



General Assembly

Distr.: General
18 January 2012

Original: English

Human Rights Council

Nineteenth session

Agenda items 2 and 10

Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Technical assistance and capacity-building

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

Summary

The present report, submitted pursuant to Human Rights Council decision 2/113 of 27 November 2006 and resolution 14/15 of 18 June 2010, describes ongoing human rights concerns in Afghanistan and proposes recommendations to address them, as well as actions the Office of the United Nations High Commissioner for Human Rights (OHCHR) is taking to support and strengthen institutional capacity in the country through the United Nations Assistance Mission in Afghanistan (UNAMA).

Throughout 2011, conflict-related violence continued to claim the lives of numerous civilians in Afghanistan. Intensified operations by the Afghan National Security Forces (ANSF) and the International Security Assistance Force (ISAF), as well as sustained insurgent attacks by Anti-Government Elements have resulted in a rising toll of civilian casualties, increased conflict-related displacement and detrimental impact on women, children and displaced populations. Protection of civilians remains a crucial human rights issue, particularly with the transition of lead security responsibility from the international forces to ANSF, which began on 20 July 2011 and is scheduled to be completed by the end of 2014.

Despite some gains in the spheres of education and health, particularly for women, impunity, poor governance, characterized by corruption, inability to provide essential services, including security and access to justice, have disappointed aspirations of the vast majority of Afghans. Violence against women and girls, including sexual violence and harmful traditional practices, continue to be widespread. Arbitrary detention and the lack of

* Late submission.

respect for due process remain major concerns. Impunity is still widespread and accountability for human rights violations weak, affecting the Government's commitment to promote transitional justice.

Capacity-building of national human rights institutions and civil society organizations is key to the development of national human rights protection mechanisms. The Human Rights Unit of the United Nations Assistance Mission in Afghanistan (OHCHR/UNAMA) continues to support and carry out joint activities with civil society organizations throughout Afghanistan on initiatives such as the Afghan People's Dialogue on Peace.

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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 (UNAMA). Since my last report (A/HRC/16/67), Afghanistan has faced enormous human rights challenges. Long-standing human rights issues exacerbated with armed conflict, poor governance, widespread and deeply entrenched impunity, weak rule of law and justice-sector institutions, coupled with extreme marginalization of women, pose significant challenges in the immediate and longer term.

2. Protecting civilians and preventing civilian casualties remain a huge and increasing concern in Afghanistan. Despite a reduction in security incidents, civilian deaths and injuries increased by three per cent in the first 11 months of 2011, compared to the same period in 2010. Anti-Government elements (AGEs) expanded their use of unlawful means of warfare. Victim-activated pressure plate improvised explosive devices (IEDs) and targeted assassinations claimed the highest number of civilian deaths. The drawdown of security forces and the transition of security responsibilities from the international military to the Afghan National Security Forces (ANSF), coupled with increased attacks from AGEs in the transition areas, has led to a deterioration of the situation. Although pro-Government forces (PGFs) have attempted to restrict the use of force and to increase civilian protection, civilian casualties attributed to PGFs continue to be high. The armed conflict and lack of protection for civilians has inhibited social and economic development. The armed conflict has also contributed to loss of livelihood, destruction of infrastructure and property and disruption of basic services.

3. Although new laws, policies and development aid have brought benefits to Afghan women, deep-rooted discrimination, and impunity for violence against women remain widespread. Violence against women and girls, including sexual violence and harmful traditional practices, such as *ba'ad* (providing women in retribution for murder and other crimes), so-called "honour" killings, early and forced marriages and rape, continue to be widespread. UNAMA documented a positive trend in many parts of the country, with judicial officials beginning to apply the Law on Elimination of Violence against Women (EVAW), although it is not yet being applied to the vast majority of cases. Many cases, including instances of serious crimes against women, are still being mediated rather than prosecuted as required by the law.

4. Arbitrary detention and the lack of respect for due process rights also remain major concerns, particularly as the detainee population continues to grow. Despite legal guarantees in the Constitution and commitment of the Government to uphold fundamental rights essential to a fair trial, detainees (especially conflict-related detainees) continue to be illegally detained and tortured in detention facilities by the National Directorate of Security (NDS) and the Afghan National Police (ANP). Detainees lack access to remedial mechanisms, such as the right to habeas corpus where they can seek redress or challenge the legality of their arrest or detention, as well as meaningful access to defence counsel.

5. Impunity remains deeply entrenched in Afghanistan. Accountability for human rights violations remains weak, and little or no political support has materialized for the advancement of transitional justice mechanisms, despite past commitments on the part of the Government. The Afghan Peace and Reintegration Programme (APRP) gained some momentum in the first half of 2011, but concerns were raised about the lack of transparency and non-inclusive representation – particularly of civil society, and the lack of accountability mechanisms within the APRP process. To ensure sustainable stability and peace, it is essential that peace and reconciliation mechanisms involve a broader

representation across society, including women, and that human rights and justice are upheld in all negotiations.

