviet withdrawal, but was forced to flee to Iran when the Taliban took control of the area in 1995. His forces regrouped to fight the Taliban. Spent two years in a Taliban prison from which he escaped in 2000. In November 2001 regained his previous position as governor of Herat. [17i] He was relieved of his additional post as military commander of western

Afghanistan in August 2003. [25r]

MALIK (General) Abdul

Former leader of the National Islamic Movement (Jonbesh-e-Melli-e-Islami).Uzbek. [1]

MASOUD (General) Ahmed Shah

Commander allied to the Jamiat-i-Islami. Tajik. Assassinated in September 2001. [1]

OMAR (Mullah) Mohammad

Supreme Taliban leader. Carried the title "Commander of the Faithful". [2b]
Disappeared following the collapse of the Taliban regime in December 2001. [1]

RABBANI Burhanuddin

Leader of Jamiat-i-Islami. Held the position of President from 1992 to 1996. [1]

SAMAR Sima

Vice Chair of Interim Administration and Minister for Women's Affairs from December 2001 to June 2002. [25ab] Hazara Doctor who runs an organisation in Quetta Pakistan providing health and education services for Afghan woman and children. [25bc] In June 2002 appointed Chair of the Independent Afghan Human Rights Commission. [40s]

SEDDIQI Suhaila

Health Minister in Interim Administration. Tajik doctor and army general, never left Afghanistan where she played a key role in keeping Kabul military hospital running. [25bd]

ANNEX D: The Cabinet Members and Vice Presidents and Advisors of Transitional Government of Afghanistan

[67] (accessed 1/03/04)

President:	H.E. Hamid Karzai
Vice Presidents:	Mareshal Mohammad Fahim [Khan] Karim Khalili Nematollah Shahrani Hedayat A. Arsala
Defence Minister	Mareshal Mohammad Fahim [Khan]
Foreign Minister	Dr. A. Abdullah
Interior Minister	Ali Ahmad Jalali
Planning Minister	Haji Mohammad Mohaqiq (until 7/03/04)
Finance Minister	Dr. Ashraf Ghani
Education Minister	Yonus Qanooni
Borders & Tribal Affairs Minister	Arif Noorzai
Reconstruction Minister	Dr. M. Amin Farhang
Mines and Industries Minister	Vacant. Acting Minister – Mahfooz Nedayee
Light Industries Minister	Mohammad Alem Razm
Women's Affairs Minister	Ms. Habiba Sorabi
Public Health Minister	Dr. Sohaila Siddiqi
Commerce Minister	Sayed Mustafa Kazemi
Agriculture Minister	Sayed Hussain Anwari
Justice Minister	A. Rahim Karimi
Communications Minister	Masoom Stanakzai
Refugees Affairs Minister	Enayatullah Nazari
Haj and Religious Affairs Minister	M. Amin Naziryar
Urban Affairs Minister	Eng. Yusuf Pashtun

Social Affairs Minister	Noor Mohammad Karkin
Water and Power Minister	A. Shaker Kargar
Irrigation and Environment Minister	Dr. A. Yusuf Nuristani
Martyrs and Disabled Minister	Abdullah Wardak
Higher Education Minister	Dr. Sharif Fayez
Civil Aviation and Tourism Minister 21/03/04)	Mirwais Saddiq Mirwais Saddiq (killed)
Transportation Minister	S. Mohammad Ali Javed
Rural Development Minister	Hanif Atmar
National Security Advisor	Dr. Zalmai Rassoul
Supreme Court Chief Justice	Sheikh Hadi Shinwari
Special Advisor on Security	Yonus Qanooni
Advisor on Women's Affairs	Mahbouba Hoqooqmal

National Defence Commission:

Marshall M.Q. Fahim
 Gen. Abdul wali
 Mohammed karim khalili
 Gen. Ismail khan
 Gen. Abdurrashid Dostom
 Gen. Sayed Hosain Anwari
 Gen. Asef Delawar
 Gen. Abdurrahim Wardak
 Gov. Gulagha Sherzai
 Gen. Bismella khan
 Gen. Atiqulla Baryalai
 Gen. Golzarak Zadran
 Gov. Haji Din Mohammed
 Gen. Atta Mohammed

