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**ADVISORY SERVICES AND TECHNICAL COOPERATION  
IN THE FIELD OF HUMAN RIGHTS**

**Report of the High Commissioner for Human Rights on the situation  
of human rights in Afghanistan and on the achievements of technical  
assistance in the field of human rights\***

**Summary**

Although the Bonn process has been completed and Afghanistan looks forward to further achievements in accordance with the new compact between the Government and the international community, the human rights situation in Afghanistan remains of great concern. There have been incremental improvements in some important areas with the completion of the disarmament, demobilization and reintegration process and the successful holding of parliamentary elections, particularly in the empowerment of women. Vetting and complaints procedures were applied to major programmes of the Government for the first time. As previously reported, the human rights situation in general remains discouraging, above all owing to the security situation and weaknesses in governance. Impunity of factional commanders and former warlords, some of whom at times receive support from the Government and Afghan leaders, has served to undermine achievements in justice sector reform, freedom of expression, elections, economic development and women's participation in public affairs. A litmus test for improvements in the field of human rights will be the will and effort of the Government to implement the Action Plan on Peace, Reconciliation and Justice adopted by Cabinet in December 2005.

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\* There was a delay in the submission of the report in order to reflect the latest information.

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## Introduction

1. This report is presented at the conclusion of the implementation of the Bonn Agreement and near the beginning of the Afghanistan Compact, which was unveiled by the Government of Afghanistan, members of the international community and the United Nations on 31 January 2006. This juncture provides an opportunity to reflect on the achievements of the past four years, to identify what further steps need to be taken, as well as to focus on the challenges that remain.
2. This report is prepared pursuant to the mandate established by the Commission on Human Rights at its sixty-first session through the Chairperson's Statement entitled "Technical cooperation in the field of human rights in Afghanistan" (see E/2005/23-E/CN.4/2005/135, chap. X). From the same mandate, a previous report was submitted to the General Assembly at its sixtieth session (A/60/343). This report was prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA). National and international actors in Afghanistan, including the Afghanistan Independent Human Rights Commission (AIHRC), were also consulted.
3. The framework of the report is based on the Plan of Action for my Office that I submitted (A/59/2005/Add.3) as called for in the Secretary-General's report "In larger freedom: towards development, security and human rights for all" (A/59/2005). In this plan, "Protection and empowerment", I highlighted six areas where human rights face particular challenges globally: poverty, discrimination, armed conflict and violence, impunity, democracy deficits, and weak institutions. This report is structured according to these challenges. It is not an exhaustive report on the human rights situation in Afghanistan; rather, it focuses on issues that remain of concern and which require addressing by the Government with international support.
4. No one can deny the progress that has been made in Afghanistan since the ousting of the Taliban in October 2001. There is now a Constitution and a democratically elected President and National Assembly; some progress has been made in disarmament and reconstruction. Refugees continue to return, there is a vibrant media, schools are operating in most areas and there are some functioning institutions, including AIHRC.
5. However, if the investments are to be protected and a stable and open society developed in which human rights are respected and observed, many challenges remain. Threats to national security must be addressed, including continuing terrorism and insurgent activity and the narcotics trade; credible and functioning Government institutions developed; reform of the justice sector accelerated; delivery of social and economic rights improved, particularly in relation to poverty alleviation; and impunity ended. It is also critical that human rights protection is enhanced, in particular for vulnerable populations such as civilians affected by the continuing armed conflict, women, the extremely poor, returnees and disabled people.
6. The key to success is less a matter of resources than of a determination to tackle sensitive and complex issues in a focused and persistent manner, giving priority to the principles upon which stable and open societies must be based: respect for human rights, rule of law leading to justice, and a monopoly by an accountable State over the use of force.

7. The Afghanistan Compact provides the framework for international cooperation with Afghanistan for the next five years. Human rights features prominently and the Government's performance will be monitored cooperatively by UNAMA and AIHRC against agreed benchmarks. This process, combined with the Government's recommitment to implementing human rights treaties it has ratified, has the potential to enhance the protection and promotion of human rights in Afghanistan.

## **I. POVERTY**

8. Poverty remains one of the greatest human rights challenges in Afghanistan. A recent report based on 5,846 interviews conducted in 2005 by AIHRC on economic and social rights indicates that half of the respondents do not have access to safe drinking water; that lack of adequate housing is widespread, compounded by insecurity of tenure and lack of protection against unlawful evictions; that accessibility and quality of clinics and hospitals is insufficient; and that primary education is widely available but inaccessible to many, largely because of child labour, physical accessibility and economic constraints. The non-enjoyment of basic economic and social rights is identified as the primary cause of ongoing displacement and the main obstacle to permanent integration of internally displaced persons and returnees.

9. The Government has signed up to the Millennium Declaration and defined ambitious targets under the global Millennium Development Goals (MDGs). It has drafted an interim Afghanistan national development strategy (I-ANDS) as a step towards achieving the MDGs and as the basis for lending programmes with the International Monetary Fund and the World Bank over the next five years. The development of the final strategy, the Afghanistan National Development Strategy (ANDS), requires an extensive consultation process that will take place throughout 2006. Although the implementation of the strategy will contribute towards the realization of the Government's obligations under international human rights law, the interim strategy would benefit by explicitly identifying international human rights obligations as an applicable legal framework.

