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Technical assistance and capacity-building

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

Summary

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

Throughout 2010, efforts to promote and protect human rights and build rule of law in the country were seriously challenged. The armed conflict intensified throughout Afghanistan with a corresponding rise in civilian casualties. Targeted assassinations, executions, abductions and intimidation of thousands of civilians by anti-Government elements throughout the country undermined international and Government efforts to provide protection and security in conflict-affected areas. The proportion of civilian casualties inflicted by pro-Government forces continued to decline during the year, however air strikes and night searches continue to place civilians at risk. Civilians also suffered from injury, loss of livelihood, displacement, destruction of property and disruption of access to education, health care and other essential services. Despite some gains in the spheres of health, education and employment opportunities, women continue to confront discriminatory laws and policies, attitudes and practices that violate their basic human rights. Harmful traditional practices against women and girls are widespread, occurring in varying degrees in all communities, urban and rural, and among all ethnic

* Late submission.

groups. Lack of political will to seriously address a long history of egregious human rights violations is a significant factor driving the culture of impunity that is deeply entrenched in Afghan power structures and systems of governance. Detention-related laws, policies and practices by national authorities and to a lesser degree international military forces remain causes for concern.

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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 has been prepared in cooperation with the United Nations Assistance Mission in Afghanistan (UNAMA). Since my last report (A/HRC/13/62), the human rights situation in Afghanistan has become more challenging. Long-standing human rights problems associated with the ongoing armed conflict, dysfunctional governance, widespread and deeply entrenched impunity, weak rule of law, coupled with extreme marginalization of and violence against women, pose significant challenges to the enjoyment of human rights.

2. The human cost of the armed conflict escalated during 2010 as civilian casualties – including deaths and injuries of civilians – increased by 20 per cent in the first 11 months of 2010 over the same period in 2009. Civilians experienced an erosion of Government presence and a further decrease in protection in more areas of the country. At the same time, anti-Government elements (AGEs) increasingly undertook unlawful means of warfare through increased use of improvised explosive devices, suicide attacks and assassinations that violated Afghans' basic right to life and international humanitarian law principles. Although improved safeguards appear to have contributed to a significant reduction in civilian casualties by pro-Government forces (PGFs), these efforts must be sustained and increased to ensure improved protection for civilians.

3. Other ongoing human rights problems in Afghanistan have not been effectively addressed. Widespread harmful traditional practices, including child marriage, offering girls for dispute resolution, forced isolation in the home, exchange marriage and "honour" killings, continue to cause suffering, humiliation and marginalization for millions of women and girls. Such practices are grounded in discriminatory views and beliefs about the role and position of women in Afghan society, although some religious leaders reinforce these harmful customs by invoking their interpretation of Islam.

4. Impunity remains a major impediment to the re-establishment of the rule of law and respect for human rights. The Afghan Peace and Reintegration Programme and reconciliation process have sent mixed messages about the Government's commitment to providing accountability for serious international crimes and violations of human rights. Many human rights activists have voiced their concerns that impunity is not being seriously addressed in the ongoing peace process.

5. The ongoing lack of capacity of both the criminal justice and penal management systems continues to result in widespread arbitrary detention. Detention-related laws, policies and practices used by the national authorities and sometimes international military forces frequently result in prolonged detention without proper due process and oversight from judicial authorities.

II. Protection of civilians

6. The human cost of the armed conflict escalated in 2010. Civilian casualties – including deaths and injuries of civilians - increased by 20 per cent in the first 11 months of 2010 (1 January to 30 November) over the same period in 2009. Three quarters of all civilian casualties were linked to AGEs, an increase of 25 per cent compared to 2009. At the same time, civilian casualties attributed to PGFs decreased by 20 per cent compared to the first 11 months of 2009.

7. Analyses by the Office of the United Nations High Commissioner for Human Rights (OHCHR)/UNAMA showed two critical developments that increased harm to civilians in

2010. The number of civilians assassinated and executed by AGEs rose dramatically and AGEs used a greater number of larger and more sophisticated improvised explosive devices (IEDs) in more parts of the country. The devastating human impact of these tactics underscored that nine years into the conflict, measures to effectively protect civilians and minimize the impact of the conflict on Afghans' basic human rights are more urgent than ever.