Constitution Review committee:

Prof. Nematollah Shahrani (Chairman)
 Prof. Abdussalam Azimi (Deputy Chairman)
 Prof. Mohammed Musa Marufi
 Mohammed Musa Ashari
 Dr. Mohammed Rahim Sherzoi

Mohammed Sarwar Danesh
Dr. Abdulhai Elahi
Mohammed Ashraf Rasuli
Abdulhagh Wala
Prof. Abdulaziz
Dr. Mohammed Tahir Burgi
Dr. Mohammed Yaqub Wahedi
Wakil Shamsoddin
Dr. Mohammed Alam Eshaqzai
Ghazi Mohammed Amin Weqad
Eng. Mohammed Ekram
Nadershah Nikyar
Likraj
Mrs. Parwin Mohmand
Mohammed Amin Ahmadi
Mir Mohammed Afzal Mirgazargah Sharif
Mrs. Fatima Gilani
Sulaiman Baloch
Mrs. Shokria Barekzai
Mrs. Sedigha Balkhi
Prof. Mohammed Hashem Kamali
Parwin ali Majruh
Eng. Merajuddin Hakema Mashal
Eng. Dawood Moosa
Naderali Mahdawi
Prof. Mohammed Tahir Hashimi
Mrs. Amena Afzali
Mohammed Siddigh Patman
Abdulhai khorasani
Dr. Mohammed Faruq (Secretary)

Afghan Assistance Coordination Authority Commission

Hamid Karzai, President
Hedayat Amin Arsala, Vice President
Dr. Abdullah Abdullah, Minister of Foreign Affairs
Ashraf Ghani Ahmadzai, Minister of Finance
Mir Mohammed Amin Farhang, Minister of Reconstruction
Hanif Atmar, Minister of Rural Dev.
Yusof Nooristani, Minister of Water Sources Environment
Abdullah Ali, Minister of Public Works
Mohammed Yusoof Pashtoon, Minister of Urban Dev.
Massum Stanakzai, Minister of Telecommunication
Minister of Mines & Industry, TBA
Zalmai Rassoul, NSC Advisor
Anwarulhaq Ahadi, President Central Bank
Mohammed Yusof Etebar, Dir. State Admin. Affairs
Said Tayeb Jawad, Chief - of - Staff

ANNEX E: LIST OF DEPUTY MINISTERS IN THE TRANSITIONAL ADMINISTRATION

	MINISTRY	DEPUTY MINISTERS
1	Education	Zabihullah Esmati, Mohammad Moeen Marastyal + Said Eshraq
2	Reconstruction	Abdul Jabar Taqwa + Nazeer Ahmad Shaheedi
3	Information & Culture	Abdul Hameed Mubarez+ Rasool Yosufzai+Ms Sheela
4	Hajj	Mubarez+Moulai Mohammad Qasim+ Ataurahman Saleem
5	City Reconstruction	Naseer Ahmad Sabiri
6	Public Works	Dr Wali Mohammad Rasooli
7	Social Works	Mohammad Ghous Bashiri+Zakiri
8	Power & Water	Eng Mohammad Amin Munsif+Eng Mohammad Yonus
9	Martyrs & Disabled	Wakil Baz Mohammad Zurmati
10	Women's Affairs	Tajwar Kakar+Shafiq Yarqeen
11	Higher Education	Mohaidin Dareez + Mohammad Sabir Khoshki
12	Aviation	Raz Mohammad Alami + Jahid Azimi
13	Rural Development	Mr Nazari+ Mr Nezami
14	Transport	Dr Abdull Hadi Musini
15	Agriculture	Eng Mohammad Sharif+Ghulam Mustafa Jawad
16	Defence	Abdul Rahim Wardak + General Mohibullah + Baz Mohammad Jouhari + Homayoon Fouzi + Gulzarak Khan
17	Interior	Fazel Ahmad Azimi+Ghulam Ghous Nasiri+ Hillaludin Hillal
18	Foreign Affairs	Mohammad Rahim Sherzoi+Mohammad Haidar Reza
19	Finance	Mr. Rahimi + Omar Sayed Jahish
20	Justice	Ashraf Rasooli + Dr Hashimzai
21	Planning	Ali Asghar Paiman+Haji Abdul Salam
22	Commerce	Ziaudin Zia + Nabi Farahi
23	Communication	Eng Mohammad Alim+Eng Baryalai
24	Borders Affairs	Alhaj Mirza Ali+Babrak Zoi+Abdul Qadir Emami
25	Refugees Return	Abdul Qadir+Moalim Naeem
26	Mines & Industries	Nazar Mohammad Mangal
27	Light Industries	Eng Mohammad Hashim Toufiqi+Mirza Khan Dalili
28	Public Health	Ferozudin Feroz+Dr Mehraban