10. The I-ANDS recognizes the need for participatory research into the qualitative nature of poverty, including data disaggregated by population groups and vulnerability factors such as gender, socio-economic status, ethnicity and disabilities. A human rights approach to development requires the strategy to identify the complex nature of poverty, and to do so partly by reflecting the views, capabilities and constraints affecting poor people, and their priorities for addressing their predicament.

11. The I-ANDS includes a commitment by the Government to fulfil its reporting obligations under international human rights treaties. It also defines a framework to ensure a continuous role for the wider public to monitor implementation of the strategy and hold the Government accountable. The right to an effective remedy in cases of human rights violations is a central element of governmental responsibility and needs to be incorporated into the I-ANDS.

12. The AIHRC report reveals ongoing discrimination based on socio-economic status by both governmental and non-governmental actors. The explicit recognition of discrimination, particularly based on socio-economic status, gender, ethnicity, age and disability, as a major obstacle for development and for the enjoyment of equal access, opportunities and rights by its citizens would strengthen the development strategy. The strategy acknowledges the

interdependence of development with key civil and political rights such as the right to freedom of expression and peaceful assembly and the right to participate in the conduct of public affairs. However, the poor must be empowered to meaningfully participate in the formulation, implementation and monitoring of the development strategy and they must have full access to all relevant information.

13. To ensure that the strategy improves the lives of the most vulnerable and marginalized, targeted indicators need to be developed to adequately reflect progress towards the realization of human rights and to demonstrate the impact on different groups. Since the Government must ensure that the initial level of fulfilment of all rights is at least upheld, the indicators should bring to notice any negative impacts.

14. A significant upsurge in violence in some areas of the country has limited access by both humanitarian actors and the Government. The closing of humanitarian space compounds the effect of conflict on the civilian population by preventing them from accessing entitlements, services and protection. Positive impacts from the implementation of the development strategy are at risk of not reaching people in areas affected by conflict and, as a result, their comparative vulnerability and poverty may increase.

## **II. DISCRIMINATION**

### **A. Women's political participation**

15. Women's political participation advanced substantially during the reporting period with the election of 18 September of 68 women to the 249-seat Wolesi Jirga (lower house of Parliament) and two women to each of the 34 provincial councils. Of the 633 women who initially submitted their candidacies, 51 withdrew citing economic and logistic problems including access to information, and social restrictions. However, other factors such as the targeting of women candidates for violent attacks, threats and intimidation by anti-Government forces, and traditional community leaders' opposition to their participation also contributed to their decisions. Nevertheless, a large number of women openly campaigned. Voter turnout among women was substantial; however, it was marred by significant proxy voting by male relatives, especially in Paktia, Paktika and Khost provinces. In the Wolesi Jirga, 10 female candidates won in their own right, contesting against men, without the need for reserved seats. In the Meshrano Jirga (upper house of Parliament), two thirds (68) of candidates were elected, one third (34) was appointed by the President. Six women won their seats directly through election and 17 were appointed by the President, resulting in overall female membership of 22 per cent.

16. The momentum gained for women's political participation as a result of the elections must be accompanied by additional training of women parliamentarians in policy-making and government administration, as well as public speaking. Gender mainstreaming for all assembly representatives is also required if women are to have effective political impact in the National Assembly.

## **B. Violence against women and women's access to justice**

17. Violence against women and lack of access to justice for women are significant persistent problems. The majority of women victims' cases are resolved at the level of the family or community elders as a result of either the absence of or mistrust in the formal justice sector. Moreover, customary law practices violate the rights of women and children in numerous instances.

18. The formal justice system repeatedly fails women. For example, the lack of statutory proscription of rape results in victims routinely being detained and charged with adultery. Victims face prosecution and detention unless able to prove that they have been raped. A woman escaping from home, including a victim of domestic violence and forced marriage, is likely to face prosecution for elopement, while authorities systematically fail to investigate and prosecute perpetrators of violence. Running away from home is not a codified crime, nor does sharia law give a legal ground for detention. Out of the 40 women detained in Herat prison, two thirds are detained for "moral crimes" and in Kabul 56 per cent were detained for "moral crimes" in 2005.

19. There is a failure by officials to bring about redress for forced marriage and for the sale of women and girls. Girls continue to be exchanged as a form of community-negotiated redress for the wrongdoing of male relatives. Women with divorce papers have been detained on suspicion of adultery until the validity of their papers was proven. Judicial officials have referred to women's marital status and public opinion about a woman's reputation as valid evidence in court rulings and prosecution. Women repeatedly fail to secure their legal entitlements for inheritance and maintenance. Systematic corruption amongst judicial officials, who are commonly subject to various kinds of influence, result in women's inability to access justice owing to their limited economic power. While presidential amnesty decrees have led to the release of many women detained for "moral crimes", these fail to redress the lack of justice and protection for victims.

20. UNAMA regularly receives reports of alleged honour killings that fail to be effectively prosecuted by the authorities. Article 398 of the Penal Code exempts from punishment for murder anyone found guilty of killing their spouse or other close relative for adultery and provides only for a maximum sentence of two years' imprisonment. While honour killings are likely to be underreported, from April to December 2005 six killings from the eastern region were reported to UNAMA. The Department of Women's Affairs has recorded 10 killings of women during the past year in Herat province. Four suspected killings in the name of honour have been recorded in Mazar-e Sharif in 2005, though families and police officials have denied they were honour killings. The inadequate legal protection against honour killings, deeply ingrained social and cultural prejudices, and Government inaction, combine to reinforce a situation where women are at risk from death or injury within the family.