6. On 5 December 2011, a high-level international conference was convened in Bonn, Germany, to discuss the future of peace, security, reconciliation and development in Afghanistan. Foreign Ministers and Heads of States of several donor countries, international officials, including the Secretary-General of the United Nations, and members of Afghan civil society and the Government, including President Karzai, attended. Participants restated their commitment to ensuring the successful transition of security responsibility to national security forces, and the transformation of Afghanistan from a country at war to a successful developing country that respects its human rights obligations for all citizens, including women. The conference also reaffirmed that the human rights and fundamental freedoms, including women's rights, enshrined in the Afghan Constitution and a thriving civil society are key to this transformation and to the success and stability of Afghanistan in the future.¹ The Human Rights Unit of the United Nations Assistance Mission in Afghanistan (OHCHR/UNAMA) facilitated civil society participation in the conference, providing support for an inclusive process to select civil society representatives to attend the conference, assisting in the planning, drafting and distribution of documents on which participants could base their advocacy efforts.

7. Capacity-building of national human rights institutions and civil society organizations is key to the development of national human rights protection mechanisms. OHCHR/UNAMA continues to work closely, including through joint collaboration and technical support, with national human rights organizations, in particular the Afghanistan Independent Human Rights Commission (AIHRC), the Human Rights Support Unit (HRSU) within the Ministry of Justice and civil society organisations.

II. Protection of civilians

8. Protection of civilians remained a major concern throughout Afghanistan. As the conflict intensified in the traditional fighting areas of the south and southeast and moved to districts in the west and north, civilians experienced a downward spiral in protection. Fighting between armed groups and national and international forces took place regularly in more than half of the provinces. Even those provinces not directly affected by the fighting endured roadside bombings, targeted killings and suicide bombings that negatively impacted protection of civilians.

9. Between 1 January and 30 November 2011, OHCHR/UNAMA documented a preliminary figure of 6,996 conflict-related civilian casualties (including 2,858 deaths and 4,138 injuries), an increase of three per cent compared to the same period in 2010. While the number of civilians injured remained statistically the same compared to the same period in 2010, the total number of civilian deaths increased by 10 per cent during the reporting period. Anti-Government elements (AGEs) were linked to 5,234 civilian casualties (75 per cent of the total number of civilian casualties), an increase of two per cent compared with the same period in 2010, while pro-Government forces (PGFs) were responsible for 1,344 civilian casualties (19 per cent of the total number), an increase of 65 per cent over the same period in 2010. For the remaining six per cent of civilian casualties, responsibility could not be attributed to either party in the conflict. A majority of civilian deaths resulted from the continued use of IEDs by AGEs and targeted killings. IED attacks were the single

¹ See letter dated 6 December 2011 from the Permanent Representatives of Afghanistan and Germany to the United Nations addressed to the Secretary-General, annex containing the conclusions of the International Afghanistan Conference held in Bonn (A/66/597-S/2011/762).

greatest contributor to civilian deaths, responsible for 888 civilians killed, that is, 31 per cent of all civilian deaths. Air strikes remained the leading cause of civilian deaths by PGFs, killing 205 civilians, a 24-per cent increase compared to the same period in 2010.

10. Protection of civilians remained a crucial human rights issue, particularly with the transitioning of lead security responsibility from international forces to ANSF² by the end of 2014, and the beginning of the withdrawal of foreign troops. Transition areas faced attacks and a resilient insurgency attempting to challenge ANSF's capacity to maintain security and disrupting the transition process. Many communities expressed their doubts to OHCHR/UNAMA about ANSF's capability of keeping law and order effectively, due to the growing insecurity and continuous attacks by insurgent groups, even in guarded city centres.

A. Anti-Government elements

11. AGEs remain responsible for the largest proportion of civilian deaths in the first 11 months of 2011. Civilian deaths reportedly caused by AGEs increased by seven per cent from 2010. Suicide attacks and targeted killings caused most civilian deaths, totalling 863 deaths. IED attacks continue to account for the greatest proportion of civilian casualties. AGEs also continued to kill civilians at the same high rate as the previous year, with 484 civilians targeted and executed by insurgents. Suicide attacks resulted in 379 civilian deaths, an increase of 63 per cent compared with the same period last year.

12. OHCHR/UNAMA found that AGEs increasingly employed unlawful means of warfare, particularly victim-activated pressure plate IEDs that act like anti-personnel landmines. IEDs accounted for 2,278 civilian casualties (888 deaths and 1,390 injuries), the single largest killer of civilians in 2011. The vast majority of the IEDs that killed civilians in Afghanistan were designed to be triggered by a weight of between 10 and 100 kilogrammes. Such a weight range means that anyone from an infant to a large adult can detonate the IED, so that such IEDs function effectively as massive anti-personnel mines. This tactic is in violation of the basic right to life and contravenes international humanitarian law principles. OHCHR/UNAMA has repeatedly called on the Taliban leadership to reiterate publicly its commitment to ban the use of pressure plate IEDs, which is in violation of its own 1998 ban on all types of landmines.³

13. AGEs continue to expand their campaign of intimidation, in particular, using the tactic of assassination against a broad range of civilians, from high-ranking government officials, community elders, influential local political and religious leaders, former military personnel, teachers, construction workers to those who supported or were perceived to be supportive of or associated with Government or international military forces. In the first 11 months of 2011, AGEs assassinated 484 civilians, a five per cent increase compared to same period in 2010. AGEs killed more people on the suspicion of spying than for any other apparent reason. AGEs also conducted a series of assassinations of high-profile political figures in 2011, with four high-level killings in the southern region alone in July 2011. The most prominent assassination carried out by AGEs, involved the killing of Burahuddin Rabanni, former President of Afghanistan and Chairman of the High Peace Council, in Kabul on 20 September 2011.