Information supplied by the Afghan Ministry of Foreign Affairs September 2003.

ANNEX F: LIST OF FORMER TALIBAN MINISTERS

1. **Mullah Mohammad Rabbani**, Chairman of the Ruling Council, Head of the Council of Ministers;
2. **Mullah Hadji Mohammad Hassan**, First Deputy, Council of Ministers; Governor of Kandahar;
3. **–Maulavi Abdul Kabir**, Second Deputy, Council of Ministers; Governor of Nangahar
4. **Mullah Mohammed Omar**, Leader of the Faithful ('Amir ul-Mumineen'), Afghanistan
- ~~8.5.~~ **Mullah Mohammad Tahre Anwari**, Administrative Affairs;
- ~~9.6.~~ **Maulavi Sayyed Haqqan**, Minister of Administrative Affairs;
- ~~10.7.~~ **Maulavi Abdul Latif Mansur**, Minister of Agriculture;
- ~~11.8.~~ **Mullah Shams-ur-Rahman**, Deputy Minister of Agriculture;
- ~~12.9.~~ **Maulavi Attiqullah Akhund**, Deputy Minister of Agriculture
- ~~13.10.~~ **Maulavi Abdul Ghafoor**, Deputy Minister of Agriculture;
- ~~14.11.~~ **Akhtar Mohammad Mansour**, Minister of Civil Aviation and Transportation;
- ~~15.12.~~ **Hadji Tahis**, Deputy Minister of Civil Aviation;
- ~~16.13.~~ **Mullah Mohammad Naim**, Deputy Minister of Civil Aviation;
- ~~17.14.~~ **Hidayatullah Abu Turab**, Deputy Minister of Civil Aviation;
- ~~18.15.~~ **Mullah Yar Mohammad Rahimi**, Minister of Communication;
- ~~19.16.~~ **Mullah Haji Alla Dad Tayeb**, Deputy Minister of Communication;
- ~~20.17.~~ **Maulavi Abdul Razaq**, Minister of Commerce;
- ~~21.18.~~ **Maulavi Faiz Mohammad Faizan**, Deputy Minister of Commerce;
- ~~22.19.~~ **Maulavi Nik Mohammad**, Deputy Minister of Commerce;
- ~~23.20.~~ **Mullah Matiullah**, Kabul Custom House;
- ~~24.21.~~ **Maulavi Dadullah Akhund**, Minister of Construction;
- ~~25.22.~~ **Mullah Hadji Ubaidullah Akhund**, Minister of Defence;
- ~~26.23.~~ **Mullah Fazel M. Mazloom**, Deputy Chief of Army Staff;
- ~~27.24.~~ **Mullah Baradar**, Deputy, Minister of Defence;
- ~~28.25.~~ **Mullah Abdul Rauf**, Commander of Central Corpus;
- ~~29.26.~~ **Mullah Amir Khan Motaqi**, Minister of Education;
- ~~30.27.~~ **Mullah Mohammad Nasim Hanafi**, Deputy Minister of Education;
- ~~31.28.~~ **Maulavi S. Ahmed Shahidkhel**, Deputy Minister of Education;
- ~~32.29.~~ **Mullah Abdul Wasay Aghajan Motasem**, Minister of Finance;
- ~~33.30.~~ **Mullah Arefullah Aref**, Deputy Minister of Finance;
- ~~34.31.~~ **Mullah Haji M. Ahmadi**, President of Da Afghanistan Bank;
- ~~35.32.~~ **Abdul Wakil Mutawakil**, Minister of Foreign Affairs;
- ~~36.33.~~ **Abdul Rahman Zahed**, Deputy Minister of Foreign Affairs;
- ~~37.34.~~ **Mullah Abdul Jalil**, Deputy Minister of Foreign Affairs
- ~~38.35.~~ **Dr. Abdul Satar Paktis**, Protocol Dept., Ministry of Foreign Affairs;
- ~~39.36.~~ **Maulavi Faiz**, Information Dept., Ministry of Foreign Affairs;
- ~~40.37.~~ **Shams-us-Safa Aminzai**, Press-Centre, Ministry of Foreign Affairs;
- ~~41.38.~~ **Maulavi Abdul Baqi**, Consulate Dept., Ministry of Foreign Affairs;
- ~~42.39.~~ **M. Jawaz Waziri**, UN Dept., Ministry of Foreign Affairs;
- ~~43.40.~~ **Maulavi Djallalouddine Haqani**, Minister of Frontier Affairs;
- ~~44.41.~~ **Maulavi Abdul Hakim Monib**, Deputy Minister of Frontier Affairs;
- ~~45.42.~~ **Alhaj M. Ibrahim Omari**, Deputy Minister of Frontier Affairs;
- ~~46.43.~~ **Qari Din Mohammad**, Minister of Higher Education;
- ~~47.44.~~ **Maulavi Hamidullah Nomani**, High Ranking Official in the Ministry of Higher Education;
- ~~48.45.~~ **Zabihullah Hamidi**, Deputy Minister of Higher Education;