21. Domestic violence is widespread. Public attention was drawn to the issue when one of Afghanistan's best-known female poets, Nadia Anjuman, died as a result of a reported beating by her husband in November 2005. He was subsequently arrested. The incident sparked public concern and opened the debate on violence against women. Herat hospital admitted 82 women, of whom 46 died, with severe burn injuries in the last nine months of 2005. The causes were not

investigated but they are suspected to be suicide attempts related to domestic violence and forced marriage. Authorities repeatedly fail to conduct proper investigations and perpetrators are rarely brought to justice.

22. The Government has undertaken a number of initiatives aimed at redressing the current failures and inadequacies of the justice system, including the need to pay special attention to women's access to justice and the critical importance of legal assistance. Legal aid programmes targeting women, established by a number of national and international non-governmental organizations (NGOs), as well as the United Nations Development Fund for Women (UNIFEM) in coordination with the Ministry of Women's Affairs (MoWA), aim to address this shortfall. The Ministry of the Interior, recognizing the shortcomings of a police force without sufficient female police staff, has created a gender-mainstreaming unit tasked to address this through targeted recruitment and capacity-building. The Ministry has started to register cases of violence against women in pilot police stations, and domestic violence units have been established at the Herat provincial police department and Kabul District 10 police station. MoWA has promoted the establishment of safe houses for victims throughout the country and a draft protocol establishing a referral mechanism is under discussion.

23. Further, an inter-ministerial commission on the elimination of violence against women with the participation of seven ministries and four Government offices has implemented its first three-month work plan. A protocol on the eradication of child forced marriages has also been signed by 17 ministries following a conference in November organized by MoWA, the United Nations Development Programme (UNDP) and UNIFEM. A national action plan for women, linked to the ANDS process, that will incorporate a gender perspective into national development is currently being drafted in cooperation with UNIFEM.

### **III. ARMED CONFLICT AND VIOLENCE**

#### **A. Attacks by anti-Government elements affecting civilians**

24. The chronic levels of violence in Afghanistan result primarily from anti-Government elements, particularly in the south, south-east and east. Insurgent activity mostly targets the Afghan National Army (ANA), the Afghan National Police (ANP), the Coalition forces, the International Security Assistance Force (ISAF) and other security agencies. However, civilians have increasingly become the target of such attacks, resulting in approximately 1,500 civilian deaths in 2005, the highest number of civilian deaths in any year since the fall of the Taliban in 2001.

25. The number of suicide bombings and improvised explosive device (IED) attacks rose dramatically in the past year. In 2005, 17 suicide bombings took place compared with 2 in 2004. By the end of January 2006, four suicide bombings had already taken place in the southern region. An incident in Tirin Kot killed 10 and wounded another 50 people in the animal market on 5 January. In Spin Boldak, 20 people were killed and another 20 wounded at an outdoor wrestling match on 16 January. While concentrated in the south, these incidents are taking place with increased frequency in other major cities including Gardez and Jalalabad. The suicide attacks in 2005 focused on ANA, ANP, Coalition forces, and ISAF, but the attacks in early January 2006 show a shift in focus to civilians.

26. Violence has increasingly targeted community leaders, particularly pro-Government religious leaders, thus signalling the objective of eliminating voices of moderation. More than 10 mullahs have been killed in the southern region in the past seven months. In October 2005, three hand grenades were thrown into a mosque in Paktika during evening prayers, injuring seven people. An IED exploded four days later in a Khost mosque killing the mullah and injuring 16 people. Government officials, including district administrators, judicial and security sector officials have also been targeted. Attacks on Government officials in November 2005 resulted in the deaths of the Deputy Governor of Nimroz and the former District Governor of Baghran District.

27. Attacks on school premises, staff and students have also increased during the second half of 2005, seriously disrupting access to education in certain regions. The United Nations Children's Fund (UNICEF) recorded 60 violent incidents in 2005 against schools, students and teachers. Three schools were set on fire on 8 January 2006 in Helmand and Kandahar. On the following day a tent school was set on fire in the eastern region. Recent incidents include the killing in December 2005 of a teacher in Helmand who had been warned to stop teaching girls. Two days later, a caretaker of a co-educational school was shot dead and in January 2006 a high school principal was beheaded in the same province. On 17 December, a pupil was killed when a school was attacked in Lashkargah, Helmand.

28. The police failed to adequately investigate these and other cases and in only a few cases has anyone been arrested in relation to attacks on schools. The police complain of limited capacity and lack of access to more insecure areas, reinforcing an environment of impunity and a climate of fear, particularly for those individuals, officials and community leaders supporting the Government's development agenda.

29. Humanitarian aid organizations continue to be targeted: at least 33 NGO workers were killed in 2005. On 12 October, a private vehicle carrying seven civilian staff of the Afghan Help Development Services, an NGO that provides medical services to returnees, was attacked on the road to Kandahar by two armed motorcyclists, killing three medical doctors, a male nurse and a vaccinator. Two Afghan Halo Trust mine clearers were killed and another six injured that same month by a roadside IED placed overnight in Kandahar.