² The transition process (*inteqal*) began on 20 July 2011, when international forces handed over the security of seven areas to ANSF. On 28 November, the Government of Afghanistan announced the second tranche of areas to be transferred from international forces to Afghan control.

³ In 1998, the Taliban banned the use of anti-personnel landmines and issued statements condemning their use as "un-Islamic and anti-human."

14. Despite the Taliban's public statements that their offensives should target exclusively military objectives and ensure the protection of civilians, AGEs continue to carry out indiscriminate attacks against hospitals, religious places and other places protected under international law. In May 2011, the Taliban claimed responsibility for a suicide attack on a national army hospital in Kabul that killed six civilians and injured 23 medical students. Similarly, in June 2011, a suicide attack against a hospital in Logar Province killed 20 civilians, including 13 children, and injured 25 others, many of whom were women and children. In a disturbing development, AGEs continued to target United Nations offices operating in Afghanistan. On 1 April 2011, a demonstration in Mazar-e-Sharif turned violent and protestors ransacked the UNAMA compound. Three UNAMA staff, including a human rights officer, and four international guards died in the incident. Similarly, in October 2011, AGEs carried out an attack on the United Nations High Commissioner for Refugees (UNHCR) compound in Kandahar, killing three local staff members and injuring two others.

15. OHCHR/UNAMA has noted several statements released by the Taliban about reducing civilian casualties. In their 30 April 2011 statement, "Inception of the Spring Operations or Operation Badar," the Taliban declared that they would focus attacks on targets of a military nature and take precautions to protect civilians. Despite these public commitments, the Taliban have made no apparent efforts to adhere to international humanitarian law standards or to take action against their commanders or members who disobeyed them.

B. Pro-Government forces

16. Civilian casualties attributed to PGFs increased in 2011, with 505 deaths and 839 injuries compared to 407 deaths and 410 injuries in the previous year. Civilian casualties as a result of air strikes increased by 28 per cent compared to the same period in 2010, while civilian casualties from ground combat and armed clashes increased by 124 per cent compared to the same period in 2010. Civilian casualties attributed to PGFs reportedly continue to be unacceptably high.

17. Air strikes remained the leading cause of civilian deaths by PGFs between 1 January and 30 November 2011, killing 205 Afghan civilians, a 24-per cent increase compared to the same period in 2010. Civilian deaths attributed to aerial attacks resulted mostly from attacks by helicopters.

18. As fighting intensified between AGEs and PGFs, AGEs responded by increasing their operations to undermine the transition process, resulting in an increase of civilian casualties from ground combat and armed clashes in the first 11 months of 2011. Ground combat resulted in 626 civilian deaths and 1,321 injuries. UNAMA documented 371 civilian deaths from ground combat by AGEs, 190 from PGFs and 65 civilian deaths from crossfire.

19. Civilian casualties from air strikes and night raids remain a major concern. Although the International Security Assistance Force (ISAF) and the Government of Afghanistan have made public apologies, conducted investigations in most of these incidents and considered offering compensation claims, these incidents continue to generate anger and fuel tensions between PGFs and local communities. Several violent demonstrations protesting civilian casualties and night search operations occurred, with some infiltrated by AGEs and other groups, resulting in further civilian casualties.

20. Between 1 January and 30 December 2011, one per cent of all civilian casualties occurred as a result of night raids. UNAMA documented 63 civilian deaths and 31 civilians wounded during night raid operations.⁴

21. ISAF has attempted to put in place regulations to restrict the use of force and increase civilian protection by issuing tactical directives to units in the field. These directives, revised in July 2011, together with standard operating procedures regulating night searches, rules of engagement and rules on the escalation of force, have positively contributed to a reduction in civilian casualties by ISAF. However, there are still concerns regarding the full and consistent implementation of these tactical directives and procedures on the ground, the persistent lack of transparency on investigations and accountability for civilian casualties and the lack of a uniform and reliable compensation scheme.

22. OHCHR/UNAMA continues to monitor community-based security initiatives, including the Afghan Local Police (ALP), which continued to grow in strength and has now reached more than 9,000. While ALP has contributed to stability in some areas, the programme remains controversial given the issues of vetting, command and control, and the risk of ethnically or politically biased militias re-emerging. Community leaders and local Afghans have expressed their concern to OHCHR/UNAMA that these initiatives could lead to an increase in criminality and warlordism at the local level. OHCHR/UNAMA has engaged with the relevant authorities, including ISAF, and was assured that strict oversight would be maintained to address these risks. OHCHR/UNAMA has also raised specific allegations of ethnic and political bias, human rights abuses, child recruitment, arbitrary detention and clashes between ALP and regular ANP units.

C. Children and armed conflict

23. Recruitment and use of children in the armed conflict emerged as an increasing concern in 2011. OHCHR/UNAMA documented incidents of AGEs recruiting children as young as 12 for suicide attacks, to plant IEDs and to smuggle weapons and uniforms. There were also cases of ANSF recruiting boys, sexual exploitation being a motivating factor. In January 2011, UNAMA and the Government of Afghanistan signed the action plan for the prevention of underage recruitment into ANSF. Similarly, in July 2011, the Minister of the Interior issued a decree reaffirming the commitment of the Government to prevent underage recruitment, sexual exploitation and the killing and maiming of children by members of the Ministry's security forces. The High Peace Council (HPC) recognized the need to introduce child reintegration into the APRP and to engage in dialogue with non-State actors on the immediate release of children within their ranks. Despite these positive developments, OHCHR/UNAMA underscores the need to promptly implement the action plan for ensuring increased protection for children.