- 49-46.** Maulavi Arsalan Rahmani, Deputy Minister of Higher Education;
- 50-47.** Maulavi Qudratullah Jamal, Minister of Information;
- 51-48.** Mullah Abdul Baqi, Vice-Minister of Information and Culture;
- 52-49.** Maulavi Abdul Rahman Ahmad Hottak, Deputy (Cultural) Minister of Information and Culture;
- 50.** Information and Culture;
- 53-51.** Maulavi Rahimullah Zurmati, Deputy (Publication) Minister of Information and Culture;
- 54-52.** Abdulhai Motmaen, Information and Culture Dept., Kandahar;
- 55-53.** Maulavi Mohammad Yaqoub, Head of BIA;
- 56-54.** Mullah Abdul Razaq, Minister of Interior Affairs;
- 57-55.** Mullah Abdul Samad Khaksar, Deputy (Security) Minister of Interior Affairs;
- 58-56.** Mohammad Sharif, Deputy Minister of Interior Affairs;
- 59-57.** Maulavi Noor Jalal, Deputy (Administrative) Minister of Interior Affairs;
- 60-58.** Maulavi Saed M. Azim Agha, Passport and Visa Dept;
- 61-59.** Mullah Nooruddin Turabi, Minister of Justice;
- 62-60.** Maulavi Jalaluddine Shinwari, Deputy Minister of Justice;
- 63-61.** Alhaj Mullah Mohammad Essa Akhund, Minister of Mines and Industries;
- 64-62.** Maulavi Sayeedur Rahman Haqqani, Deputy Minister of Mines and Industries;
- 65-63.** Mullah Abdul Salam Zaief, Deputy Minister of Mines and Industries;
- 66-64.** Maulavi Mohammad Azam Elmi, Deputy Minister of Mines and Industries;
- 67-65.** Qari Din Mohammad Hanif, Minister of Planning;
- 68-66.** Maulavi Ezatullah, Deputy Minister of Planning;
- 69-67.** Maulavi M. Musa Hottak, Deputy Minister of Planning;
- 70-68.** Mullah Mohammad Abbas Akhund, Minister of Public Health;
- 71-69.** Sher Abbas Stanekzai, Deputy Minister of Public Health;
- 72-70.** Maulavi Mohammadullah Mati, Minister of Public Works;
- 73-71.** Maulavi Rostam Nuristani, Deputy Minister of Public Works;
- 74-72.** Hadji Molla Atiqullah, Deputy Minister of Public Works;
- 75-73.** Maulavi Najibullah Haqqani, Deputy Minister of Public Works;
- 76-74.** Maulavi Sayyed Ghiassouddine Agha, Minister of Haj and Religious Affairs
- 77-75.** Maulavi Moslim Haqqani, Deputy Minister of Haj and Religious Affairs;
- 78-76.** Maulavi Qalamudin Momand, Deputy Minister of Haj Affairs;
- 79-77.** Maulavi Abdul Raqib Takhari, Minister of Repatriation;
- 80-78.** Ramatullah Wahidyar, Deputy Minister for Martyrs and Repatriation;
- 81-79.** Mohammad Sediq Akhundzada, Deputy Minister of Martyrs and Repatriation;
- 82-80.** Maulavi Mohammad Wali, Minister of Department of Preventing Vice and Propagating Virtue;
- 83-81.** Maulavi Mohammad Salim Haqqani, Deputy Minister of Preventing Vice and Propagating Virtue;
- 84-82.** Maulavi Sayed Esmatullah Asem, Deputy Minister of Preventing Vice and Propagating Virtue;
- 85-83.** Qari Ahmadulla, Minister of Security (Intelligence);
- 86-84.** Maulavi Abdul-Haq-Wasseq, Deputy Minister of Security (Intelligence);
- 87-85.** Maulavi Ehsanullah, Deputy Minister of Security (Intelligence);
- 88-86.** Mullah Habibullah Reshad, Head of Investigation Dept.;
- 89-87.** Mullah Ahmed Jan Akhund, Minister of Water and Electricity;
- 90-88.** Eng. Mohammad Homayoon, Deputy Minister of Water and Electricity;
- 91-89.** Maulavi Saiduddine Sayyed, Vice-Minister of Work and Social Affairs;
- 92-90.** Maulavi Abdul Jabbar, Governor of Baghlan Province;
- 93-91.** Maulavi Nurullah Nuri, Governor of Balkh Province; Head of Northern Zone;
- 94-92.** Muhammad Islam, Governor of Bamiyan Province;
- 95-93.** Mullah Janan, Governor of Fariab;
- 96-94.** Mullah Dost Mohammad, Governor of Ghazni Province;