30. Deaths and injuries have resulted from civilians caught in the crossfire between security forces and anti-Government elements. In October 2005, in Logar, two civilians were killed and four injured, including children, when a rocket-propelled grenade aimed at a Coalition forces convoy hit a taxi.

### **B. Attacks on human rights defenders**

31. The security environment, particularly in the south, south-east and eastern regions, has seriously constrained the ability of human rights monitors to investigate allegations of violations. While there is no evidence of systematic targeting of human rights defenders by the Government or anti-Government elements, a number of recent incidents have raised concerns. There were six reported incidents against an AIHRC staff member in Nangarhar between May and December 2005, including death threats, burglary and an IED attack on her home. The incidents, which are believed to be related to her outspokenness against the



conservative interpretation of sharia law by some tribal and religious leaders in the area, have not been thoroughly investigated by the police. In addition, an international UNAMA Human Rights Officer in Nangarhar was temporarily withdrawn to Kabul after credible threats to her life from an anti-Government element. UNAMA has also received reports of death threats against defenders in other regions.

### **C. Anti-insurgency operations**

32. The number of complaints received by UNAMA and AIHRC about Coalition forces activities has decreased; however, some serious incidents have occurred during this period. They include the burning of two Taliban bodies by soldiers of the Coalition forces in Gonbaz village, Kandahar, in October 2005. The incident led to public denouncement and military disciplining of those responsible.

## **IV. IMPUNITY**

### **A. Transitional justice**

33. Impunity for past and current crimes remains firmly entrenched in Afghanistan. Individuals responsible for committing grave violations of human rights, including war crimes during the conflict, have not been held to account and some hold positions of authority. A number of figures alleged to have been involved in serious human rights violations ran successfully for the National Assembly in September 2005. Armed strongmen continue to dominate local communities and are able to commit human rights violations and other crimes with little fear of legal consequences.

34. The Government has recently taken a first definitive step towards challenging this situation. On 12 December the Cabinet adopted the National Action Plan on Peace, Reconciliation and Justice. The plan is based on recommendations contained in the AIHRC report "A call for justice", which was a product of national consultations carried out by AIHRC in 2004. The plan is a three-year comprehensive strategy on transitional justice consisting of five mutually reinforcing elements; it seeks to address the atrocities of the past in a way that will promote security and the rule of law in the future.

35. The five elements of the plan are: public symbolic measures to acknowledge the suffering of victims and families; institutional reform; truth-seeking and documentation; promotion of reconciliation; and the establishment of meaningful and effective accountability mechanisms. The plan specifically states that there shall be no amnesty for war crimes, crimes against humanity and other gross violations of human rights.

36. Proposed activities under the action plan for 2006 include the building of national memorials; institutional reform including the introduction of vetting mechanisms to improve the professionalism and integrity of appointees to senior political positions and the civil service; and the establishment of a task force to consider and make recommendations to the President by the end of 2007 on the development of an institutional and legal framework for holding to account those responsible for grave violations of human rights.

37. The Government is commended for developing a national strategy on transitional justice that, if fully implemented, will go a long way towards breaking the cycle of impunity and overcoming the legacy of armed conflict in Afghanistan. However, the challenges are considerable. Political resistance to tackling impunity remains strong in some quarters, including among veterans of Afghanistan's successive conflicts who fear that it is aimed at excluding them from power, while at the same time they contend that all the acts they committed were justified by the jihad. Poor security in some areas represents a serious obstacle to implementation, as does the lack of institutional capacity and trained personnel.

38. The United Nations will support efforts by the Government to implement the plan, which is included in the Afghanistan Compact. Further support will also be required from the international community. To this end my Office, in collaboration with UNAMA and AIHRC, hosted a conference on truth-seeking and reconciliation in Kabul from 13 to 15 December 2005. This event, together with the Afghan-wide consultations that preceded it, represented the first forum in which members of civil society, victims and other key actors from throughout Afghanistan could debate specific actions contained in the action plan and thereby contribute their views on the most suitable mechanisms to address the past and build a better future.

39. Conference participants expressed support for a comprehensive approach to transitional justice in Afghanistan. Investigation and prosecution of perpetrators of gross violations of human rights and the removal of alleged human rights abusers from positions of power were regarded as the most immediate priorities. There was strong support for a truth-seeking mechanism that focuses primarily on documentation and fact-finding.

40. The quality of appointments in the Government and administration remains of serious concern. While a reform process for senior police officials, including vetting, is currently under way, elsewhere progress has been slow. The continued influence of faction leaders who control illegally armed groups is undermining the credibility of the State and inhibiting performance.

41. The judicial sector remains chronically weak with the result that Afghanistan is currently incapable of meeting its international obligations to investigate and prosecute violations of international humanitarian and human rights law in a manner that is consistent with internationally recognized standards for fair trial. Serious procedural flaws have been observed in one of the few cases of crimes relating to the conflict that has so far been brought to trial in Afghanistan. Asadullah Sarwary, an intelligence chief under the pro-communist regime of April 1978 to September 1979, is accused of the extrajudicial killing and illegal detention of an unspecified number of people. Detained without charge since 1992, his trial in the National Security primary court commenced in December 2005. He had no legal representation, and standards of evidence, as well as other due process safeguards, were ignored. He was sentenced to death on 25 February 2006.