24. Conflict-related violence continues to have an impact on schooling and education, more particularly that of girls. Although the number of girls enrolled in schools has increased in recent years, ongoing insecurity has impacted girls' access to education. AGEs continue to intimidate education personnel and local populations, killing and injuring

⁴ UNAMA notes that obtaining accurate data on night search operations is difficult given the lack of transparency, frequency and wide scope of such operations conducted by ISAF, Afghan National Army (ANA), international and national special forces and the Afghan National Border Police (ANBP), both independently and jointly. ISAF did not share information on night raids, citing it as classified, despite repeated requests from UNAMA. Given both limitations associated with the operating environment and limited access to information, UNAMA may be under-reporting the number of night raids involving civilian casualties.

students and teachers, carrying out attacks in schools and the vicinity, sometimes forcefully closing schools, which in many instances prevents girls from attending school. Of concern is also the issue of PGFs occupying schools for tactical purposes. The Country Task Force on Children and Armed Conflict, of which OHCHR/UNAMA is a member, continues to monitor the impact of conflict on education. It also advocates with Government and AGEs to maintain the neutrality and safety of schools and to immediately cease attacks or threats of attacks against educational institutions and personnel.

III. Violence against women

25. Violence against women and girls, including sexual violence and harmful traditional practices such as *ba'ad* (providing women in retribution for murder and other crimes), so-called “honour” killings, early and forced marriages and rape continue to be persistent and widespread in Afghanistan. In many areas where the criminal justice system's presence is weak, Government authorities continue to refer most complaints of domestic violence and cases of “running away from home” to traditional dispute-resolution mechanisms. Women and girls who flee their homes due to abuse or threats of forced marriage are often charged with the crime of adultery or intent to commit adultery. Moreover, incidents of self-immolation as a result of domestic violence continued to increase. While new laws, policies and development aid have brought benefits to Afghan women, deep-rooted discrimination, harmful traditional practices and impunity for violence against women remain widespread.

26. In November 2011, OHCHR/UNAMA released a report on the implementation of the EAW law.⁵ The report, based on 261 interviews with judicial, police and Government officials, and on OHCHR/UNAMA's monitoring of numerous cases of violence against women throughout Afghanistan, noted both progress and gaps in implementing the law from March 2010 to September 2011. It also found that the Government's application of the law represented a very small percentage of the actual treatment of cases of violence against women. Indeed, many cases of violence, including instances of serious crimes against women, were still being mediated rather than prosecuted as required by the law. OHCHR/UNAMA recommended that the Government and its international partners increase their efforts to raise awareness of the law; apply the law consistently, rapidly and efficiently; and train police, prosecutors and judges on how to apply the law.

27. OHCHR/UNAMA conducted awareness-raising activities and training for women's groups, students, religious leaders, mullahs, judges, prosecutors, police, university students, journalists, and provincial government authorities. It also broadcasted radio and television programmes on the EAW law and harmful traditional practices. Women have increasingly come forward to seek assistance, in part due to their increasing awareness of the law and encouragement from its use in the criminal justice system.

28. There have also been instances in which the EAW law has been weakened. OHCHR/UNAMA noted that the Supreme Court has annulled article 42 of the EAW law which banned the use of pardons for persons convicted under the law, finding the provision to be in conflict with the President's Constitutional power of pardon. Some judicial officials, however, told OHCHR/UNAMA that article 42 actually resulted in many prosecutors being reluctant to use the law, preferring to charge perpetrators under the Penal Code in order to keep the option of pardons open. It has yet to be determined if the

⁵ See OHCHR/UNAMA, *A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*, Kabul, November 2011. The law, enacted in August 2009, criminalizes child marriage, forced marriage and 17 other acts of violence against women, including rape and beating; it also specifies punishment for perpetrators.

Supreme Court's decision will result in more prosecutors now being willing to apply the EVAW law, rather than the Penal Code, in future.

29. A positive step in improving protection for women's rights came in September 2011 when the Afghan Council of Ministers approved a by-law regulating the operation of protection centres for women. This regulation sets standards for the operation and management of protection shelters for women, effectively re-affirming the critical service that these centres, both those operated by the Government and NGOs, provide for vulnerable women and girls facing violence and abuse. The final version of the regulation contrasted starkly with the earlier drafts which had provisions restricting the independent management of centres run by civil society groups and failing to protect vulnerable women from being forcibly returned to their families or from non-consensual disclosure of information to law enforcement authorities. Following continuous advocacy from civil society, AIHRC and the United Nations, amendments were made to the regulation. The final regulation places obligations on the Government to establish additional protection centres, and on shelters to admit, without exception, women subjected to or at risk of violence. It also safeguards fundamental human rights, such as privacy and access to adequate health care. Successful prosecutions of perpetrators of violence under the EVAW law depend, in part, on the ability of victims to secure safe, temporary housing, along with social and legal support. Effective enforcement of the regulation should encourage the creation of new shelters in areas where they are needed and the strengthening of existing ones through improved government oversight.

