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Technical assistance and capacity-building

Report of the United Nations 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 in 2013

Summary

The human rights situation in Afghanistan continues to face serious challenges, with the 2014 elections and scheduled conclusion of security transition creating an environment of uncertainty, including for human rights. Many Afghans, especially women, fear that achievements made in the protection and promotion of human rights since 2001 will be increasingly at risk. There are signs that hard-won gains may be forfeited for the sake of short-term political goals, undermining the fragile stability to which respect for human rights and the rule of law has contributed. In this context, I was pleased to pay my first visit to Kabul from 15 to 17 September 2013 to meet with the Government and other stakeholders. The Office of the United Nations High Commissioner for Human Rights (OHCHR) continued to provide strong support to the human rights mandate of the United Nations Assistance Mission in Afghanistan (UNAMA).

Protection of civilians in the armed conflict continues to be a serious concern. In the first 11 months of 2013, civilian deaths and injuries from conflict-related violence increased by 10 per cent compared to the same period in 2012. The rise in civilian casualties marks a return to the high numbers of civilian deaths and injuries recorded in 2011. While three quarters of all civilian deaths and injuries were caused by anti-Government elements, a rise in civilian casualties caused by Afghan Government forces was documented, particularly during ground engagements. Child casualties were 36 per cent higher than those recorded in 2012. During the first 11 months of 2013, at least nine children were killed or injured every two days in Afghanistan. July and August 2013 were the worst months on record for children, with 214 injured and 196 killed in the armed conflict.

Violence, discrimination and harmful practices against women remain systemic and entrenched; landmark protections for women, including the 2009 Law on the Elimination of Violence against Women, have been questioned. UNAMA/OHCHR found that, while the Afghan authorities registered more reports of violence against women under the Law on the Elimination of Violence against Women in 2013, the number of prosecutions and convictions remained low, with the majority of cases settled by mediation.

As security transition proceeds in 2014 and Afghan National Security Forces take full responsibility for civilian protection and command and control of all military operations, UNAMA/OHCHR documented Afghan forces' continued use of torture against conflict-related detainees in a number of detention facilities and denial of detainees' access to legal counsel.

The highly regarded, credible and effective work of the Afghanistan Independent Human Rights Commission (AIHRC), a key element of the Karzai Government's 12-year legacy, including on human rights, was undermined during 2013. The process for appointing new Commissioners was not inclusive, transparent or participatory, as required by the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). This threatened the independence and effectiveness of the Commission's work. During my visit to Afghanistan in September 2013, I raised this issue with national and international partners. In November 2013, the AIHRC underwent its regular accreditation review by the Sub-Committee on Accreditation of the International Coordinating Committee for National Human Rights Institutions, which recommended a deferral of the decision on accreditation for one year and other measures to assist the AIHRC to retain its "A" accreditation status. I remain committed to supporting and strengthening this critical national institution.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council decision 2/113 of 27 November 2006 and resolution 14/15 of 18 June 2010 and has been prepared in cooperation with the United Nations Assistance Mission in Afghanistan. Since the last report (A/HRC/16/67), the human rights situation in Afghanistan has remained deeply challenging.

2. Between 15 and 17 September, I had the opportunity to make a short visit to Kabul where I met President Karzai, senior ministers, members of civil society and our United Nations and bilateral partners. I observed that the country is clearly at a critical juncture, with the ongoing political, security and economic transition concluding in 2014, all of which will have an impact on human rights. There have been some distinct human rights achievements during the past 12 years, but they are fragile, and many Afghan counterparts have expressed concerns that the overall human rights situation is deteriorating on several fronts.

3. Deeply concerning is the notable rise in the number of civilian casualties, indicating that the impact of the armed conflict on the civilian population has not abated in any significant way. In the first 11 months of 2013, civilian deaths and injuries increased by 10 per cent compared to the same period in 2012. This rise reflects a return to the high numbers of civilian deaths and injuries recorded in 2011. The principal causes include the increased indiscriminate use of improvised explosive devices (IEDs) and more ground engagements between Afghan forces and anti-Government elements (AGEs), particularly in civilian populated areas. After IEDs, ground engagements were the second leading cause of civilian deaths and injuries, a new and disturbing trend in 2013.

4. The year also saw an increase in targeted killings of civilians, especially government officials, by anti-Government elements. Although AGEs caused 75 per cent of civilian casualties, the number of civilian casualties caused by the actions of Afghan National Security Forces (ANSF), including the police, has also increased. The increasing pace of transition of security responsibilities from international military forces to Afghan forces and the closure of international forces' military bases has been met with increased ground engagement between Afghan forces and AGEs, and has been accompanied by rising civilian casualties. Children also increasingly became victims of the conflict. The number of child casualties reported and verified between 1 January and 30 November 2013 was 36 per cent higher than that recorded during the same period in 2012.

5. Torture and cruel, inhuman and degrading treatment of conflict-related detainees while in Afghan National Police (ANP) and National Directorate of Security (NDS) custody continues to be reported and documented by UNAMA/OHCHR. On 20 January 2013, UNAMA/OHCHR released its second major report on human rights concerns in places of detention, entitled Treatment of Conflict-Related Detainees in Afghan Custody: One Year On. Torture was found to be prevalent in several ANP and NDS detention facilities and was largely used to obtain a confession or information.