8. Between 1 January and 30 November 2010, OHCHR/UNAMA documented a preliminary figure of 6,717 conflict-related civilian casualties, including 2,584 deaths and 4,133 injuries. Over this period, AGEs were linked to the deaths and injuries of 5,162 civilians (or 77 per cent of the total number of civilian casualties for this period), an increase of 25 per cent from the same period in 2009. Suicide and IED attacks caused the most civilian casualties attributed to AGEs, including 1,075 deaths (55 per cent of civilian deaths attributed to AGEs) and 2,291 injuries (71 per cent of civilian injuries attributed to AGEs). In the same period, OHCHR/UNAMA recorded 774 civilian casualties (or 11 per cent of the total number of civilian deaths and injuries) linked to PGFs, down 20 per cent from the same period in 2009. Aerial attacks caused the largest number of civilian casualties attributed to PGFs, including 165 deaths (41 per cent of civilian deaths attributed to PGFs) and 121 injuries (32 per cent of civilian injuries attributed to PGFs).

9. As civilian casualties rose in 2010, women and children made up a greater proportion of those killed and injured than in 2009. Women and children continued to experience an extreme lack of protection in conflict-affected areas along with widespread violations of their basic human rights. Between 1 January and 30 November 2010, IEDs and suicide attacks by AGEs caused the most women and children casualties - 33 per cent and 44 per cent, respectively. During this period, women casualties increased by 9 per cent and child casualties leapt by 56 per cent from 2009.

A. Anti-Government elements

10. The 2,584 total civilian deaths in the first 11 months of 2010 represented a 15 per cent increase over the number documented in the same period in 2009. In total, 1,955 (76 per cent of total civilian deaths) were attributed to AGEs, up 28 per cent from the first 11 months in 2009. IEDs remained the deadliest tactic used by AGEs in the first 11 months of 2010 and caused 33 per cent of all civilian deaths. OHCHR/UNAMA recorded 232 civilians killed by suicide attacks and a further 442 killed by assassinations and executions, representing 10 per cent and 17 per cent of total civilian deaths, respectively. Of the deaths attributed to AGEs, some 39 per cent of women and 45 per cent of children died from IED explosions and suicide attacks - a 15 per cent increase in female deaths and 72 per cent increase in child deaths by those means over the number documented from 2009. OHCHR/UNAMA also recorded 247 incidents of abductions.

11. Compared with the same period in 2009, the number of civilians assassinated and executed by AGEs surged by more than 106 per cent in 2010. More than half of the civilian assassinations and executions occurred in southern Afghanistan, where more than 211 such incidents were noted as the Taliban expanded and strengthened its campaign of intimidation against a wider and larger group of civilians who worked for, or were perceived by the Taliban to be supportive of the Government of Afghanistan and international military forces. This campaign included assassinations, executions, abductions, night letters and threats. In one week alone in August, in Kandahar province, AGEs allegedly assassinated a former prosecutor, a sitting judge, a shura member, an off-duty Afghan National Police officer, a woman working for an international non-governmental organization (NGO) and an engineer working for an international company. Civilians targeted included teachers, nurses, doctors, tribal elders, community leaders, provincial and district officials, other

civilians and civilians working for international military forces and international organizations. The intensified pattern of assassinations reinforced the widespread perception by civilians that the Taliban can strike anywhere at anytime with impunity and that the Government and international forces are failing to protect them.

12. In the first 11 months of 2010, OHCHR/UNAMA documented a number of executions carried out by the Taliban in Badghis, Ghazni, Kandahar, Kunduz, Uruzgan and Wardak provinces. These incidents included the public execution of a woman by shooting on 7 August in Badghis province for alleged adultery, the public execution by stoning of a man and woman on 15 August in Kunduz province for alleged adultery,¹ and the sentencing of two women to death on 14 October in Ghazni province for allegedly killing their mother-in-law. A relative of the mother-in-law reportedly executed one of the women and the execution of the second woman, who is pregnant, is reportedly being delayed until she gives birth. OHCHR/UNAMA also recorded a number of other reported serious human rights violations including the execution (by hanging) of a 7-year-old boy accused of spying for the Government on 10 June in Helmand province and the assassination of a 12-year-old boy on 29 June in Ghazni province. These incidents indicate that AGEs commit serious human rights violations with full impunity and underscore the severe protection and accountability gaps that exist in Afghanistan.