30. A number of provincial commissions for the prevention of violence against women are beginning to carry out their mandate of preventing violence by coordinating among Government and non-governmental institutions. However, they need much greater support and guidance. OHCHR/UNAMA found that although commissions have been established in 28 of Afghanistan's 34 provinces, only 16 meet regularly. The provincial commissions vary widely in their operations. OHCHR/UNAMA assisted many provincial governors and women affairs departments with establishing and strengthening provincial commissions and in conducting awareness programmes for civil society groups and Government officials in 13 provinces.

31. Increasing the ability of women to participate equally in political processes and government structures remains a key priority for the human rights agenda in Afghanistan. The Government, with support from Finland, is developing a national action plan on women, peace and security. OHCHR/UNAMA has pledged its support in this process. On the occasion of International Women's Day in March 2011, civil society organizations issued a declaration calling on the Government and members of Parliament to ensure effective participation by women in the peace process, and to increase women's participation in Government in accordance with the Afghan National Development Strategy (ANDS).

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

32. As the process of transitioning control from international military forces (IMF) to Afghan National Security Forces (ANSF) progressed, the Government and the international community indicated the need for a formal process for discussing a settlement with the Taliban. At the same time, the Taliban have shown signs that they may be ready to negotiate terms, despite their public refusal to discuss peace until international forces have withdrawn. In July 2011, the Taliban issued a public statement in which they sought to distance themselves from terrorism, indicated aspirations for political recognition, advocated a negotiated withdrawal of foreign military, and asserted that they would pose no

threat to regional and international stability. Also, in July 2011, at the request of the Government of Afghanistan, the Security Council de-listed 15 former Taliban from the 1988 list established pursuant to Security Council resolution 1988 (2011),⁶ an important step in reconciliation and confidence-building with the Taliban. Many civil society organizations, especially women's rights groups, have repeatedly expressed their fear that a negotiated settlement with the Taliban could result in sacrificing advances in human rights protection, especially with regard to women's rights, that have been achieved in the last 10 years since the fall of the Taliban.

33. OHCHR/UNAMA has stressed the need for any political process to be inclusive and just. Both existing and future mechanisms to discuss peace and reconciliation should involve a broad cross-section of Afghan society, particularly women, minorities, civil society and victims of human rights violations. OHCHR/UNAMA has regularly advocated with Government, international and civil society partners, emphasizing that for peace and reconciliation to be sustainable, the central and critical problem of impunity must be addressed. Efforts to strengthen the rule of law, build the capacity of the justice system, and ensure accountability within the Government and security forces will be essential to creating a political culture conducive to meaningful peace and an environment in which transitional justice can take place.

34. Peace and reintegration efforts by the Government of Afghanistan, including those of the High Peace Council (HPC) under the APRP, gained some momentum in the first half of the year. Provincial peace committees were established in at least 28 provinces to undertake confidence-building and grievance-resolution activities at the local level. Efforts by the HPC and its Joint Secretariat to generate international donor support were extremely successful with over US\$170 million having been pledged in 2011 to implement reconciliation and reintegration projects for former combatants and the communities to which they returned. Nearly 3,000 rank-and-file insurgents had come forward to disarm and seek reconciliation under APRP by late August 2011. Despite some positive developments on peace-building activities, much of the momentum of the programme was undone in September 2011 when an insurgent posing as a messenger from the Taliban assassinated the Chairman of the HPC, former President Burahuddin Rabbani. This political killing effectively froze the APRP process until mid-November, when the President convened a *Loya Jirga*, a nationwide gathering of prominent Afghans, who recommended that the Government take immediate steps to implement the APRP and appoint a new HPC chairman.

35. Human rights organizations, including AIHRC, have raised concerns that the HPC and the APRP⁷ will allow demobilized combatants to return to their communities without addressing issues of justice and accountability for abuses that occurred during and prior to Taliban rule. OHCHR/UNAMA has also raised concerns about the lack of a serious process for vetting combatants who wished to join the programme, to ensure that known violators of human rights do not benefit from reconciliation and reintegration support without accountability. In particular, OHCHR/UNAMA advocated for vetting to be carried out not only with the involvement of security actors, but also with civil society and community input, including the women and victims of human rights violations. In July 2011, the Joint Secretariat accepted these suggestions in part, including vetting criteria in their standard operating procedures on vetting, and using language clarifying that acceptance in the APRP does not amount to blanket amnesty from prosecution for ex-combatants.

⁶ Formerly the consolidated list pursuant to Security Council resolution 1267 (1999).

⁷ The Afghan Peace and Reintegration Programme (APRP) was created by the Government in June 2010 with the aim of bringing low-level insurgents back into local communities and, at the same time, creating momentum for rebuilding communities.

36. Arbitrary detention and abuse in custody have long been factors exacerbating the conflict; efforts to reduce such abuses have been recognized as key confidence-building measures in efforts to promote reconciliation. In early June, the HPC, within the APRP framework and through its working group on prisoner release, began reviewing cases of conflict-related detainees held without evidence or access to courts. OHCHR/UNAMA facilitated discussions between this working group and national and international legal aid organizations to assist the process of reviewing case files of political detainees whose cases fit these basic criteria. The working group agreed to involve legal aid organizations in cases where detainees' families have petitioned provincial governors to help with the release of their relatives. Legal aid groups have approached the courts to speed up the processing of pending cases.