6. UNAMA/OHCHR released a report on 8 December 2013 entitled A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan, in which it reported limited results in the implementation of the 2009 Law on the Elimination of Violence against Women (EVAW law). Over the past year, Afghan authorities registered 28 per cent more reported incidents of violence against women under the EVAW law. However, use of the law by prosecutors and courts as a basis for filing indictments and obtaining convictions remained low, with most cases mediated through traditional dispute resolution.

7. On 18 September 2013, the Government of the Netherlands published a list of 5,000 victims who had disappeared or been killed during the communist regime in Afghanistan between 1978 and 1979. The publication of these “death lists”, compiled by Afghan authorities at the time, had some effect on mobilizing victims’ families, civil society and the President’s Office on the issue of transitional justice. The AIHRC conflict mapping report, which documents serious international crimes and human rights violations committed in Afghanistan between 1977 and 2001, was not formally submitted to the President’s Office in 2013.

8. On 16 June 2013, President Karzai appointed five new Commissioners and reappointed four serving Commissioners to the AIHRC. Civil society actors, donors and UNAMA raised concerns that the selection process for the new Commissioners failed to meet the Paris Principles. During my visit to Afghanistan in September 2013, I expressed concern at the non-consultative process leading to the appointments and its potential impact on the “A” status of the AIHRC. A decision on accreditation was deferred for one year following a review of the AIHRC on 18 November 2013 by the Sub-Committee on Accreditation of the International Coordinating Committee for National Human Rights Institutions (ICC). This decision outlined concerns for the Government and the AIHRC to address, including changes to the selection and appointment process and increased State financing of the AIHRC operations budget in line with the Paris Principles, failing which a downgrade to “B” status would be likely.

II. Protection of civilians

9. Conflict-related violence is increasingly affecting the civilian population. Changes in the political and security landscape have impeded the protection of civilians and further restricted the full enjoyment of human rights. The heightened pace of transition of security responsibilities from international military forces to Afghan forces and the closure of international forces’ military bases was met with increased attacks by AGEs (the Taliban and other armed opposition groups) on ANSF, mainly at checkpoints, on strategic highways, in some areas that had been transitioned and in districts bordering neighbouring countries.

10. In the first 11 months of 2013, civilian deaths and injuries from conflict-related violence increased by 10 per cent compared to the same period in 2012. The rise in civilian casualties reverses the downward trend recorded in 2012, and reflects a return to the high numbers of civilian deaths and injuries recorded in 2011, the highest figures recorded by UNAMA/OHCHR. May 2013 was the deadliest month of the conflict with the highest number of civilian deaths, while August was the second. Between 1 January and 30 November 2013, UNAMA/OHCHR documented 7,899 civilian casualties (2,730 civilians killed and 5,169 injured). UNAMA attributed 75 per cent of civilian deaths and injuries to AGEs, 10 per cent to pro-Government forces (ANSF and international military forces) and 11 per cent to ground engagements between pro-Government forces and AGEs in which attribution was not possible. The remaining 4 per cent of civilian casualties were unattributed and were caused mainly by explosive remnants of war.

11. As in previous years, improvised explosive devices (IEDs) used by AGEs caused the most civilian casualties. Ground engagements between Afghan forces and AGEs, particularly in civilian populated areas, were the second leading cause of civilian deaths and injuries, representing a trend and an increasing threat to civilians in 2013. Security gaps and contests between AGEs and pro-Government forces over territory gave rise to increased numbers of armed clashes, particularly in the southern and eastern regions, with civilians increasingly being killed or injured in the crossfire or by IEDs planted by AGEs. UNAMA/OHCHR also documented increased civilian casualties attributed to AGEs,

including targeted killings, attacks against civilian government workers, abductions and killings, and high levels of threats and intimidation.

12. Between 1 January and 30 November 2013, UNAMA documented 90 civilian deaths and 177 injuries (267 civilian casualties) from explosive remnants of war, a 48 per cent increase from 2012. Eighty-one per cent of the victims were children. This sharp increase coincides with an increase in ground engagements between parties to the conflict, making unexploded ammunition and ordnance more likely to be left behind. A second cause is the closure of International Security Assistance Force (ISAF) bases and firing ranges, many of which have not been sufficiently cleared of unexploded ordnance prior to their closure.

A. Anti-Government elements

13. Seventy-five per cent of all civilian casualties during 2013 were attributed to AGEs, which includes a range of armed opposition groups, compared with 81 per cent for the same period in 2012. Between 1 January and 30 November 2013, IEDs and suicide/complex attacks by AGEs together accounted for 49 per cent of all civilian deaths and injuries. UNAMA/OHCHR documented a 44 per cent reduction in civilian casualties from pressure-plated IEDs, but also noted an 83 per cent increase in civilian deaths and injuries from the use of remote-controlled IEDs.

14. Throughout 2013, AGEs continued to target and kill civilians who worked for or were perceived to support the Government or Afghan and international military forces. Between 1 January and 30 November, UNAMA/OHCHR documented 740 civilian deaths and 341 injuries (1,081 civilian casualties) from targeted killings — on a par with the same period in 2012. In many cases, the Taliban claimed responsibility for the killings on their website. On 27 November 2013, for example, the Taliban claimed responsibility for attacking and killing six non-governmental organization staff members in Faryab province.

15. Deliberate targeting of civilian government institutions by AGEs increased in 2013, with attacks against civilian government employees, offices, district headquarters and other civilian government structures documented throughout Afghanistan. UNAMA/OHCHR documented four attacks against court-houses: in Farah on 3 April, in Kabul on 11 June, in Marja district in Helmand province on 12 May and in Pashtunkot district of Faryab province on 23 April, causing 57 civilian deaths and 145 injuries (202 civilian casualties) including judges, prosecutors, legal and clerical staff. The Taliban claimed responsibility for the attacks and issued a public statement announcing their intention to target and kill judges and prosecutors.

