

ADVANCE EDITED VERSION

Distr.
GENERAL

E/CN.4/2003/39
13 January 2003

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 9 of the provisional agenda

**QUESTIONS OF THE VIOLATION OF HUMAN RIGHTS AND
FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD**

**Report on the situation of human rights in Afghanistan, submitted
by Mr. Kamal Hossain, Special Rapporteur, in accordance with
Commission on Human Rights resolution 2002/19**

Executive summary

The Special Rapporteur undertook three missions to Afghanistan during 2002, specifically to Kabul in January, Herat in February, and finally Kabul and Kandahar in October. His ninth report provides an overview of Afghanistan's transitional process initiated by the Bonn Agreement, with particular focus on its impact on human rights.

As regards the Bonn Agreement and the progress of the peace process, the Special Rapporteur highlights security as the prerequisite to its implementation and the single greatest concern looming in Afghanistan, with many Afghans still feeling that they are at the mercy of local commanders or armed groups. Insecurity and lawlessness undermine the people's confidence in the peace process, hamper economic activities, limit reconstruction assistance, and threaten the exercise of the most basic human rights and the main objectives of the Bonn process. The building of the national army is stressed as a priority. Important advances during the transitional period are also highlighted, in particular those relating to education and the return of refugees.

The Special Rapporteur met with the members of the Afghan national Human Rights Commission, which was established on 6 June 2002, during his visit to Kabul in October 2002. He discussed with them their key areas of work, in particular on the human rights of women, human rights education, monitoring and investigations, and on transitional justice. The Commissioners underscored the need to secure assistance in building the capacities of the Commission to address the wide range of tasks entrusted to it, including pursuing the complaints of human rights violations that it had received. In that regard, the Special Rapporteur witnessed during his October mission the signing of the United Nations project that will provide support to the Human Rights Commission. Moreover, the Commissioners stressed the need for the full support of the Transitional Administration in establishing its authority and for its decisions and directives to be respected. This message was relayed by the Special Rapporteur to the President, who confirmed his full support for the work of the Commission. The present report highlights a number of examples of the involvement of the Human Rights Commission in pursuing human rights situations, in particular those relating to women and to the student demonstrations at Kabul University.

The findings of the mission of the International Commission of Jurists to examine the legal system established under the 1964 Constitution against the benchmark of international human rights standards are mentioned, as are its main conclusions which are broadly endorsed by the Special Rapporteur. In particular, it is recommended that the rebuilding of Afghanistan's legal system and the support for it not focus on any single component but proceed in an integrated, all-embracing manner.

A summary of issues relating to human rights and cases of violations is summarized under the four headings of discrimination against specific ethnic groups; human rights of women; cases of violence as a result of local conflict and extrajudicial execution; and the treatment of prisoners. In particular, cases of violations against ethnic groups are broken down by zone, i.e. North, West and South. As regards extrajudicial killings, the Special Rapporteur on extrajudicial, summary and arbitrary executions visited Afghanistan in October 2002.

On national reconstruction and development, 8-16 per cent of the Afghan population are considered highly vulnerable to the approaching winter. In Kabul itself, the population has doubled in size over the last year, with many returnees flooding into the capital because of its relative peace. Faced with limited housing and employment possibilities, coupled with inflation, the living conditions are increasingly becoming difficult. The 2003 Transitional Assistance Programme for Afghanistan (TAPA) has been completed and prioritizes integrated United Nations agency action in communities of return, to help assure sustainable livelihoods, essential community services, potable water supply and sanitation, and to address problems of debt and asset depletion. It equally addresses the survival, shelter and livelihood needs of Afghanistan's growing urban population. Capacity for mine action increased in 2002 and will remain a cornerstone for recovery and reconstruction in TAPA in 2003. While there has been significant international support, existing pledges are not quite sufficient to bring peace and stability to the country.

In addition to the Afghan Human Rights Commission, the newly established 11-member Judicial Reform Commission provides a comprehensive programme for the reform of law with the close coordination and cooperation of the Supreme Court, the Ministry of Justice and other relevant bodies. The nine-member Constitutional Drafting Commission has been proceeding with its work of drafting a constitution and is guided by Islamic principles, international standards and Afghan legal traditions. Consultations with Afghans will be crucial for a draft constitution and important for national reconciliation.