37. OHCHR/UNAMA continued to work closely with human rights and women's groups to promote transitional justice, accountability and inclusiveness in peace, reintegration and reconciliation processes ongoing in the country. Although the programme envisioned inclusive participation and involvement, including from women and civil society, in the provincial peace committees (PPCs) of the APRP, many provincial governors have neither invited their participation nor consulted with them.

38. In an effort to promote an inclusive peace and reconciliation process, OHCHR/UNAMA facilitated the Afghan People's Dialogue on Peace, comprised of 13 civil society organizations and AIHRC. This initiative consisted of discussions by over 78 focus groups with over 1,500 Afghans throughout the country, to elicit their views on peace, security, transition, rule of law, impunity and the international community's role in the country after the transition of security responsibilities to Afghan security forces. Most participants in the Dialogue noted that the discussions were the first time that anyone from the international community or Government had ever solicited their views on peace and issues that affect their daily lives. A report on the findings of the Dialogue was distributed during the Bonn Conference as a means of promoting the voice of ordinary Afghans in the discussions on the future direction of peace.

39. Civil society organizations and AIHRC continue to document human rights violations and abuses committed during the conflict, in the hope that their data will be used to establish accountability for past violations. AIHRC has continued to make progress in finalizing their mapping report on human rights violations in Afghanistan during the conflict, which should be a major landmark in the transitional justice debate, and will support efforts in establishing truth and creating a record for use in future accountability mechanisms.

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

40. Arbitrary detention and mistreatment of detainees, particularly conflict-related detainees, remain major concerns in the country. Official figures from November 2011 reveal that the Central Prison Department is housing more than 18,000 sentenced prisoners and detainees who have not yet been tried or had their cases finalized in the courts. These numbers do not include the number of persons detained by the NDS and ANP, neither of which keeps regular public statistics of their detainee populations. These numbers continue to increase with the intensification of the conflict and security operations that result in arrests of persons on suspicion of national security crimes. This increase in the prison population has put a strain on the already overcrowded system that was designed for about 10,000 prisoners. Widespread arbitrary detention has long been a consequence of this situation with lengthy pre-trial detention which routinely can stretch up to three months or longer for a detainee without charge, indictment or trial. The situation has been a

contributing factor in the willingness of law enforcement agencies to use torture in order to coerce confessions from detainees, particularly conflict-related detainees.

41. Afghanistan is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its Constitution guarantees the fundamental rights essential to a fair trial, including the right to counsel, the presumption of innocence and prohibition against the use of torture and arbitrary detention. In spite of such legal provisions, detainees lack access to remedial mechanisms where they can seek redress for human rights violations or challenge the legality of their arrest or detention. Government ministries, including the Ministry of Justice, began a process to reform the Criminal Procedure Code, however, progress has been slow. Many reforms designed to address the shortcomings of the criminal justice system have also been identified within the Afghan National Development Strategy (ANDS) and National Priority Program (NPP) on Law and Justice for All. These would include more responsible custodial measures (detainee case tracking system, forensic evidence collection and preservation mechanisms and the introduction of remedies for unlawful detention) which, if fully implemented, could improve the availability of legal safeguards and effective remedies for detainees.

42. Another weakness in the justice system is the difficulty that detainees encounter to access legal counsel at all stages of the criminal justice process. Despite the constitutional guarantee for Afghans to have access to legal counsel from the moment of arrest, many detainees lack meaningful access to defence counsel. Currently there are around 300 lawyers providing legal aid for criminal cases in 25 provinces in Afghanistan. Despite the increase in the number of legal aid lawyers, most are based primarily in provincial capitals with almost no representation at district level. Legal aid is only targeted towards women and children, although more than 90 per cent of the detainees are adult men. Legal aid providers have limited access to many detention facilities, including those of the NDS and ANP. Due to lack of access to detainees, there is an increasing practice of legal aid providers defending cases in absentia. OHCHR/UNAMA has supported mechanisms for referring cases to legal aid providers, and has been working closely with legal aid providers and Government to ensure that defense attorneys have access to clients in all detention facilities.

43. On 10 October 2011, OHCHR/UNAMA issued its report⁸ on the mistreatment of conflict-related detainees held in custody by the NDS and ANP. Based on interviews of 379 pre-trial detainees at 47 facilities in 22 provinces from October 2010 to August 2011, of which 324 were being held under suspicion of committing conflict-related offences, OHCHR/UNAMA identified the interrogation techniques used by NDS and ANP that constitute torture under international and Afghan law, as well as other forms of abuse. Almost half (125 detainees or 46 per cent) of the 273 conflict-related detainees held by NDS that OHCHR/UNAMA interviewed had experienced torture and 41 (35 per cent) of the 117 detainees held by the ANP had experienced torture or cruel, inhuman or degrading treatment. While the report does not establish that torture was being used as a matter of Government policy, OHCHR/UNAMA found compelling evidence that torture was being practised systematically in five NDS facilities and multiple credible allegations of torture in two other NDS facilities. OHCHR/UNAMA received the full cooperation of NDS and the Ministry of Interior (MoI) throughout its monitoring, particularly as regards access to NDS and MoI facilities. Prior to and following the release of the report, OHCHR/UNAMA held a series of meetings with the Afghan authorities to discuss the findings of the report and support that OHCHR/UNAMA could provide to address the problems highlighted in the

⁸ See OHCHR/UNAMA, *Treatment of Conflict-Related Detainees in Afghan Custody*, Kabul, October 2011.

report. The Afghan authorities launched their own investigation, reassigned personnel, in the case of NDS, and initiated remedial action. NDS and MoI have repeatedly renewed their commitment to take the findings of the report seriously and to develop a clear plan of action for addressing the concerns raised therein, but as of late 2011, follow-up had failed to produce substantive changes.