- ~~97-95.~~ **Maulavi Khair Mohammad Khairkhwah**, Governor of Herat Province;
- ~~98-96.~~ **Maulavi Abdul Bari**, Governor of Helmand Province;
- ~~99-97.~~ **Maulavi Walijan**, Governor of Jawzjan Province;
- ~~100-98.~~ **Mullah M. Hasan Rahmani**, Governor of Kandahar Province;
- ~~101-99.~~ **Mullah Manan Nyazi**, Governor of Kabul Province;
- ~~102-100.~~ **Maulavi A. Wahed Shafiq**, Deputy Governor of Kabul Province;
- 100. **Alhaj Mullah Sadudin Sayed**, Mayor of Kabul City;
- 101. **Maulavi Shafiqullah Mohammadi**, Governor of Khost Province;
- 102. **Maulavi Nazar Mohammad**, Governor of Kunduz Province;
- 103. **M. Eshaq**, Governor of Laghman Province;
- 104. **Maulavi Zia-ur-Rahman Madani**, Governor of Logar Province;
- 105. **Maulavi Hamsudin**, Governor of Wardak Province;
- 106. **Maulavi A. Kabir**, Governor of Nangarhar Province;
- 107. **Mullah M. Rasul**, Governor of Nimroz Province;
- 108. **Maulavi Tawana**, Governor of Paktia Province;
- 109. **Mullah M. Shafiq**, Governor of Samangan Province;
- 110. **Maulavi Aminullah Amin**, Governor of Saripul Province;
- 111. **Maulavi Abdulhai Salek**, Governor of Urouzgan Province;
- 112. **Maulavi Ahmad Jan**, Governor of Zabol Province;
- 113. **Noor Mohammad Saqib**, Chief Justice of Supreme Court;
- 114. **Maulavi Sanani**, Head of Dar-ul-Efta;
- 115. **Maulavi Samiullah Muazen**, Deputy of High Court;
- 116. **Maulavi Shahabuddin Delawar**, Deputy of High Court;
- 117. **Abdul Rahman Agha**, Chief Justice of Military Court;
- 118. **Mullah Mustasaed**, Head of Academy of Sciences;
- 119. **Maulavi Esmatullah Asem**, SG of Afghan Red Crescent Society (ARCS);
- 120. **Maulavi Qalamuddin**, Head of Olympic Committee;
- 121. **Abdul Salam Zaeef**, Taliban Ambassador to Pakistan;
- 122. **Abdul Hakim Mujahid**, Taliban envoy to the United Nations;
- 123. **General Rahmatullah Safi**, Taliban representative in Europe;
- 124. **Mullah Hamidullah**, Head of Ariana Afghan Airlines;
- 125. **Alhaj Mullah Sadrudin**, Mayor of Kabul City;
- 126. **Amir Khan Muttaqi**, Taliban representative in UN-led talks;
- 127. **Mr Jan Mohammad Madani**, Charge d'Affaires, Taliban Embassy, Abu Dhabi;
- 128. **Mr Shamsalah Kmalzada**, Second Secretary, Taliban Embassy, Abu Dhabi;
- 129. **Mr Azizirahman**, Third Secretary, Taliban Embassy, Abu Dhabi;
- 130. **Mr Mawlawi Abdul Manan**, Commercial Attache, Taliban Embassy, Abu Dhabi;
- 131. **Malawi Abdul Wahab**, Taliban Chargé d'Affaires in Riyadh,