## **V. DEMOCRACY DEFICITS**

### **A. Freedom of expression**

42. The right to freedom of expression, so systematically violated during the Taliban period, has significantly improved in recent years. Today, freedom of expression is protected in both the Constitution and by law. It was widely exercised during the presidential and parliamentary

elections when open and public debate was held throughout the country. Public discussion on more sensitive issues, including on addressing past crimes and ending impunity is also beginning to emerge. It is particularly encouraging to note that women's voices are increasingly heard in the media, in Government and in elected bodies such as the new National Assembly and provincial councils.

43. There has been remarkable growth in private and State media in the past four years. By 2005, an estimated 300 publications were being produced and 38 radio and 4 private television stations had been established. Nevertheless, media distribution across the country remains uneven; almost a third of the country does not have access to broadcasting.

44. Article 34 of the Constitution states that freedom of expression shall be inviolable but that the media should be regulated by law. While the Law on Mass Media protects the independence of the media including from interference by Government, article 31 of the law prohibits coverage of subjects contrary to principles of Islam in the mass media. Although international human rights standards do admit certain legal restriction on the right to freedom of expression for the protection of public morals, there is a risk that a conservative interpretation of this legal restriction will result in journalists who seek to challenge mainstream interpretations of Islam being subjected to arbitrary decisions and punishment by the courts. A number of recent cases highlight the need for vigilance.

45. In October 2005, the Central Court of Appeal sentenced journalist Ali Mohaqiq Nasab to six months' imprisonment and three years' probation for violating the Law on Mass Media after he published articles on religious freedom and women's rights that criticized the severity of the punishment of 100 lashes for those found guilty of adultery and challenged the interpretation of sharia law that renouncing Islam is a crime. The primary court sentenced him to two years' imprisonment. Prior to Nasab's appeal, the Chief Justice of the Supreme Court stated that unless Nasab "repented" he would continue to be detained. Religious councils in Kandahar, Kunduz, and Kabul requested that the death penalty should be imposed. Instead, the sentence was reduced, and Nasab was released, but only after he had apologized for any "misunderstandings" caused by the articles.

46. Tolo Television, one of the most prominent privately owned television stations in Afghanistan, has also faced criticism and pressure. Several of its staff have been victims of intimidation and threats, allegedly because of their un-Islamic style of presentation, and one was forced to leave the country after receiving death threats. A female former presenter was killed in unclear circumstances. Other Tolo Television journalists have complained about receiving threats from the authorities following investigation of questionable land deals allegedly involving former royal properties.

47. On 2 July 2005, four journalists were detained by the National Security Directorate (NSD) in Kunar Province where they were investigating an attack on a Coalition forces helicopter and the subsequent aerial bombardment by Coalition forces of two areas in the Nangalam Valley in which at least 27 people, including civilians, were killed. The four were detained for eight days without charge before being released. In spite of protests by national and international journalist groups, the authorities took no further action in this case.

48. Self-censorship remains prevalent in Afghanistan, a product of fear of violence and repression both past and present, and was evident during the elections among candidates and their supporters. According to UNAMA-AIHRC verification reports, on some occasions candidates who made public statements against the mujahideen or local government officials received threats, and in a number of cases were subjected to arbitrary detention or violent attacks.

### **B. Elections**

49. Parliamentary and provincial council elections were held on 18 September 2005. Despite security concerns and other constraints, 5,800 candidates, both male and female, were able to partake in a multiplicity of campaign activities, ranging from private meetings to rallies involving thousands of people. While political rights were broadly exercised, significant human rights concerns were observed.

50. Although 57 candidates were removed from the candidates' list in accordance with the electoral law by the Electoral Complaints Commission (ECC), 34 of them for maintaining links to illegal armed groups or for failing to hand in weapons under the Disbandment of Illegal Armed Groups (DIAG), it was considered that vetting processes established to prevent perpetrators of violations of human rights, individuals involved in criminal activity and persons with connections to armed groups from standing in the election were largely unsuccessful. In some cases, disqualified candidates were subsequently appointed to governmental positions in the provinces.

51. No candidate was disqualified on the basis of article 85 of the Constitution that prohibits candidates from standing if they have been convicted by a court for committing crimes against humanity, any other crimes, or have been sentenced to deprivation of their civil rights. In a situation where the judicial system has not functioned for many years the provision was impossible to implement. In other cases related to intimidation by these candidates or their agents during the electoral period, the complaints filed were usually vague and ECC lacked the necessary powers, time and resources to investigate.

52. Approximately 6.4 million people, or 51.5 per cent of registered voters, voted in the elections at 26,248 polling stations throughout the country. The higher number and better geographic spread of polling stations facilitated voting for the rural population and Kuchis. However, the rate of participation was lower than during the presidential election. Several factors contributed to this reduction, including attacks and intimidation from anti-Government elements; intimidation of voters by candidates and their agents; and disillusionment due to the low number of disqualifications under the challenge and DIAG processes.

53. During the electoral process more than 400 incidents were recorded by the UNAMA-AIHRC joint verification teams, including intimidation of candidates, voters and election staff and violations of the rights to non-discrimination, freedom of expression and security of person. Half of the complaints received could not be fully verified for reasons including incomplete information, lack of witnesses, fear of retaliation, and limited access to some regions for reasons of security.