As regards Afghan women, their low social status and the consequent power imbalances between women and men are the underlying reasons for harmful and discriminatory practices and physical and sexual violence against girls and women in Afghanistan. At the same time, and despite the horrors of war, many have emerged empowered. The centrality of the gender dimension is crucial in the processes of reconstruction. To ignore women and their organizations in the process of reconstruction means that women in Afghanistan will be denied the right to participation in the reconstruction of their new reality.

Finally, seven key recommendations are outlined, aimed at identifying priority areas where action needs to be taken for improving the human rights situation, ranging from ways to improve security, to strengthening the national Human Rights Commission, to national participation in the transition process.

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
Introduction	1 - 2	5
I. THE BONN AGREEMENT: PROGRESS OF THE PEACE PROCESS	3 - 7	5
II. AFGHAN NATIONAL HUMAN RIGHTS COMMISSION	8 - 14	6
III. THE LEGAL SYSTEM AND ITS COMPATIBILITY WITH INTERNATIONAL HUMAN RIGHTS STANDARDS	15	8
IV. REVIEW OF THE HUMAN RIGHTS SITUATION (JUNE-NOVEMBER 2002)	16 - 21	9
A. Discrimination against specific ethnic groups	17	9
B. Human rights of women	18	10
C. Cases of death resulting from local conflicts and alleged extrajudicial executions	19	10
D. Treatment of prisoners	20 - 21	11
V. NATIONAL RECONSTRUCTION AND DEVELOPMENT: ECONOMIC AND SOCIAL RIGHTS	22 - 28	11
VI. JUDICIAL COMMISSION	29 - 30	13
VII. CONSTITUTIONAL COMMISSION	31	13
VIII. WOMEN	32 - 39	13
IX. RECOMMENDATIONS	40	15

Introduction

1. This is the ninth report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Afghanistan. The eighth report, presented to the General Assembly (A/57/309), covered the period from December 2001 when the Bonn Agreement was concluded, to October 2002.

2. The present report presents an overall review of the transitional process initiated by the Bonn Agreement, and in particular seeks to assess its impact on human rights, in the phase that commenced with the establishment of the Transitional Administration following the Emergency Loya Jirga (June 2002). The Special Rapporteur visited Afghanistan three times in the course of 2002: Kabul (January 2002); Herat (February 2002), and Kabul and Kandahar (October 2002).

I. THE BONN AGREEMENT: PROGRESS OF THE PEACE PROCESS

3. In the words of the Special Representative of the Secretary-General, Lakhdar Brahimi, progress of the Bonn process as at October 2002 was assessed thus:

“So far, the peace process is on track. To be sure, it is a fragile peace, which must be handled with great care so that it does not unravel. But there are a few important factors that give rise to cautious optimism.

First, the people of Afghanistan are truly tired of fighting. After 23 years in which they experienced every form of bloodshed and repression, and witnessed every kind of loss and destruction, Afghans are finally getting a taste of peace, and most are determined to do everything in their power to avoid a relapse into war.

Second, while there are still many individuals and factions that seek power, and are perhaps ready to go to great lengths to achieve or hold on to it, no one has, so far, opted out of the peace process.

Third, the international community’s interest in Afghanistan has not waned, despite the fact that there are many other crises and deserving causes elsewhere in the world.”¹

Nevertheless, numerous challenges require urgent attention in the months ahead, lest they develop into obstacles to peace.

4. The single greatest concern is the issue of security, which continues to loom large in Afghanistan. It is a prerequisite to the implementation of the peace process. Yet, security remains precarious in much of the country. Many Afghans still feel that they are at the mercy of local commanders or armed groups.

5. In the course of the first year a Transitional Administration was established. Three million children went back to school including more than 1 million girls banned from education under the Taliban regime; 1.7 million refugees had returned to their homeland.