16. UNAMA/OHCHR observed a pattern of threats and attacks by AGEs against religious leaders and documented 23 incidents in which religious leaders or places of worship were directly threatened or attacked, resulting in 15 civilian deaths and seven injuries. The majority of the attacks targeted mullahs performing funeral ceremonies for deceased members of Afghan security forces and religious figures who expressed public support for the Government.

B. Pro-Government forces

17. In the first 11 months of 2013, UNAMA/OHCHR documented 300 civilian deaths and 499 injuries (799 civilian casualties) attributed to pro-Government forces, a 43 per cent increase from 2012. The rise is attributed to an increase in offensive operations and counter-attacks by ANSF against AGEs in contested areas. These operations also damaged civilian properties and in some areas displaced civilians on a large scale. For example, Afghan forces' operations in Qaysar district, Faryab province, on 18 to 20 November led to

the displacement of 1,000 families, requiring a humanitarian response which was made more urgent by the cold weather and the onset of winter.

18. Despite Afghan forces leading almost all military operations countrywide, a permanent structure does not yet exist in relevant ANSF bodies to systematically investigate allegations of civilian casualties, initiate remedial measures and take follow-up action. The Civilian Casualties Tracking Team in the Presidential Information Coordination Centre, established in May 2012, only records reports of civilian casualties received from security bodies and does not receive complaints from individuals or organizations.

19. Human rights violations attributed to Afghan Local Police (ALP), including violations leading to civilian casualties, are a growing concern; in the first 11 months of 2013, UNAMA/OHCHR documented 29 civilian deaths and 78 injuries in 60 separate incidents, more than double the number of incidents and casualties compared to the same period in 2012. In most cases, the deaths and injuries resulted from ALP members committing human rights violations including punishments and revenge killings, carrying out illegal searches and alleged accidental shootings in highly questionable circumstances. In response to these violations, UNAMA/OHCHR has recommended the creation of a national-level accountability mechanism in the ALP Directorate at the Ministry of Interior Affairs, such as the appointment of a military prosecutor, to enable timely, independent and transparent investigations and prosecution of alleged ALP crimes and human rights violations.

20. The escalated pace of ISAF base and firing range closure has led to concerns that bases and firing ranges have not been sufficiently cleared of unexploded ordnance prior to closure. At the end of November 2013, following intensive advocacy by UNAMA/OHCHR, ISAF issued a standard operating procedure on base and firing range closure/transfer to ensure clearance of explosive remnants and unexploded ordnance before bases and ranges are closed or transitioned in 2014. ISAF also agreed to review 700 bases and ranges that have closed since 2001.

21. While UNAMA/OHCHR recorded a decrease in civilian casualties from aerial operations in the first 11 months of 2013, civilian deaths and injuries from remotely piloted aircraft (drones) more than tripled with 36 civilian deaths and 12 injuries. On 7 September, a drone strike in Watapur, Kunar province, killed 10 civilians, including four children and four women. UNAMA/OHCHR has urged international military forces to review thoroughly pre-engagement targeting criteria and required precautionary measures to reduce civilian casualties from drone strikes.

C. Children and armed conflict

22. Children continued to suffer disproportionately from the impact of the armed conflict. Child casualties reported and verified between 1 January to 30 November 2013 were 36 per cent higher than those recorded during the same period in 2012. UNAMA verified 705 incidents out of a total of 842 reported incidents in which children were killed or maimed. During this period, at least 491 children (318 boys, 110 girls and 63 gender unknown) were killed and a further 1,018 children (577 boys, 236 girls and 205 gender unknown) were injured. During the first 11 months of 2013, at least nine children were killed or injured every two days in Afghanistan.

23. Ground engagements, which include crossfire, shootings, rocket and artillery shelling, and hand grenade attacks, caused the highest number of child casualties: 552 deaths and injuries in total. AGEs were responsible for nearly 40 per cent and international and Afghan security forces were responsible for almost 20 per cent of casualties caused during ground engagements. Improvised explosive devices were the second leading cause

of child deaths and injuries, amounting to 448 casualties. In 2013, explosive remnants of war claimed the lives of 315 children, more than 83 per cent of them boys. Suicide attacks by AGEs resulted in 116 child casualties, with the highest numbers in the central region. Air strikes by international forces killed 35 children and injured 19 between January and November.

24. July and August 2013 were the worst months of the armed conflict on record for children, with 214 children killed and a further 196 wounded. At least 511 child casualties — one third of the total child casualties during the first 11 months of the year — were reported from the eastern region, a direct result of increased ground engagements between the parties to the conflict. In the southern region, 307 child casualties occurred during the first 11 months of 2013 and were mainly the result of IEDs. AGEs were responsible for more than 53 per cent of the total child casualties, pro-Government forces were responsible for 11 per cent, and 36 per cent remained unattributed to any party to the conflict.

25. Over 11 months, 91 incidents of attacks against schools and 34 incidents of attacks against hospitals were reported. UNAMA/OHCHR, in cooperation with other members of the United Nations-led Country Task Force on Monitoring and Reporting on grave violations against children in armed conflict, was able to verify 44 incidents of attacks against schools and 25 incidents of attacks against hospitals. Attacks against schools included deliberate targeting and incidents that impeded access to education, including crossfire incidents, IED detonations near schools and abductions, killing, injuring, intimidation and harassment of education personnel. Attacks against schools were mostly reported from the eastern, northern and the north-eastern regions. Unverified reports suggest that large numbers of schools remained closed in Nuristan, Helmand and Kandahar provinces due to insecurity and lack of teachers. Of the total verified reports of such attacks, 33 were attributed to AGEs, and three to ANSF, with the remaining eight unattributed.