Election-related violence

13. During the parliamentary election campaigning period from June to September 2010, AGEs conducted a systematic and targeted assassination campaign against candidates and campaign workers. Between June and August, four candidates and 24 campaign workers were killed. On 18 September, election day, OHCHR/UNAMA documented 136 civilian casualties including 33 deaths and 103 injuries, making it the most violent day in Afghanistan since the 2009 Presidential and Provincial Council elections, when 31 civilian deaths and 79 injuries (110 civilian casualties) were recorded. The eastern region recorded the highest number of casualties in the 2010 election, with 38 civilians killed and injured, followed by 26 recorded in the south-eastern region. The southern region saw a high number of security incidents, but few civilian casualties. On election day, most provinces experienced rocket attacks, IEDs and armed clashes, depriving many of their freedom of movement and their right to vote. Security incidents led to the closure of at least 153 polling centres. Intimidation tactics by AGEs contributed to reduce the participation of voters, especially women voters, in different parts of the country.

B. Pro-Government forces

14. PGF military operations resulted in deaths and injuries of civilians as a result of air strikes, mortar attacks, escalation of force and cross-fire incidents. Between 1 January and 30 November 2010, PGFs were linked to 401 deaths or 15 per cent of total civilian deaths, down 27 per cent from 2009.

15. OHCHR/UNAMA found a 52 per cent decrease in civilian deaths caused by aerial attacks carried out by PGFs compared to the same period in 2009. Tactical directives and standard operating procedures implemented by the International Security Assistance Force (ISAF) in 2010, including an August 2010 tactical directive on “disciplined use of force”, appear to have contributed to a significant reduction in civilian casualties by PGFs. The use

¹ The UNAMA Human Rights Unit has also received reports that the female victim’s killing was an “honour killing” following complaints by some members of her family to the Taliban about her relationship with the male victim.

of aerial attacks in civilian areas, however, continued to claim the largest percentage of civilian casualties attributed to PGFs, causing 165 civilian deaths (41 per cent of the 401 civilian deaths attributed to PGFs) and 121 injuries (32 per cent of the civilian injuries attributed to PGFs) in the first 11 months of 2010. OHCHR/UNAMA documented increased use of aerial attacks between July and October 2010, resulting in more alleged civilian casualties, particularly in the southern, northern and eastern regions of the country.

16. Search and seizure operations, mainly night searches, resulted in 63 deaths (16 per cent of civilian deaths by PGFs) and numerous detentions. Although night searches do not cause a large number of civilian casualties, these operations continue to cause anger and frustration within Afghan society. Communities' concerns included lack of effective investigation and prosecution for abuses that occurred during raids, lack of information regarding the location of persons detained in night raids and the inability to receive compensation for loss of life, injury and destruction of property. Communities also reported a continuing lack of cultural awareness and sensitivity on the part of certain troops involved in raids. Invasion of people's homes, especially at night, searching of women's quarters by men and violating the honour of women negatively affects the reputation and future of the entire family.

17. Escalation-of-force incidents (PGF shooting at suspected AGE attackers) accounted for 11 per cent of civilian deaths by PGFs in the same period.

18. Tactical directives and standard operating procedures implemented in 2010 by international military forces regulating night searches and rules of engagement on escalation of force, together with the July 2009 and August 2010 tactical directives restricting air strikes, appear to have contributed to a significant reduction in civilian casualties by PGFs. OHCHR/UNAMA welcomes the efforts of international military forces to minimize civilian deaths and injuries and urges these be further improved and sustained. At the same time, OHCHR/UNAMA highlights concerns about the lack of full implementation of directives and procedures on the ground, and the continuing lack of transparency on investigations and accountability for civilian casualties.