6. The Petersburg Conference was convened on 2 December 2002 to mark the first anniversary of the Bonn Agreement. It was attended by representatives from 32 States including Afghanistan and the host, Germany. It noted that significant progress had been made even though major challenges, in particular that of maintaining security, lay ahead. The effect of the security deficit on the overall situation was described by the Special Representative of the Secretary-General at the Conference, thus: "whether caused by the attacks of extremists, by factional rivalries, abuses of power or common banditry, insecurity and lawlessness undermine the people's confidence in the peace process, hamper economic activities, limit reconstruction assistance, threaten the exercise of the most basic human rights and the main objectives of the Bonn process". At the Conference, priority was accorded to the building of the national army. President Karzai emphasized that: "Hardly any project could contribute more to rebuilding the Afghan State, to repairing divisions inherited from the civil war and restoring popular confidence in the Government than the creation of truly national security forces."

7. The communiqué adopted by the Conference noted that while security concerns remain in parts of Afghanistan, there has nevertheless been considerable improvement in security and stability in much of the country, and strongly endorsed the Transitional Administration's decision: (a) to create an Afghan National Army; and (b) to disarm former fighters and to reintegrate them into civilian life.

II. AFGHAN NATIONAL HUMAN RIGHTS COMMISSION

8. The Bonn Agreement had provided for the establishment of an independent Human Rights Commission, the responsibilities of which would include human rights monitoring, investigation of violations of human rights and the development of domestic human rights institutions. This Commission was established on 6 June 2002 with 11 members, of whom 5, including the Chairperson, Dr. Sima Samar, are women. Most of its members are drawn from civil society organizations, many of which had been active in the promotion and protection of human rights.

9. The Special Rapporteur met the members of the newly constituted Afghan National Human Rights Commission and visited the new building in which it has established its office. United Nations support is provided under an agreement signed in the course of the Special Rapporteur's visit in October 2002. The following areas were identified for support:

(a) The creation of an institutionalized, independent, expert national human rights commission in Afghanistan, with sustainable operational and managerial capacity;

(b) Establishing adequate Commission capacity to play a leading role in the advancement of the human rights of women;

(c) Establishing adequate Commission capacity to carry out the human rights education programme;

(d) Coordinating the development and adoption of a national system of monitoring and investigation, and gaining an adequate human rights monitoring and investigative capacity to carry out its mandated function; helping the Commission to enhance the capacity of domestic non-governmental human rights monitoring and investigation expertise;

(e) Establishing adequate Commission capacity to coordinate the development of the national strategy on a consultative process of transitional justice;

(f) Establishing adequate Commission capacity to carry out its mandated functions in terms of petitions/complaints processing;

(g) Establishing the Commission's human rights advisory and institution-building capacity;

(h) Establishing the Commission's capacity to carry out its mandated functions relating to conflict resolution, mediation and conciliation;

(i) Achieving maximum physical, cultural, linguistic and gender accessibility of the Commission;

(j) Supporting the Commission's human rights networking capacity;

(k) Establishing the Commission's human rights data management and protection capacity.

10. At their meeting with the Special Rapporteur, the members of the Human Rights Commission underscored the fact that it needed to develop its capacity to deal with the wide range of tasks entrusted to it. It had already received over 500 complaints. It awaited the arrival of a consultant who would assist in developing the methods and procedures for dealing with the complaints. The consultant has since arrived. The complaints involved 17 different types of human rights violation and abuse.

11. The members of the Commission impressed upon the Special Rapporteur that in order to establish its authority and for its decisions and directives to be respected, it must be seen to have the full support of the Transitional Administration, and in particular of President Karzai. The Special Rapporteur, during his meeting with President Karzai, conveyed this concern and was assured that whatever was necessary would be done so that the Human Rights Commission could discharge the responsibilities entrusted to it effectively.

12. Two women members of the Human Rights Commission, in the course of their meeting with the Special Rapporteur, stated that they had just visited a detention centre. A number of women prisoners detained there had been in detention for several months. The Special Rapporteur suggested that the Commission take the initiative to move for the release of these women. In the eighth report the Special Rapporteur had indicated that prisoners had been released by presidential decree and that this was a mechanism that could be emulated. In the course of November 2002, a presidential decree in fact ordered the release of those women.