26. Of the 38 reports of underage recruitment into armed groups and armed forces in 2013, UNAMA/OHCHR was able to verify 25 incidents. Of the verified incidents, 43 boys between the ages of 11 and 17 were recruited, allegedly to carry out different types of military activities, such as planting IEDs, transporting explosives, carrying out suicide attacks, conducting policing duties and taking part in armed clashes. Twenty of the 43 recruited boys allegedly lost their lives while planting or assembling IEDs or carrying out suicide attacks. During 2013, Kandahar and Helmand provinces in the south, Farah province in the west, and Paktya province in the southeast remained centres for child recruitment. Reportedly, AGEs were responsible for recruiting 29 boys, Afghan Local Police 13 boys and the Afghan National Police at least 1 boy. AGEs and Afghan security forces, namely the Afghan National Police and the Afghan Local Police, remain listed for child recruitment in the annual report of the Special Representative of the Secretary-General for Children and Armed Conflict.

27. Grave violations against children also included abductions, with 13 verified incidents from the eastern, south-eastern and the southern regions of the country. At least 7 of the 27 victims were executed following abduction. Children were abducted for reasons including recruitment into armed groups, punishment for alleged suspicious activities or the activities of their family members, and reprisals. Seven incidents of sexual violence in the armed conflict were documented, of which four were verified. Three incidents in which four boys were abused were attributed to Afghan National Police and the Afghan Local Police, and one incident to the Taliban. AGEs, including the Taliban, denied humanitarian access in the areas under their control. UNAMA/OHCHR was able to verify 27 such incidents out of 40 reported. Verified incidents included abduction, intimidation, killing and injury of humanitarian staff, mostly of de-miners, denying access to vaccinators and causing damage to facilities run by humanitarian organizations.

28. Throughout 2013, UNAMA/OHCHR provided technical support to the Government in implementing the Action Plan for the Prevention of Underage Recruitment. In June 2013, UNAMA/OHCHR, on behalf of the Country Task Force on Monitoring and Reporting, responded to the Government's progress report on implementation of the Action Plan. In August 2013, the Office of the Special Representative of the Secretary-General for Children and Armed Conflict and UNICEF undertook a joint mission to Afghanistan focused on supporting the Government in developing a "road map towards compliance" aimed at expediting implementation of the Action Plan. The road map was endorsed in principle at a high-level meeting of the Inter-ministerial Steering Committee on Children and Armed Conflict on 14 August. Once fully endorsed by the Government, UNAMA/OHCHR will focus on supporting the Government in devising a strategy to implement the road map.

III. Protection from arbitrary detention and respect for fair trial rights

29. Over the last year, Afghanistan's prison population increased from 25,003 adult and juvenile detainees and prisoners in 2012 to 32,157. Based on October 2013 statistics from the Interior Affairs, Justice and Defence Ministries, these figures represent an increase of 7,154 detainees and prisoners housed in Central Prisons Directorate facilities and the juvenile rehabilitations centres across Afghanistan and in the Afghan Detention Facility in Parwan. This increase includes 2,440 detainees and prisoners transferred by the United States of America to Afghan custody on 25 March 2013 under a March 2012 agreement that handed over control of the United States-run Detention Facility in Parwan to the Afghan Ministry of Defence.

30. Persons detained in connection with the armed conflict (hereinafter "conflict-related detainees") held by the Afghan National Police (ANP) or the National Directorate of Security (NDS) in pretrial custody, however, are not included in these statistics. In the majority of cases, conflict-related detainees are held arbitrarily for extended time periods, in violation of legally prescribed time limits and due process guarantees in Afghan law. Most of these detainees do not have access to defence counsel, have not been informed of the charges against them and have not been brought before a tribunal while in ANP and NDS custody.

31. Treatment of conflict-related detainees while in ANP and NDS custody remains a major human rights concern. On 20 January 2013, UNAMA/OHCHR released its second major report on human rights concerns in places of detention, entitled *Treatment of Conflict-Related Detainees in Afghan Custody: One Year On*. Based on interviews with 635 conflict-related detainees in 89 Afghan facilities covering 30 provinces, torture was found to persist in a number of detention facilities, despite efforts by the Government and international partners to address it. More than half of conflict-related detainees interviewed had experienced torture and ill-treatment as defined and prohibited under Afghan and international law. Torture was found to be prevalent in several ANP and NDS detention facilities and took the form of coercive interrogation techniques in which Afghan officials inflicted severe pain and suffering on detainees during interrogations aimed mainly at obtaining a confession or information.

32. UNAMA/OHCHR made 64 recommendations to the Government and international partners to prevent torture and ill-treatment, ensure accountability and build the capacity of State institutions. One key recommendation is the creation of an independent national preventive mechanism on torture in line with the Optional Protocol to the Convention against Torture — which Afghanistan has not yet ratified — which could be located within the AIHRC with authority and enhanced capacity to inspect all detention facilities, make detailed technical recommendations and assist institutions with follow-up implementation. I

also encourage the Government to invite the Special Rapporteur on torture to make a country visit and assist in these important reform efforts.