54. The most serious incidents were the killings of eight candidates. Neither the motivation nor the identity of those responsible could be confirmed in all cases. There were also violent attacks by anti-Government elements on candidates, religious leaders, election workers, civic educators and national and international security forces.

55. In spite of the fact that the elections took place in the context of growing insurgency resulting in the highest number of civilian fatalities since 2001, on election day itself there were only minor incidents and only a small number of polling stations were temporarily disrupted. More than 240,000 national and international observers, political party and candidate's agents and media representatives were accredited to monitor the elections. However, many of the areas where results were disputed were not observed by internationals owing to accessibility problems.

56. During election day and the counting process, ECC received around 2,800 reports of irregularities and fraud, including ballot stuffing, proxy voting and other tampering with the voting material. Despite its very limited resources and time, ECC adopted important decisions in response to a significant number of concerns, including the dismissal of 50 electoral staff and the exclusion of 746 polling stations. Protests were held in several provinces where ECC issued sanctions affecting candidates. Election workers throughout the country received death threats and were harassed by disgruntled candidates. However, the general perception among the public was that ECC measures were insufficient.

57. A well-functioning and credible democratic system is a valuable safeguard against a return to Afghanistan's brutal past. However, controversial figures widely suspected of having been involved in illegal activities including drug trafficking, smuggling, operating illegal armed groups as well as having been responsible for past or current human rights abuses, were among the winners in the elections. It is estimated that between 25 and 35 per cent of elected representatives - 50 per cent according to AIHRC - are individuals involved in illegal activities. In addition to undermining public confidence in political institutions, the composition of Parliament raises concerns about the prospect for reforms, including in areas relating to rule of law and human rights.

## **VI. WEAK INSTITUTIONS**

### **A. Administration of justice**

58. The Afghan justice system still lacks qualified officials, adequate legal education, and the necessary administrative tools and physical infrastructure to administer justice properly. The absence of strong State institutions, particularly in rural areas, low salaries for judges and prosecutors and the failure to ensure a secure environment for courts, judicial personnel, victims and witnesses also continue to severely undermine the capacity of the legal system to act independently and impartially, and contribute to low public trust and confidence in these institutions. The lack of adequate detention and correctional facilities and the illegal detention of women and children continue to raise serious concerns. The absence of a strong independent bar and a State-funded legal aid system is a considerable impediment to safeguarding the rights of accused persons and to providing necessary legal representation for vulnerable groups.

59. The justice sector still struggles to address institutionalized corruption, lengthy pretrial detentions, due process violations, implementation of the new juvenile justice code and, particularly in traditional dispute resolution mechanisms, inequities that negatively impact upon women, juveniles, and other vulnerable groups. The absence of systematic legal system monitoring to track the progress of the justice sector reforms and to monitor compliance with international fair trial standards remains a critical gap.

60. Education levels among the judiciary are low. A high percentage of judges are not legally qualified. In addition, there are 523 vacant judicial posts. There are very few practising lawyers and only 170 lawyers are registered and licensed with the Ministry of Justice.

61. The Supreme Court is widely perceived as lacking legal expertise and as being unduly influenced by the executive and conservative factions. The court has no women justices. The Constitution requires the confirmation of a newly constituted Supreme Court within 30 days of the first session of the Wolesi Jirga. The quality of the new appointments and the representation of women will be a touchstone of the Government's commitment to justice reform in Afghanistan.

62. The Government should prioritize the expansion of legal advice centres at the provincial level and continue to build the professional capacity of lawyers. The establishment of an independent Afghan bar association is deemed essential and a relevant law is being drafted.

63. The situation regarding prisons in Afghanistan remains critical. While the prison population continues to grow at an unprecedented rate, most prisons are old and dilapidated. Overall living conditions for prisoners are very poor. Overcrowding, unacceptable food and hygiene practices and insufficient heating aggravate the situation. Adequate health care is rarely available and mentally unstable prisoners are detained along with other prisoners. There are also few programmes or activities available to the prisoners. Although the situation is improving, discredited security practices and means of restraint continue to occur, largely owing to insufficient equipment and inappropriate facilities.

64. The imprisonment of women presents particular challenges, although their number remains small. The problem of insufficient and unsuitable accommodation is aggravated by the fact that many women have their children in prison with them. Currently many are held in privately rented and operated facilities where abuses have been reported.

65. Working conditions for prison staff remain poor. This, along with low levels of remuneration, makes it difficult to attract qualified, educated prison staff. Despite insufficient funding, the reconstruction and rehabilitation of prisons and detention centres, the training of staff, incorporating human rights and international standards, along with policy and administrative reforms, are essential and ongoing.

66. UNAMA, UNDP and other United Nations agencies and donors, especially Italy and the United States of America, have continued to actively support the justice sector reform agenda. Judges and prosecutors are being trained, courthouses and detention facilities are being built or refurbished, the capacity of the permanent justice institutions enhanced, and new legislation has been enacted.