13. The Human Rights Commission has a pivotal role to play in improving the human rights situation in Afghanistan. The Agreement supporting its programme and activities should be supplemented by an agreement to provide the resources needed to develop its capacity at an accelerated pace, including its capacity to investigate and monitor violations and to issue reports of its findings. The Petersburg Conference expressed its support for the Commission in the following terms: "The Conference (agreed that) the need to develop a culture of respect for human rights in Afghanistan with the strengthening of the national independent Human Rights Commission's capacity for human rights monitoring and investigation of violations of human rights remain fundamental, as does the development of domestic human rights and civil society institutions. The goal of promoting human rights in particular those of women and minorities could be reinforced through international assistance."² The Special Rapporteur had further suggested that the Human Rights Commission should solicit the active participation of civil society organizations as well as volunteers from among the youth, who would thus be motivated and could help to expand the Commission's outreach into local communities for disseminating human rights values.

Student protest in Kabul University and police response

14. A protest march of over 1,000 university students in Kabul against poor living conditions in the campus dormitory of Kabul University was fired on by police on 12 November 2002, reportedly resulting in the deaths of up to four students and the wounding of several dozen. This led to a further demonstration by the students and generated tension. The problems to which the students sought to draw attention is expressed, in their words, as follows: "We have no water, we have no bread, we have no electricity." They demanded that these needs be met. There is also a demand that an inquiry be held so that those responsible for the deaths are held accountable. President Karzai met the students and ordered an investigation into the causes of both the protest and the killings. The United Nations mission, in cooperation with the Human Rights Commission has looked into the circumstances of the police having fired upon the demonstrators and urged the authorities to launch an official investigation and take appropriate action against those responsible. This event provides the Human Rights Commission with an opportunity not only to ensure that an impartial inquiry is held but also to probe deeper into the living conditions in the students' dormitory. Indeed, the Commission could consult with students and seek their active participation by inviting student representatives to come forward with useful practical suggestions. This case provides a defining example of how a situation leading to a student demonstration could be turned around by inviting them to propose constructive solutions. It is suggested that resources be made available on an emergency basis so that constructive proposals made by students could be rapidly implemented. This would demonstrate to the students that the Transitional Administration was responsive to genuine grievances and impress upon them how problems can be solved through discussions.

III. THE LEGAL SYSTEM AND ITS COMPATIBILITY WITH INTERNATIONAL HUMAN RIGHTS STANDARDS

15. The International Commission of Jurists (ICJ) undertook a mission to Afghanistan³ to examine the legal system established under the 1964 Constitution against the benchmark of international human rights standards. The ICJ noted that, at present, Afghanistan does not have a uniform legal system. Abuses of human rights continue to occur and remain outside the reach of

Afghanistan's Transitional Administration. There is an urgent need to develop the capacity of the Transitional Administration to exercise effective authority in all parts of Afghanistan. This is a prerequisite for the establishment of the rule of law and a legal system capable of guaranteeing basic fundamental rights. Some of the main conclusions and recommendations of the ICJ mission, which in principle are broadly endorsed by the Special Rapporteur, are as follows:

(a) The current legal system as it exists and functions in practice falls short of international human rights standards;

(b) The destruction and disintegration of Afghanistan's legal system is such that its rebuilding, and support for this, cannot focus on any single component but has to proceed in an integrated, all-embracing manner and aim to achieve the following:

- (i) Foremost is the establishment of an effective and properly funded commission able to coordinate and prioritize the reform and rebuilding of Afghanistan's legal system;
- (ii) The body of applicable laws needs to be determined. Of particular importance in this regard are the procedural laws governing criminal trials, including the rights of the accused;
- (iii) The essential institutional manifestations of a legal system, including courts, offices of the public prosecutor, the police and jails, have to be brought within a legal framework and be equipped and trained to be able to fulfil their respective roles in a legal system that is in line with international human rights standards. Institutional capacity-building must include both material provisions, such as the payment of salaries, as well as training and development.

IV. REVIEW OF THE HUMAN RIGHTS SITUATION (JUNE-NOVEMBER 2002)

16. During the period under review reports of cases involving issues relating to human rights and cases of violations can be summarized under the following four heads: (a) Discrimination against specific ethnic groups; (b) Human rights of women; (c) Cases of violence as a result of local conflict and extrajudicial execution; and (d) The treatment of prisoners.