33. In response to the UNAMA/OHCHR report, on 22 January 2013, President Karzai established a fact-finding presidential delegation to investigate the allegations of torture and ill-treatment contained in the report. UNAMA/OHCHR cooperated fully with the delegation. In February 2013, the delegation publicly announced that 48 per cent of the detainees it interviewed had experienced torture and ill-treatment at the time of arrest and during interrogation by ANP and NDS officials. The delegation also noted that two thirds of the detainees who were interviewed had not had access to a defence lawyer.

34. After receiving the delegation's report, on 16 February 2013, President Karzai endorsed its recommendations and issued Presidential Decree No. 129. This decree ordered the NDS, the Attorney General's Office, the Ministry of Interior Affairs, the Ministry of Justice and the Supreme Court to investigate allegations of torture, prosecute alleged perpetrators, release detainees and prisoners in arbitrary detention, and increase access of defence lawyers and medical personnel to detainees to prevent torture and arbitrary detention and ensure accountability.

35. During 2013, UNAMA/OHCHR engaged with government officials from relevant institutions and ministries, troop contributing nations, international donors, defence lawyers, human rights organizations and civil society to advocate and track implementation of the Presidential Decree. Visits to detention facilities continued with UNAMA/OHCHR assessing both the implementation and effectiveness of the Presidential orders and providing technical assistance when requested. UNAMA/OHCHR findings to date have indicated that torture and ill-treatment of conflict-related detainees persists in some detention facilities and that ANP and NDS personnel continue to use torture to obtain confessions. Presidential Decree No. 129 alone is not an effective deterrent to torture; greater accountability is needed.

36. However, some progress has been made, with basic accountability measures taken in several cases: there were torture-related arrests of Afghan Local Police officers in Kunduz in May 2013, but no prosecutions yet in this case; the AIHRC made a complaint of torture against a prominent ANP Commander in Kandahar to the NDS prosecutor which resulted in the Commander receiving a warning letter from the NDS and the police regarding his conduct; an ANP officer in Herat province received a similar reprimand. UNAMA/OHCHR also received reports that two NDS officials, who were arrested in Uruzgan province in June 2013 for allegedly torturing detainees, have been transferred to a Kandahar military court to await trial. These cases could set a precedent for addressing torture in the future.

37. Access to detention facilities has improved; in April 2013, the Director of the NDS ordered its detention facility directors to provide full access to human rights organizations and facilitate unannounced visits. Some provincial directors have established internal complaints mechanisms to investigate allegations of torture and internal monitoring mechanisms. While these complaints procedures are an improvement, they are internal measures that lack independence and transparency.

38. Defence lawyers have access to provincial NDS detention facilities, but can usually access detainees only after the investigation phase has been concluded. The Legal Aid Department of the Ministry of Justice lacks capacity and alone cannot address the current shortfall of legal aid defence lawyers. The Ministry of Public Health has made some progress to ensure that medical personnel working in detention facilities across Afghanistan are aware of Presidential Decree No. 129. Most medical personnel, however, lack independence as they report directly to the NDS and the Ministry of Interior Affairs and fear that they will face reprisals if they endorse findings of physical abuse or torture.

39. The Supreme Court has taken action to implement Presidential Decree No. 129, including issuing instructions to judges reminding them to reject confessions obtained through torture and to dismiss cases that rely solely on evidence thus obtained. Additionally, the Supreme Court, the Attorney-General's Office and the Ministry of Justice conducted joint visits to several provincial prisons to review cases of individuals who had been held in arbitrary detention. As a result, more than 400 detainees were released, although very few had been held for conflict-related offences.

40. In response to the findings of the UNAMA/OHCHR report of 20 January 2013, the International Security Assistance Force suspended transfers of detainees it captured to 35 Afghan detention facilities and redesigned its detainee certification review process to include inspections, extended training and capacity-building of all ANP and NDS interrogators and detention staff on human rights principles and non-coercive interrogation techniques, and mentoring. On 5 May 2013, ISAF certified or permitted transfer of detainees to NDS departments 124 and 40 in Kabul, but shortly after suspended this certification decision, which has yet to be lifted. ISAF certified six Afghan-run detention facilities, NDS provincial headquarters in Kunar, Nangarhar, Khost and Helmand, the Helmand provincial prison and the Afghan National Detention Facility in Parwan (ANDF Parwan). These certifications are reviewed every three months.

41. UNAMA/OHCHR has conducted three visits to ANDF Parwan since it was handed over to the Government of Afghanistan. Approximately 2,330 detainees have been released since the handover, following case reviews by the Government. However, 2,440 Afghan detainees (including 70 children) remain in custody in the detention facility. In addition, 70 detainees remain under the control of the United States Government at this location. Approximately 1,879 of the 2,440 detainees are still awaiting their initial court hearing and many have been detained for periods longer than that prescribed by Afghan law, and are arbitrarily detained. UNAMA/OHCHR also found that many detainees' due process rights had not been guaranteed, including the right to be informed of the reason for arrest and the right to defence counsel.

IV. Violence against women

42. Across Afghanistan, harmful practices and incidents of violence against women remain pervasive. On 8 December, UNAMA/OHCHR released a report entitled *A Way to Go: An Update on Implementation of the Law on Elimination of Violence against Women in Afghanistan*, documenting mixed results in the implementation of the 2009 Law on the Elimination of Violence against Women (EVAW law). The report was based on consultations with 203 judicial, police and government officials, and monitoring of nearly 500 cases of violence against women from 18 of 34 provinces throughout Afghanistan between October 2012 and September 2013.