Taliban "Embassy", Islamabad

- 132. **Mullah Abdul Salam Zaeef** (Ambassador Extraordinary & Plenipotentiary)
- 133. **Habibullah Fauzi** (First Secretary/Deputy Head of Mission)
- 134. **Mohammad Sohail Shaheen** (Second Secretary)
- 135. **Mohammad Sarwar Siddiqmal** (Third Secretary)
- 136. **Mullah Mohammad Zahid** (Third Secretary)
- 137. **General Abdul Qadeer** (Military Attache)
- 138. **Maulavi Nazirullah Anafi** (Commercial Attache)
- 139. **Maulavi Abdul Ghafar Qurishi** (Repatriation Attache)
- 140. **Mohammad Daud** (Administrative Attache)
Taliban "Consulate General", Peshawar
- 141. **Maulavi Najibullah** (Consul General)
- 142. **Qari Abdul Wali** (First Secretary)

- 143. **Syed Allamuddin** (Second Secretary)
- 144. **Maulavi Akhtar Mohammad** (Education Attache)
- 145. **Alhaj Maulavi Mohammad Saddiq** (Trade Representative)
Taliban "Consulate General", Karachi
- 146. **Maulavi Rahamatullah Kakazada** (Consul General)
- 147. **Mufti Mohammad Aleem Noorani** (First Secretary)
- 148. **Haji Abdul Ghafar Shenwary** (Third Secretary)
- 149. **Maulavi Gul Ahmad Hakimi** (Commercial Attache)

Taliban "Consulate General", Quetta

- 150. **Maulavi Abdullah Murad** (Consul General)
- 151. **Maulavi Abdul Haiy Aazem** (First Secretary)
- 152. **Maulavi Hamdullah** (Repatriation Attache)

Information supplied by the Afghan Government

ANNEX G: LIST OF SOURCE MATERIAL

[1] Europa World Year Book 2003, 44th Edition, Volume 1, May 2003.

[2] US Department of State

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[a] News Digest for January 2004

[b] News Digest for September 2001

[c] News Digest for October 2001

[d] News Digest for November 2001

[e] News Digest for December 2001

[f] News Digest for January 2002

[g] News Digest for February 2002

[h] News Digest for March 2002

[i] News Digest for April 2002

[j] News Digest for May 2002

[k] News Digest for June 2002

[l] News Digest for February 2003

[m] News Digest for November 2003

[n] News Digest for December 2003

[6] United Nations Economic and Social Council

[a] United Nations Economic and Social Council Report of the Special Rapporteur E/CN.4/2003/39 13 January 2003

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