A. Discrimination against specific ethnic groups

17. Cases of violence involving discrimination against ethnic groups may be broken down by zone (North, West and South) as follows:

(a) **North.** Some 50,000 Pashtuns were reportedly expelled from the province of Jawzjan after the collapse of the Taliban regime. Those new internally displaced persons (IDPs) have been living in the area of Spin Boldak in the south of the country and a number of them were moved recently to the nearby Zar-I-Dasht IDP camp, which the Special Rapporteur visited. Local commanders are blamed for the harassment and expulsion of certain ethnic groups;

appropriation of land, looting of cattle and other property and forced expulsions of people belonging to a specific ethnicity were also reported in the provinces of Sari Pul, Faryab, Badakshan and Takhar. About 9,000 families are said to have been expelled from Badakshan and Takhar. Delegations representing the victims have made representations to President Karzai, General Dostum and other authorities. The IDPs interviewed at Zar-I-Dasht confirmed these reports. They indicated that they would like to return, but only if the security situation improved and they could return in safety. A Return Commission, with the involvement of the United Nations Assistance Mission in Afghanistan (UNAMA), the Office of the United Nations High Commissioner for Refugees (UNHCR), the Afghan national Human Rights Commission, and the northern local authorities, under the overall guidance of the central Government and with the direct involvement of the Ministry of Refugees and Repatriation, is engaged in the North to create conditions for the return of the ethnic minorities and a greater sense of security to stop further displacements;

(b) **West.** Similar gross violations have reportedly been perpetrated against specific ethnic groups living in the Herat region, particularly in the provinces of Ghurian and Shindand. The violations reported include cases of harassment and discrimination against specific ethnic groups; intimidation against civil society, organizations and individuals, arbitrary detention and torture; and violation of the rights of women. About 15,000 Pashtuns are reported to have fled from the district of Khost. A Human Rights Watch report (November 2002) has given detailed accounts of such reported violations;

(c) **South.** Some of the abusive actions by local authorities were carried out against people belonging to a different tribe of the same ethnic group as the perpetrators. Thus, the city authorities of Kandahar, dominated by the Barakzai tribe, demolished approximately 100 houses in the neighbourhood of Loya Wala. The inhabitants claimed the demolitions were an act of discrimination against the Alkozai tribe.

B. Human rights of women

18. Some of the areas reporting violations involving women's rights are summarized below:

(a) Several women delegates to the Emergency Loya Jirga from the district of Puli Khumri, Baghlan province, were reportedly dismissed from their positions as teachers or employees. Reportedly, they were subsequently reinstated;

(b) Frequent abuses against young women and their families by local commanders were reported in the province of Badakshan and in other districts in the northern areas.

C. Cases of death resulting from local conflicts and alleged extrajudicial executions

19. Local conflicts have exacted a heavy toll, among civilians and such conflicts among local armed groups have been reported from different districts, including Faizabad (Jawzjan province), Qala-I-Shahr (Sari-pul province), Shindand district (Heart Province) and Khost city. Some centred around water distribution. The case was reported of a person who returned from Pakistan to visit relatives in his home village north of Kabul, having left as an infant 18 years previously, who was arrested and reportedly tortured to death.

D. Treatment of prisoners

20. The Special Rapporteur's earlier reports had drawn attention to the plight of prisoners. Overcrowding, malnutrition and disease were reported in particular in Sheberghan prison, where there were over 3,000 prisoners in November 2001. The Special Rapporteur's inquiries in October 2002 indicated that the number was now to around 1,200. There are also reports of persons being detained in other jails and places of detention for a prolonged period since the capacity to investigate allegations against them and have their cases disposed of through a judicial process has yet to be established. Appointments to the Judicial Commission were announced in December 2002. The Special Rapporteur urges the Commission to take expeditious steps to ensure that the cases of those at present suffering prolonged detention are speedily dealt with. The release of batches of prisoners would itself contribute to alleviating prison conditions. In this context, the issuance of further presidential decrees, a number of which have previously resulted in releases, is recommended.