43. The UNAMA/OHCHR report noted that authorities registered 28 per cent more reported incidents of violence against women under the EVAW law, but the overall use of the law by prosecutors and courts as a basis for filing indictments and obtaining convictions remained low, with more cases mediated than entering the judicial process. In 16 of the 18 provinces where detailed information on the application of the EVAW law was available, police and prosecutors registered 650 incidents of violence against women. This represents an increase in the number of incidents registered by police and prosecutors compared with UNAMA's findings in December 2012. Of those 650 incidents, prosecutors used the EVAW law in 109 (17 per cent) and the courts applied the law in 60 cases, reflecting decreases from the previous period. UNAMA/OHCHR notes with concern that, despite the rise in reported incidents, the overall number of criminal indictments filed by prosecutors in cases of violence against women under all applicable laws decreased in 2013.

44. UNAMA/OHCHR note that police and prosecutors have been mediating more cases registered under the EVAW law or referring cases to informal dispute resolution. The EVAW law neither refers to mediation nor rules it out, but permits a woman to withdraw her complaint at any point, which in practice facilitates mediation and is often culturally emphasized. UNAMA/OHCHR found that mediation, whether through informal or formal processes, often did not enforce penal sanctions for perpetrators under the EVAW law and/or the Afghan Penal Code. Through field monitoring, UNAMA observed that mediation of cases of violence against women by police in practical terms meant persuading a woman to resolve her case outside the judicial system. Decisions by informal mechanisms were often observed to be shaped by powerful men in local areas applying different procedures and making decisions based on a mix of tradition, varying interpretations of Islamic law and local power relations, sometimes contrary to law or religious principles. As a result, women sometimes faced further victimization.

45. Prosecutions of women and girls for leaving their homes without the permission of male relatives — often to escape violence — continued in spite of 2012 directives from the Attorney-General and the Supreme Court to end the practice. Although “running away” is not a crime under Afghan law or sharia law, police and prosecutors often arrest and prosecute women and girls for this “moral crime” and based on their discretion, charge them with “intention” to commit *zina* (premarital or extramarital sexual intercourse). Under sharia law, *zina* is a crime irrespective of a woman’s marital status or age, but “attempt to commit *zina*” is not a distinct codified crime in the Afghan Penal Code, nor is it proscribed under sharia law. UNAMA observed through field monitoring that authorities’ determination of “intent” in such cases is highly subjective, usually based on circumstantial evidence and often centred on the views of a specific prosecutor or police officer. The Supreme Court recorded 71 convictions for “running away/attempted *zina*” between March 2012 and March 2013.

46. Over the course of 2013, several legislative developments occurred in the form of setbacks to the advancement of women’s rights. The EVAW law was enacted by Presidential Decree in 2009 and on 18 May 2013, was brought before the Afghan Parliament by the Parliamentary Commission on Women’s Affairs, Civil Society and Human Rights with the stated purpose of obtaining parliamentary endorsement. This resulted in heated debates as several parliamentarians stated that the law contradicted certain tenets of Islam. The law was sent for consultation by 18 parliamentary committees. The debate around the law was highly publicized in the media, which negatively impacted on the already weak implementation of the EVAW law. It also highlighted the fragile nature of gains made for women’s rights in Afghanistan. Should the law come back to Parliament for a vote, many women’s advocates are concerned that it will be considerably weakened or rejected altogether.

47. In June 2013, the lower house of Parliament, the Wolesi Jirga, passed a draft criminal procedure code which prohibits witnesses from testifying against their relatives in all criminal cases. This provision would make effective prosecution of EVAW law cases extremely difficult, as in most instances where violence takes place in the domestic sphere, family members are generally the only witnesses to the criminal acts. Support for the new provision focused on the need to keep family matters, such as violence against female relatives and child abuse, private matters to be addressed within the family or community. At the time of writing, the draft is pending before the upper house of Parliament, the Meshrano Jirga.

48. In August 2013, Parliament passed an election law which reduced the quota of seats for women in provincial councils from 25 to 20 per cent and eliminated the quota altogether in district councils. These amendments to the election law are concerning as parliamentarians tried to remove all quotas for women at the local level and only reinserted

the lower 20 per cent quota for provincial councils after intense advocacy by women's rights groups. During its July 2013 session, the Committee on the Elimination of Discrimination against Women — commenting on the State report of Afghanistan under the Convention — expressed its concern regarding the election law, and the delegation made assurances that the women's parliamentary quota would be preserved given that it is constitutionally mandated.

V. Peace and reconciliation (including accountability and transitional justice)

49. On 18 September 2013, the Government of the Netherlands published a list of 5,000 victims who disappeared or were killed during the communist regime in Afghanistan between 1978 and 1979. The disclosure of this information, known as the “death lists”, compiled by Afghan authorities at the time and revealed through a criminal proceeding in the Netherlands, mobilized victims' families, civil society and the President's Office on transitional justice. Following a meeting with former Jihadi commanders, the Office of the President issued a public statement recognizing the pain and suffering of concerned families and announced two days of national mourning on 30 September and 1 October to commemorate the victims of that period. The families of victims and civil society held memorials and public rallies calling on the Government and the international community to provide justice for past crimes and to ensure that atrocities do not reoccur, that perpetrators are punished and the needs of victims and survivors are addressed. General Abdul Rashid Dostum, a former militia commander who joined the current presidential ticket of Ashraf Ghani Ahmadzai as his vice-presidential candidate, issued a public apology to victims of years of conflict in Afghanistan without accepting any personal responsibility. This episode underscores the importance of the Government receiving and accepting the “conflict mapping report” prepared by the AIHRC and publicizing and acting on the report's findings and recommendations.