44. In response to the OHCHR/UNAMA report, the International Security Assistance Force (ISAF) took immediate action to support the Afghan authorities in reforming their interrogation and detainee-treatment practices. Under this remedial scheme, ISAF suspended all transfers from international military custody to 16 NDS and ANP facilities where UNAMA had found compelling evidence that torture and ill-treatment took place. Additionally, ISAF developed a six-phase plan, including on-site facility inspection, training on human rights and detainee treatment, monitoring detention facilities, supporting accountability actions by the Government and facilitating transparency between ISAF and Government detention operations. Throughout November and December 2011, ISAF completed all initial rounds of inspection of NDS and ANP detention facilities, regularly updating OHCHR/UNAMA as they undertook on-site inspections, trained NDS and ANP staff, including guards and investigators in detention facilities throughout the country. ISAF indicated that it would not restart the transfer of detainees to facilities tainted by allegations of torture until this programme of remedial measures of inspections and training is fully implemented and certified.

45. OHCHR/UNAMA documented that in a large number of cases, families refused to accept women released from prisons back to their homes. Without proper post-release transition shelters for women, provincial departments of women affairs and local women's shelters have been accommodating several released female detainees. As courts commonly convict women for adultery in Afghanistan, it is common for families to reject the return of released female prisoners. Moreover, women fear that they will face violence and/or be forced into marriages on their return home. To address the problem, the United Nations Office on Drugs and Crime (UNODC), in partnership with relevant Government ministries and non-governmental organizations, established the first post-release transition shelters in Mazar-e-Sharif and Kabul to facilitate successful reintegration of women prisoners into civilian life prior to and after their release, including through providing shelter, security, food, psycho-social and capacity-building support.

VI. Support to national institutions

46. OHCHR/UNAMA continues to collaborate and provide technical support to AIHRC, both at the national and provincial level, to assist in capacity-building of its staff, particularly in those areas where they have taken on new tasks and responsibilities. In one such instance, AIHRC has taken on the role of police oversight, at the behest of the Ministry of Interior. To support the investigative staff in assuming these responsibilities, the European Union's Police Assistance Mission in Afghanistan (EUPOL) collaborated with OHCHR/UNAMA to provide training to AIHRC staff on police accountability and investigation skills. OHCHR/UNAMA and AIHRC implemented a number of joint training activities on human rights and violence against women for civil society partners at the provincial level. AIHRC and OHCHR/UNAMA continue to share information and undertake joint advocacy initiatives on key human rights issues.

47. As per commitments made at the Kabul Conference,⁹ AIHRC worked with line ministries and civil society to develop a three-year action plan for the implementation of the

⁹ The international conference on Afghanistan, held in Kabul on 20 July 2010.

National Priority Program (NPP) on Human Rights and Civic Responsibilities¹⁰ under the Governance Cluster of the Joint Coordination and Monitoring Board (JCMB). OHCHR/UNAMA provided input during the action plan's consultation and drafting process, supporting the coordination role of AIHRC throughout. In October 2011, JCMB endorsed the priority programme, and its further implementation and funding were discussed along with the other NPPs at the Bonn Conference in December. Additionally, at Bonn, the international community agreed to continue supporting Afghanistan in the long term and to deliver the vast majority of development assistance in line with the Government's strategic funding priorities, laid out in the NPPs. Although the plan of action has been endorsed by the JCMB and donors have committed to channel 80 per cent of all future funding through the NPPs, it is still unclear whether there will be enough funding available to implement the NPP on Human Rights and Civic Responsibilities.

48. OHCHR/UNAMA and international donors worked with the Government to meet the Kabul Process¹¹ commitment to create a funding mechanism in the State budget for AIHRC. On 13 December 2010, the Ministry of Finance announced that the Government had allocated one million dollars to AIHRC, subject to parliamentary approval of the 2011/2012 budget. Despite this pledge, the final 2011/2012 budget submitted to Parliament allocated only half the pledged amount and failed to regularize AIHRC's legal status within the overall budget framework. As international donor support is likely to dwindle in the next year, AIHRC will increasingly have to rely on Government allocations, and so long as its budgetary status is not regularized and safeguarded, the Commission's independence and long-term sustainability will be vulnerable. OHCHR/UNAMA, together with international partners will continue to advocate for the Commission to have access to sustainable State funding in order to perform all the functions set out in its mandate, in accordance with the Paris Principles.

49. Together with the Asia Pacific Forum of National Human Rights Institutions and the United Nations Development Programme (UNDP), OHCHR/UNAMA facilitated a capacity assessment of AIHRC in May and July 2011. OHCHR/UNAMA and international partners will continue providing support to the Commission to aid implementation of their capacity development strategy and capacity assessment recommendations.

50. AIHRC's Child Rights Commissioner, Hamida Barmaki, and her family were tragically killed in the 28 January 2011 attack on a supermarket in Kabul. She was one of OHCHR/UNAMA's key partners on children's rights and played an important role in furthering agreements between the Government and the United Nations to prevent sexual abuse and underage recruitment of children.