Mass graves

21. The Special Rapporteur on extrajudicial, summary or arbitrary executions visited Afghanistan in October 2002 and reported on mass graves in the northern areas, including those where prisoners taken during military operation in October-November 2001 are reportedly buried. She recommended that an inquiry be undertaken. The Boston-based organization, Physicians for Human Rights, has appealed to the Secretary-General to investigate mass graves in northern Afghanistan that reportedly contain the bodies of hundreds of prisoners who were killed during the military operations in October-November 2001. This matter, and the related issue of witness protection, is under consideration. There have been some reports that potential witnesses are facing threats to their personal security and one may have actually been killed.

V. NATIONAL RECONSTRUCTION AND DEVELOPMENT: ECONOMIC AND SOCIAL RIGHTS

22. According to aid agencies, between 2 and 4 million Afghans - 8 to 16 per cent of the population - are considered highly vulnerable to the approaching winter and need food, clothing and blankets. In many areas, medical services are rudimentary or non-existent. The country has about 7,000 trained doctors, or one for every 3,500 people. Most are concentrated in the main cities. The country's maternal and child mortality rates are among the worst in the world.

23. The population of Kabul doubled in size to 2.7 million over the past year. About 600,000 of the estimated 2 million Afghans who have returned from exile over the last year, along with many others from rural areas, have flooded into the capital attracted by its relative peace and the possibility, however slim, of employment. Most residents face a difficult daily struggle just to survive. The rapid expansion of the population, the proliferating network of United Nations and other aid agencies and the demands of government agencies have sent rents soaring fivefold, putting decent housing beyond the reach of most. Less than half of the housing stock is electrified and its supply is subject to frequent blackouts. In September, the Government introduced a new currency, hoping to stabilize prices and exchange rates, but instead its value has plunged against the Pakistani rupee, causing consumer prices to shoot up. The prices of staples

such as rice and oil have doubled, while that of beef has tripled. At least 100,000 squatters eke out a marginal existence in the bombed-out ruins of houses, without access to water or electricity.

24. The 2003 Transitional Assistance Programme for Afghanistan (TAPA) is being completed by the Transitional Government of Afghanistan and the United Nations. Over 1.7 million refugees and 400,000 internally displaced persons have returned to their communities of origin in 2002. The TAPA prioritizes integrated United Nations agency action in communities of return to help assure sustainable livelihoods, essential community services, potable water supply and sanitation, and to address problems of debt and asset depletion. In addition, a further 1.2 million refugees and 300,000 IDPs are expected to return home in 2003.

25. Despite a good harvest in 2002, the effects of years of conflict, drought, isolation and impoverishment still affect millions of Afghans. Some 2.2 million Afghans are highly vulnerable to the expected effects of the harsh winter weather and are receiving emergency food aid and support for shelter and warmth to combat the cold. In 2003, some 4.1 million Afghans are expected to need emergency food aid.

26. Afghanistan remains a predominantly agrarian society. The restoration of agricultural opportunities and the recovery of agriculture, including seed stocks, irrigation systems, pasture lands, pest control and livestock, are significant elements of the 2003 programme, supported by off-farm income-generating initiatives. Special initiatives will address the particular needs of nomadic pastoralist Kuchi populations, whose way of life has been disrupted or destroyed by years of conflict and drought. In 2002, poppy cultivation has increased markedly in the country. The United Nations is participating in a multi-partner, long-term strategy to combat poppy production, provide alternative livelihoods, reduce demand and strengthen law enforcement networks as part of a national counter-narcotics strategy. In parallel, TAPA will address the survival, shelter and livelihood needs of Afghanistan's growing urban population, supporting urgently needed sites and services development as well as longer-term urban planning. Throughout the country, the United Nations system and its partners will be supporting skill-training and work programmes for former combatants, as part of a massive national disarmament, demobilization and reintegration programme.

27. Afghanistan remains one of the most heavily mined countries in the world. Capacity for mine action increased markedly in 2002 and remains a cornerstone for recovery and reconstruction in TAPA 2003. A new mine action strategy aims to clear high-impact areas contaminated with mines and unexploded ordnance within 5 years and low-impact areas within 10 years.