50. During 2013, UNAMA/OHCHR continued to support the Afghan People's Dialogue on Peace initiative. The project promotes a rights-based approach to peace and reconciliation efforts by enabling ordinary Afghans, including women, men, youth and minority groups, to express their views on prospects for peace, reconciliation, security, economic development, human rights, justice and the rule of law. The project has been implemented in two phases; Phase I from October to December 2011, and Phase II from June 2013 to mid-2014. By the end of 2013, approximately 6,500 Afghans had been consulted across the country. In line with the principle of Afghan leadership and ownership of peace-building initiatives, UNAMA/OHCHR has played a facilitation role, supporting civil society to lead in promoting this inclusive, rights-centred process that enables the voices of ordinary Afghans to be heard and considered by all policymakers.

51. Phase II of the People's Dialogue anticipates developing local road maps for peace by holding around 200 focus group discussions with community and religious leaders, women, youth representatives, former armed opposition and beneficiaries of development projects. The consultation process is expected to result in the production of 34 local road maps for peace — one for each province. Reports from focus groups so far indicate that Afghans are concerned about entrenched impunity, pervasive corruption and abuse of authority. Participants identified these factors as the main reasons for the insurgency's strength, which weakened the legitimate authority of government institutions, the rule of law and the protection of human rights.

VI. Support to national institutions

Afghanistan Independent Human Rights Commission

52. On 16 June 2013, President Karzai appointed five new AIHRC Commissioners and reappointed four serving Commissioners, including the Chair, Sima Samar. These (re)-appointments were made 18 months after the terms of office of the previous Commissioners had expired, in December 2011. Civil society, donors and UNAMA raised serious concerns that the selection process for the Commissioners failed to meet the international standards enshrined in the Paris Principles. I raised similar issues publicly at the end of June, stressing the need for a transparent, participatory and consultative process involving civil society to select qualified and independent human rights commissioners. None of the five new Commissioners appointed were drawn from the list of 60 potential candidates that civil society groups had provided to the President. These groups and UNAMA/OHCHR have also expressed concerns over the eligibility, political independence and human rights experience and commitment of several newly-appointed Commissioners, as required under law.

53. During my visit to Afghanistan in September 2013, I expressed concern at the non-consultative process leading to these appointments and the potential impact of this on the Commission's "A" status, given its five-year accreditation review in November 2013 by the International Coordinating Committee of National Human Rights Institutions (ICC). I encouraged the Government to address the deficiencies in the selection and appointment process, and to further strengthen the independence and effectiveness of the AIHRC.

54. On 18 November 2013, the Commission underwent its accreditation review with the ICC Sub-Committee on Accreditation, which recommended a deferral of the decision on accreditation for one year. In its decision, the recommendation to defer was accompanied by a statement of concerns regarding the selection and appointment process for Commissioners, the dependence of the AIHRC on international donor funding and the disparity in the ratio of female to male staff members among Commission staff. The Sub-Committee warned that these concerns needed to be addressed before the Commission's next review, failing which the Committee would recommend a downgrade of the AIHRC to "B" status. Final certification by the ICC Bureau of the Sub-Committee recommendation to defer was pending at the time of writing.

VII. Cooperation with United Nations human rights mechanisms

55. Afghanistan presented its combined initial and second periodic reports to the Committee on the Elimination of Discrimination against Women in July 2013. The Committee expressed satisfaction with the progress made in women's rights protection in Afghanistan since 2001, including the EVAW law, the National Action Plan for the Women of Afghanistan (2008–2018) and efforts to increase women's participation in political and public life. The Committee also raised several issues of concern, including proposed amendments to the EVAW law and the appointment of the new members of the AIHRC, given that one Commissioner was known to have spoken publicly against women's rights. The Committee recommended that women should be more involved in the peace process to ensure its success, and inquired about the Family Code, which is currently being revised.

56. The Committee noted the significant efforts made during the last decade to enact and implement a legal framework protecting and promoting women's rights. However, it considered that the climate of persistent and extreme violence, in particular against women,

the ongoing political process and the transition of security responsibilities placed the State in a challenging position. It considered implementation of the Convention as the most effective safeguard to ensure the full respect and enjoyment of women's rights. The Committee provided recommendations on the elimination of violence against women and harmful practices and other measures as a high priority for national mobilization and international support.

57. In November 2013, the Government submitted its second report to the universal periodic review mechanism of the United Nations Human Rights Council. This report addressed the Government's progress in implementing the 117 recommendations made by the Council following the first review of the human rights situation in Afghanistan in 2009. In the second half of 2013, the Ministry of Foreign Affairs began a robust process to prepare the initial report of Afghanistan to the Committee against Torture, which is due in June 2014. Given the serious concerns raised about torture, it is greatly appreciated that Afghanistan is paying particular attention to the preparation of this report.

VIII. Conclusion

58. The human rights agenda in Afghanistan is at a critical crossroads. In April 2014, President Karzai's two terms in office will expire and presidential elections will be held. Over the next year, international military forces will finalize their handover of security responsibilities to Afghan forces. At the same time, a large portion of the international donor presence is expected to withdraw from Afghanistan, significantly reducing financial commitments and direct engagement in project implementation.