51. OHCHR/UNAMA continued to provide technical support to the Human Rights Support Unit (HRSU) at the Ministry of Justice.¹² OHCHR/UNAMA had regular strategic meetings with HRSU to provide policy advice in different areas of its work, as well as technical assistance for the development of an action plan to implement the recommendations of the Human Rights Council under the 2009 universal periodic review.

¹⁰ The National Priority Program on Human Rights and Civic Responsibilities highlights the importance of human rights, legal awareness and civic education programmes targeting communities across Afghanistan to foster a more informed public and civil society and to increase Government accountability. AIHRC is the lead coordinator of activities among line ministries and civil society groups.

¹¹ The transition process to Afghan leadership and responsibility, reaffirmed at the international conference on Afghanistan, held in Kabul on 20 July 2010.

¹² The Human Rights Support Unit, officially inaugurated on 29 September 2010, is responsible for strengthening the Government's capacity to fulfil its international human rights obligations.

52. During 2010, the Government made positive efforts with regards to submission of periodic reports under its treaty obligations. In January 2011, the Committee on the Rights of the Child considered the initial report of Afghanistan on its implementation of the Convention on the Rights of the Child. With support from UN-Women, the Government also completed its initial report to the Committee on the Elimination of All Forms of Discrimination against Women, which will be considered in 2012. OHCHR/UNAMA will continue to support the Government in developing action plans to implement the concluding observations of the treaty bodies.

VII. Conclusion

53. **The Government authorities, with support from the international community, have made some progress in addressing major issues of concerns, such as in the areas of legal reform, consolidating the peace and reconciliation process and strengthening the criminal justice system. The Afghanistan Independent Human Rights Commission, media and civil society organizations have continued advocacy efforts and to highlight human rights concerns. However, many challenges still remain, such as ensuring justice for victims of human rights violations, ensuring civilian protection, improving laws and policy implementation, and establishing effective accountability mechanisms within government and security sector institutions. As the transition of lead security responsibility progresses from international to Afghan-led security structures, it is imperative that greater attention be given to the Government of Afghanistan's human rights obligations. In order to be successful and sustainable, the transition process must be focused not only on the handover of security responsibilities, but also on the development of local communities, the establishment of good governance and the ability to protect civilians, especially the rights of the most vulnerable individuals, including women, children and ethnic minorities. Respect for international legal norms by all parties is critical, not only for strengthening efforts to protect civilians, but also seeking a political solution that will allow all Afghans – men and women, boys and girls – to partake in their country's development, free from violence and to enjoy their fundamental human rights.**

VIII. Recommendations

54. **The United Nations High Commissioner for Human Rights recommends that:**

(a) **Afghan National Security Forces and International Military Forces take all feasible precautions to prevent and minimize incidental loss of civilian life, injury to civilians and damage to civilian objects during the planning and implementation of military operations. They should institute immediate, credible, impartial and transparent investigations into all incidents involving civilian casualties, including public and prompt reports on the progress and results of investigations, take appropriate disciplinary or criminal action against any individuals found responsible for violations of military or domestic criminal law, and ensure consistent and appropriate compensation;**

(b) **The Taliban and other AGEs prevent civilian casualties by complying with international humanitarian law including respect for the principles of distinction, proportionality and precautionary measures. They should immediately cease targeting civilians as such deliberate attacks are violations of international law;**

(c) **The Government of Afghanistan ensure prosecution of all serious crimes of violence against women. It should issue instructions to all officials, clarifying the**

types of offences that must be investigated and prosecuted, and those that might be referred for mediation;

(d) The international community increase its support to Government initiatives aimed at the enforcement of the Law on the Elimination of Violence against Women, including women's protection centres and shelters that offer refuge to female victims of violence;

(e) The Government of Afghanistan promote an inclusive peace process ensuring that mechanisms are in place to involve and obtain the views of ordinary Afghans, including women and youth, and that these views are incorporated into sustainable peace and security processes;

(f) The Government of Afghanistan reaffirm its commitment to justice and combating impunity. It should ensure that there is no amnesty for perpetrators of war crimes, crimes against humanity and gross violations of human rights;

(g) The Government of Afghanistan uphold human rights values in all negotiations and efforts aimed at achieving reconciliation and lasting peace, and in particular ensure that gains made in human rights, particularly the rights of Afghan women and girls, are guaranteed;

(h) The Government of Afghanistan support the greater representation of civil society organizations and women in all decision-making bodies established to promote and support durable peace;

(i) The Government of Afghanistan investigate all reports of torture and ill-treatment at detention facilities and remove, prosecute, discipline and punish all public officers and their superiors found responsible for committing or condoning such practices;

(j) The Government of Afghanistan revise the Interim Criminal Procedure Code to guarantee the right of detainees to be brought promptly before a judge for an initial and periodic review of the lawfulness of pre-trial detention, and the right of detainees to challenge the legality of their detention with a speedy court decision;

(k) Troop-contributing States and the concerned State review policies on transferring detainees to ANP and NDS custody to ensure adequate safeguards, and use their bilateral relationship to prevent the use of torture by NDS and ANP;

(l) The Government of Afghanistan ensure that AIHRC has access to sustainable State funding to perform all the functions set out in its mandate, in accordance with the Paris Principles.