28. The pledge by the international community of US\$ 4.5 billion dollars over five years appears to have been based on cost estimates in unidentified countries which received international assistance in the range of \$40 to \$80 per capita annually for post-conflict recovery programmes. This is in contrast to aid to the Balkans and East Timor which ranged from \$200 to \$300 per capita annually. Comparable levels of aid would translate into an annual figure of at least \$5 billion for Afghanistan, three times greater than the Tokyo pledges. The Afghan Support Group meeting was urged significantly to increase the commitment of aid in order to meet the critical humanitarian and reconstruction needs. Finance Minister Ashraf Ghani

estimated that up to \$20 billion would be needed to enable Afghanistan to get back on its feet in the next five years. The Special Representative of the Secretary-General, while noting that there had been significant international support, stated that the existing pledges were not quite sufficient to bring peace and stability back to the country. He said that hundreds of thousands of jobs would need to be created to enable impoverished Afghans to earn a living and climb out of debt. The massive flow of returning refugees must be accommodated. Alternative livelihoods for poppy farmers must be found. Fighters wishing to lay down their arms must be confident that there is a job for them to go to.

VI. JUDICIAL COMMISSION

29. Based on the Bonn Agreement and the resolution of the emergency Loya Jirga concerning prison reform and reform of the justice system, a Judicial Reform Commission was established on 2 November 2002, comprised of: Mr. Bahao din Baha, Mr. Habibullah Ghalib, Dr. Habiburrahman Zakria, Dr. Atta Mohammed Norzai, Mr. Abdul Ahad Ashrati, Dr. Abdul Qdir Amir Yar, Mawlawi Mohammed Qasim, Ms. Mahrow Hamid and Mr. Haburrahman Ghani; Ms. Najiba Hossaini and Mr. Faizur Rahman Wasiq were appointed on 27 November 2002.

30. The Judicial Reform Commission provides a comprehensive programme for the reform of law with the close coordination and cooperation of the Supreme Court, the Ministry of Justice and other relevant bodies. They are to publish and distribute the laws. The Commission would have the power to propose amendments for the improvement of laws and regulations to the competent authorities, so that a suitable justice system may be established in Afghanistan.

VII. CONSTITUTIONAL COMMISSION

31. The nine-member Constitutional Drafting Commission was formally inaugurated by the former King, Mohammad Zaher, on 3 November 2002. The Commission is chaired by Vice-President Shahrani. Its membership consists mainly of legal scholars and jurists from a variety of ethnic and regional backgrounds, and includes two women. The Commission has agreed on its by-laws, established three subcommittees for Writing, Researching and Drafting, and is now at work on a draft constitution. The Commission has asserted that its work will be guided by Islamic principles, international standards and Afghan legal traditions. Further, the Commission considers consultation with Afghans to be crucial for a draft constitution and important for national reconciliation. For this purpose, Commission members have requested, through the media, public inputs and have participated in national and international seminars on the future constitution of the country.

VIII. WOMEN

32. A report based on field research in Kabul in early 2002 included the findings summarized below:

“Women ... suffer specific health problems in relation to war. Years of repression, deprivation and dire socio-economic conditions have severely affected the mental well being of the majority of citizens. The head of the National Union of Women of

Afghanistan explained. 'We all suffer from the psychological pains of the war and destruction. It is going to take a long time to reduce and cure the pains of Afghan women, especially the female headed households and the orphanages.' It is important to analyse women's and girls' health issues in relation to cultural specificities in Afghanistan. Many women have been subject to rape, forced marriage, torture, killing, fear, domestic violence, social exclusion and separation from their home and family members."

33. A number of issues frequently mentioned by interviewees were in relation to inter-familial violence against women by male kin; the isolation and marginalization of female-headed households and men's perceptions of women in the wider society.

34. The low social status of women and the consequent power imbalances between women and men are the underlying reasons for harmful and discriminatory practices and physical and sexual violence against girls and women in Afghanistan. The responsibility for this injustice and violence lies not only with the immediate family but also with each community, religious organizations, health and education institutions, professionals and law enforcers.

35. The majority of poor women in urban and rural areas remained in Afghanistan. Those with skills turned their homes into underground schools. They were paid for their services by their neighbours, friends and family. In this way they survived financially.