59. As political, security and economic transition accelerate to their conclusion and with the persistence of the armed conflict, many Afghans are concerned that instability may increase throughout the country, undoing the significant human rights gains of the last 12 years. There are already signs that the Government and the international community's commitment and attention to the human rights agenda are weakening and that the overall situation of human rights is deteriorating. Indicators include the recent flawed appointment process to the AIHRC, rising civilian casualties in the armed conflict, and developments that could weaken women's rights. The Government should ensure that the transition in 2014 does not lead to a rollback of the gains made and that human rights are not sacrificed for the sake of political expediency.

IX. Recommendations

60. **The United Nations High Commissioner for Human Rights recommends the following:**

The Government of Afghanistan should:

(a) **Prioritize efforts to strengthen civilian protection, especially full implementation of the Government counter-IED strategy, and ensure development and resourcing of sufficient ANSF capacity to command, control and effectively conduct counter-IED operations and IED disposal, including exploitation;**

(b) **Strengthen structures in the Government that track, mitigate and provide accountability for civilian casualties by pro-Government forces, including transparent and timely investigations and accurate tracking of all incidents of civilian casualties caused by ANSF, in order to improve civilian protection, compensation and accountability;**

(c) Strengthen the national and provincial commissions on ERAW to enable them to coordinate all efforts to address violence against women and fulfil their legally prescribed role mandated under the ERAW law, including through oversight and political support by the highest level of the Government. Issue clear instructions to all government bodies to collaborate and share information with the commissions;

(d) Fully implement the Attorney General's 2012 directive No. 92/202 requiring prosecutors to ensure that women are not prosecuted for leaving their houses, and review any new cases of women who are imprisoned for "running away" and/or "attempted zina" by a joint delegation comprising the Attorney General's Office, the Supreme Court and the Ministry of Interior Affairs, with a timeline for completion and follow-up action including release of women and girls who have been wrongly imprisoned;

(e) Develop and implement detailed instructions for police and prosecutors outlining the methodology, criteria, minimum requirements and follow-up mechanisms regulating mediation of registered incidents of violence against women. The instructions should specify responsibilities after mediation settlements to be carried out periodically for a minimum of six months with mandatory follow-up reports;

(f) Put in place within six months a concrete plan covering the next two-year period to improve implementation of the ERAW law, including the measures recommended to Afghanistan by the Committee on the Elimination of Discrimination against Women in July 2013;

(g) Build the capacity of government institutions working on implementation of the ERAW law to ensure a common understanding of violence against women and the provisions of the ERAW law. Training on the ERAW law should be a mandatory element of the training curriculum of police and prosecutor's offices with progress on ERAW law implementation measured biannually against defined indicators and publicly reported;

(h) Consider creating an independent inspection mechanism that would help to identify problems in detention facility operating procedures and practices and work with the institutions to resolve these issues in the long-term;

(i) Invite the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment to visit Afghanistan to assist in providing a comprehensive response to preventing ill-treatment in detention facilities.

(j) Fully implement Presidential Decree No. 129, particularly to ensure that perpetrators of torture are held accountable, including through proper independent investigation and oversight mechanisms, suspension from or loss of employment, and criminal prosecution. Courts and prosecutors must be diligent in throwing out evidence obtained through the use of torture and ill-treatment;

(k) Prevent any interference or political pressure designed to compromise the independence or effectiveness of the AIHRC, ensuring that any measures taken to ensure retention of the Commission's "A" status only strengthen its effectiveness and ensure its independence. The selection and appointment process for Commissioners should be reformed in order to strengthen the effectiveness and independence of the Commission, and sustainable public funding of the Commission's operational budget should be provided;

(l) Fully support the public release of the Commission's conflict-mapping report as a way of promoting peace and reconciliation.

61. **Anti-Government elements should:**

(a) Cease the deliberate targeting and killing of civilians and withdraw orders that authorize attacks on and killing of civilians, particularly religious personnel, judicial authorities and civilian government workers;

(b) Cease using victim-activated IEDs and halt the indiscriminate use of IEDs, particularly in all areas frequented by civilians;

(c) Cease practices carried out by parallel judicial structures that impose unlawful punishments such as killing, amputation, mutilation and beatings.

62. **The international community should:**

(a) Consider increasing support to the Government in implementing the EVAW law by channelling development assistance towards commitments made under the Tokyo Declaration on gender equality, women's empowerment and EVAW law implementation, and toward the recommendations the Committee on the Elimination of Discrimination against Women made to Afghanistan in July 2013;

(b) Implement a joint monitoring framework that includes specific indicators to measure progress and incentives for sustained and increased financial support based on demonstrated measurable results by the Government in EVAW law enforcement and related measures to end violence against women and girls;

(c) Continue to support the AIHRC, which will struggle to survive without continuing donor support. A withdrawal of donor support at this critical juncture would result in a rolling back of human rights gains in the face of escalating violations across the country;

(d) Undertake countrywide verification of the 700 international military bases and firing ranges that have closed to ensure they are cleared of unexploded and abandoned ordnance;

(e) Establish a mechanism within ISAF and ANSF that communicates the suspected presence of unexploded ordnance from aerial and ground operations to appropriate authorities and ensure the marking and clearance of suspect hazardous areas;

(f) Put plans in place to continue engagement on detention issues post-2014, especially if international forces, including special forces, will be active in supporting any ANSF military or counter-insurgency operations. Detention oversight, remediation, training and other torture prevention measures should remain an essential aspect of any international support mandate or partnership with Afghan forces post-2014.