67. Targeted support has been provided successfully to the justice sector Consultative Group (CG) through UNDP advisers working within the Ministry of Justice, UNAMA and from key stakeholders to assist in the development of a strategic framework, "Justice for All". Following wide consultation, the Afghan Cabinet endorsed the framework in October 2005. Two UNDP justice programmes, "Strengthening the Justice System of Afghanistan" and the European Commission/Italian funded "Access to Justice at the District Level", are commencing in 2006. The latter project will focus on improving access to justice at community level in the districts and will also take a human-rights based approach to traditional justice mechanisms, with a view to protecting the rights of vulnerable groups such as women, children and minorities through increased justice awareness and skills for religious and community leaders, media campaigns and education in schools.

### **B. Security sector reform and justice**

68. The NSD, responsible for both civil and military intelligence, operates in relative secrecy without adequate judicial oversight and there have been reports of prolonged detention without trial, extortion, torture, and systematic due process violations. Multiple security institutions managed by the NSD, the Ministry of the Interior and the Ministry of Defence, function in an uncoordinated manner, and lack central control. Complaints of serious human rights violations committed by representatives of these institutions, including arbitrary arrest, illegal detention and torture, are common. Thorough, transparent and public investigations are absent and trials regularly occur without adhering to the due process rights enshrined in the Constitution. Serious concerns remain over the capacity and commitment of these security institutions to comply with international standards.

69. For example, a 45-year-old man accused of kidnapping and raping two young girls died in Kabul police custody in November 2005. The official inquiry and autopsy concluded that he had been beaten but that the beating was not the cause of death. In December 2005, four individuals detained on suspicion of anti-Government activities in Logar were beaten by local police before being transferred to the custody of the Anti-Terrorism Unit of the Ministry of the Interior in Kabul where three of them say they were ill-treated with electric shocks. In at least two cases before the National Security primary court defence lawyers have not been notified of the trial date.

70. A welcome development is the issuance of an order by the Ministry of the Interior on 30 November 2005, relating to police performance, tasks and authorities of human rights offices of the provincial police headquarters. The order outlines expectations regarding police adherence to international human rights standards and the terms of reference of the new human rights offices located inside provincial police headquarters that will be available to receive complaints of human rights violations.

### **C. New security legislation**

71. Poppy cultivation, heroin manufacturing, and international drug trafficking represent one of the most significant threats to security and rule of law in Afghanistan. A new Narcotics Law was enacted in December that formally establishes the jurisdiction of the Central Narcotics Tribunal. It also, however, introduces new procedures for the stop and search of individuals,

search of vehicles, search of private residences, covert investigations such as the use of intrusive and electronic surveillance and use of informants, and confiscation of the benefits of crimes, including new standards, new terminology and procedures that are not contained within the existing Interim Criminal Procedure Code and Penal Code. The Law has wide consequences for criminal justice and human rights. Implementation of these new procedures, the potential for intrusions into individual rights and liberties and the effectiveness of judicial oversight and other procedural safeguards incorporated in the law will need to be monitored.

#### **D. Treatment of detainees by Coalition forces**

72. The protection of legal rights of those detained by Coalition forces in Afghanistan remains an issue of concern. There is no Status of Forces Agreement between the United States and Afghanistan to form the basis for search, seizure, arrests and detentions or to ensure the application of international human rights and international humanitarian law. The legal status of individuals detained by Coalition forces, including at the Bagram detention facility, has not been resolved and detainees continue to linger in a “legal limbo”.

73. It is notable that UNAMA and AIHRC have received fewer complaints against Coalition forces in relation to detentions in the past six months. However, indefinite incommunicado detention without formal charges and the inability to challenge the basis of the detention remains a grave concern. The risk of abuses is also compounded by the continued lack of access to United States detention facilities in Afghanistan. The Government of the United States of America has been considering requests by AIHRC to visit detainees in Bagram and other Coalition forces detention locations where the International Committee of the Red Cross visits regularly. Thus far, however, access has yet to be granted.

74. All Afghans in the custody of international forces should enjoy the full protection that international law and the Constitution afford to detainees and there must be accountability when violations occur. My Office welcomes the speed and openness in which recent cases of alleged ill-treatment have been addressed. However, concerns remain about the lack of appropriate action in other cases. For example, although court martial proceedings and investigations against 15 soldiers are ongoing in relation to two Afghans who died in custody at Bagram in 2002, those who were directly responsible for the deaths have not been brought to justice. No one has been charged with homicide and the sentences imposed upon those convicted of lesser but related charges failed to reflect the gravity of their conduct.

75. The issue of detentions during military operations is one that ISAF and the North Atlantic Treaty Organization (NATO) will also have to address as it prepares to expand its operations to the south.

76. In the meantime, the United States has indicated its desire to transfer Afghan detainees held in United States custody in both Bagram and Guantánamo Bay detention facilities to the exclusive custody and control of the Ministry of Defence. Construction is under way at the Pul-e Charki Prison in Kabul to transform a cell block into a maximum security wing to accommodate them. Issues relating to the legal status of the detainees and independent access to the detention facilities remain unclear.



77. Allegations of renditions and undisclosed detention facilities continue to be made that require further investigation by Afghan and United States authorities. The absence of any known extradition treaty between the United States and Afghanistan is noted. The legal status of transferred suspects in drugs-related cases from Afghanistan to the United States must be clarified. In this regard, the extradition to the United States in October 2005 of Baz Mohammed from Nangarhar who is accused of violating United States narcotics law by profiting from drug trafficking would benefit from clarification.