36. In a group interview with 39 women at the Ministry of Communication women explained how they turned their homes into secret schools. They also had special stories of other women: "Ghamar jaan's husband was killed in the civil war. She had a daughter. She secretly taught more than 800 students in her home. Many of us paid her as much as we could, sometimes 20,000 afghanis a month, to teach our children. This was very little money. She could hardly manage the household expenses, but it was better than nothing. Without her our daughters would have been illiterate."

37. Despite the horrors of war and violent conflicts many women in Afghanistan emerged empowered. They became aware of their own capacities to organize and find new survival strategies. Organizing in this way was an empowering process. Women's secret organizations and networks in Afghanistan were the only functioning organizations that were trusted by the community.

38. Throughout the violent conflicts, women's NGOs also remained in touch with each other and with female members of the community through networking and solidarity groups. In the post-Taliban era they became an important agency of reconstruction. In the post-war conflict era, when the State does not yet exist in the real sense of the term, women's NGOs are playing a very important role. They provide education, training and skills to create opportunities for women to have access to income-generating activities, thus contributing to household well-being.

39. The centrality of the gender dimension is crucial in the processes of reconstruction. Women's experience of war and violent conflict was different from that of men. Their secret organizations empowered many women; they created networks of trust and reciprocity in their

neighbourhoods, among their friends and relatives and at the community level. To ignore women and their organizations in the process of reconstruction would mean that women in Afghanistan would be denied the right to participate in the reconstruction of their new reality. This is particularly important in the present period, when the Transitional Administration in Afghanistan and donors are preoccupied with political and security issues. It is important for policy makers and aid workers to be more concerned with both economic and social issues.

IX. RECOMMENDATIONS

40. The following recommendations are aimed at identifying priority areas where action needs to be taken for improving the human rights situation:

(a) Security must be improved so that the Transitional Administration can exercise effective authority throughout Afghanistan. This is imperative and must be accorded the highest priority. The expansion of the International Security Assistance Force is essential while the national Afghan army and police forces are in the process of being built up;

(b) The Transitional Administration should be given full support to enable the national mobilization, disarmament and reintegration programme to be implemented as expeditiously as possible;

(c) Every care should be taken not to arm regional and local commanders in a way that might hinder the progressive development of the Afghan national army;

(d) The national Human Rights Commission should be enabled, through the provision of adequate resources, to develop its capacity at an accelerated pace in order to be able to build a progressively more effective role in investigation and monitoring of human rights violations;

(e) The Transitional Administration and the United Nations must make every effort to ensure the participation of all segments of the Afghan population in the transition process so that Afghan ownership, which is a declared policy, can become a reality. The role of youth, in particular, must be recognized. They should be encouraged to engage in this process and devote their energies to national reconstruction and to promote respect for human rights;

(f) The role of the media in raising people's awareness of their rights as well as of the formidable challenges that have to be faced and overcome can also be valuable. A national radio network reaching throughout the country could aim to reach every corner of Afghanistan, so that no part of the country would feel isolated during the transition process;

(g) Significantly more resources above the original Tokyo pledge should be committed so that the critical minimum needed both to meet survival needs and priority reconstruction projects can be provided in a timely manner. Failure to provide such a

critical minimum could jeopardize the transition process and the realization of the basic goal to which the Bonn Agreement is ultimately committed: to establish a broad-based gender-sensitive multi-ethnic and fully representative Government. The challenge of effectively implementing the Bonn Agreement is formidable. The international community for its part should rise to the occasion and make available the needed resources in a timely manner. It is only through the successful implementation of the entire Bonn process that its goals can be realized and a significant improvement made in the human rights situation in Afghanistan.

Notes

¹ Briefing by the Special Representative of the Secretary-General for Afghanistan to the Security Council, 19 July 2002.

² Communiqué issued by President Hamid Karzai at the conclusion of the Conference of Foreign Ministers on Rebuilding Afghanistan: Peace and Stability (Petersburg, Germany, 2 December 2002).

³ International Commission of Jurists, "The Compatibility of Afghanistan's Legal System with International Human Rights Standards", interim report.