## VII. CONCLUSIONS

78. It is important in this new post-Bonn phase to focus on the development of an effective national human rights protection system, building on the gains of the past four years. In this respect, my Office will intensify its technical cooperation programme. Among numerous initiatives, my Office continues to support the Ministry of Foreign Affairs following the Government's renewed commitment to reporting on ratified human rights treaties. Any commitment by Government agencies to institutionalize human rights protection is welcomed. At the same time, there should be continued support for AIHRC as affirmed in the recent Afghanistan Compact. In this regard, it is critical that the stability, integrity and independence of AIHRC is preserved in the pending appointments process. The principles relating to the status and functioning of national institutions (Paris Principles) highlight the importance of a legally defined appointments process and I have written to President Karzai with some examples of appointment procedures best practices. At the time of writing, however, membership of the Commission has yet to be confirmed. I recommend that members who have the necessary integrity and demonstrated commitment to human rights be appointed or reappointed to the Commission at the earliest opportunity.

79. My Office stands ready to support the Government and the Afghan people to take the necessary steps to close the gaps between the rhetoric and the reality of human rights protection. The success or otherwise of the Afghanistan Compact will depend to a large degree on the extent to which respect for human rights is institutionalized. The human rights lens remains one of the most effective means of both diagnosing shortfalls and offering policy solutions to critical issues.

## VIII. RECOMMENDATIONS

**80. The international community should demonstrate its commitment towards the implementation of the Afghanistan Compact, through political and economic support for the whole spectrum of human rights reflected in the Compact.**

**81. The national development strategy should focus on poverty reduction among the most marginalized and vulnerable sectors and areas. Progress reports on the strategy's implementation must give details of the Government's achievements in fulfilling its obligations under international human rights law.**

**82. Additional information on the multidimensional nature of poverty should be collected through a participatory process. The poor and marginalized must be empowered to meaningfully participate and contribute to the development of the ANDS and its implementation.**

83. **The Government, with the support of the international community, should support initiatives to build the capacity of women parliamentarians.**

84. **The Government, supported by the international community, should develop and implement the strategy included in “Justice for All” to take a human rights-based approach to customary law mechanisms with a view to protecting the rights of women and children from detrimental traditional practices.**

85. **The international community should continue to support Government efforts to train judicial, police, prison and other Government officials in the practical implementation of human rights standards relating to the rights of women. A programme of progressive establishment of family response units in police stations with specialized personnel should be instituted throughout the country.**

86. **The Government should continue to strengthen initiatives to eradicate violence against women through both educational and legal measures. The Government and the international community should support initiatives of women’s organizations to end violence against women, and the establishment of safe houses staffed by trained personnel.**

87. **The Government should prioritize the ratification of the optional protocols of the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Discrimination against Women, enabling women who have been subject to discriminatory judicial rulings to resort to an international complaints mechanism.**

88. **Government security and international forces as well as anti-Government elements are reminded of their obligation to protect the rights of civilians in armed conflict in accordance with common article 3 of the Geneva Conventions of 12 August 1949.**

89. **The Government and international security forces must ensure that allegations of violations of international humanitarian and human rights law are immediately, impartially and effectively investigated and those responsible brought to justice.**

90. **The Government should take effective measures to challenge impunity by fully implementing, with international support, all elements of the Action Plan on Peace, Reconciliation and Justice and through its security, rule of law and good governance programmes.**

91. **The Government should refrain from appointing persons who have violated human rights to any public position and should accelerate efforts to institute fair and transparent mechanisms to ensure that known human rights violators are not able to hold public office.**

92. **The Government should ensure the close coordination of strategies for justice sector reform and the development of the framework to investigate and prosecute violations of international humanitarian and human rights law.**

93. **The Government should adopt all necessary measures to ensure respect for and correct application of constitutional and legal safeguards for freedom of expression and ensure that the media is protected from unlawful restrictions.**

94. **Building on the 2004 and 2005 elections, the democracy-building process should be continued and deepened. In this regard the Government and the new Parliament should work together, with the support of the international community, to achieve or strengthen, among other things, a democratic electoral system, rule of law, protection of human rights and political pluralism. Security should be improved including through the continuation of the disarmament process.**
95. **The Government, supported by the international community, must intensify its efforts to implement the “Justice for All” strategic framework and establish a functional, affordable, accessible, equitable and sustainable justice system that provides safety, security and justice to all citizens.**
96. **The Government must ensure the appointment of qualified and well-trained male and female judges to senior judicial positions and introduce transparent and merit-based appointment, promotion, transfer and disciplinary mechanisms.**
97. **The Government should increase access to justice through enhanced public awareness of legal rights, remedies and responsibilities and an expansion in the availability of and access to qualified legal representation.**
98. **The Government should ensure that the national security and justice sectors adhere to fundamental legal principles enshrined in the Constitution and address reports of torture, extortion, and due process violations.**
99. **The Government should strengthen efforts, within the framework of human rights law, to counter the destabilizing effects on the justice sector of the narcotics industry, and fight corruption, to advance the State towards governing through the rule of law.**
100. **The international community should continue to expand its commitment to rule of law, justice and human rights through increased monitoring, investigation, capacity-building, including training and mentoring, and a dedicated programme to monitor the justice system.**

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