C. Advocacy on protection of civilian issues

19. OHCHR/UNAMA met with embassies, donors and Afghan and international military forces to advocate for implementation of the recommendations published in *Afghanistan: Mid Year Report on the Protection of Civilians in Armed Conflict 2010*. OHCHR/UNAMA held individual meetings with high-level officials at the Canadian embassy, the French embassy, the Norwegian embassy, and the embassies of the United States of America and the United Kingdom of Great Britain and Northern Ireland and made presentations to a large group of key donors. Advocacy activities also included briefings on the report's findings and recommendations, given to the Deputies Committee of the National Security Council and the Security Operations Group that advises the Deputies Committee, and to the Senior Security Shura, a high-level weekly meeting chaired by the Afghan Minister of Defence and attended by ISAF commander General David Petraeus. OHCHR/UNAMA held meetings at Camp Bastion in Helmand province, and in other regional command headquarters, with ISAF, the United States Marines and other interlocutors to discuss the report's recommendations and civilian protection issues.

20. On 11 August 2010, the Taliban released a statement on their website criticizing the OHCHR/UNAMA 2010 mid-year report on the protection of civilians. The statement alleged that the report "is based on political expedience, exaggeration and propaganda instead of surfacing the facts" and was followed by another statement on 15 August calling for the establishment of a joint committee of the Taliban, OHCHR/UNAMA and ISAF to conduct investigations into civilian casualties. On 23 December, the Taliban released a

similar statement criticizing the OHCHR/UNAMA civilian casualty numbers for the first 11 months of 2010 that indicated AGEs were linked to 76 per cent of all civilian casualties, a figure referred to in the December 2010 report of the Secretary-General to the Security Council on the situation in Afghanistan and its implications for internal peace and security (A/65/612-S/2010/630, para. 56).

III. Violence against women

21. Violence against women and girls, including sexual violence and harmful traditional practices such as *ba'ad* (use of girls in marriage to settle disputes), so-called “honour” killings, early and forced marriages and rape continue to be persistent and widespread in Afghanistan. The misplaced stigma of sexual violence falling on the victim rather than the perpetrator and the lack of access to effective justice or remedies for victims have ensured that sexual violence and harmful traditional practices remain largely unaddressed either by the law enforcement institutions of Afghanistan or by Afghan society. The 2009 OHCHR/UNAMA report *Silence is Violence: End the Abuse of Women in Afghanistan*, and the December 2010 report *Harmful Traditional Practices and Implementation of the Law on Elimination of Violence against Women in Afghanistan* confirmed these findings and provided recommendations for action. The latter report noted that harmful traditional practices serve to harm, degrade and marginalize women and girls and are often reinforced by certain interpretations of religious precepts. These practices are inconsistent with national laws, in particular the Law on Elimination of Violence against Women which criminalizes many harmful traditional practices, as well as sharia law and international law.

22. Based on country-wide research and case analysis, the report on harmful traditional practices documents particular customary practices that violate the rights of women and girls throughout Afghanistan and makes recommendations that would strengthen implementation of the Law on Elimination of Violence against Women as the Government’s main tool to end harmful practices. The report found that although there had been some improvement in the State’s response to harmful practices and crimes of violence against women, the police and the judiciary often fail to impartially enforce the law and are unwilling or unable to implement laws that protect women’s rights.

23. Law enforcement officials frequently take a selective approach to administering justice. They pursue cases where women are perceived to have transgressed social norms and fail to act when women report violence or in cases of child marriage, claiming these are “private matters”. This situation is demonstrated by the large number of women detained in prisons for “moral crimes”. When social and cultural circumstances do not allow women and girls to oppose harmful traditional practices, or to escape violence, they sometimes run away from home. “Running away” is not a crime under Afghan law. Yet law enforcement authorities often arrest, jail and prosecute girls for running away. The charge is usually “intention” to commit *zina* (sexual intercourse outside of marriage).

24. On a positive note, OHCHR/UNAMA documented some improvements in the Government’s response to harmful traditional practices. The Ministry of Justice, with support from the UNAMA Human Rights Unit and other partners, is drafting a law that would regulate traditional dispute resolution mechanisms which have been found to frequently violate women’s rights. State authorities sometimes supported girls who objected to their forced marriage. Furthermore, some religious leaders have spoken out in favour of women’s rights. At a conference on International Women’s Day 2010 in Jalalabad, ulema members unanimously vowed to raise awareness against harmful practices in their teaching at mosques. OHCHR/UNAMA also found examples of religious figures condemning exchange marriages and high bride price.

25. OHCHR/UNAMA continued its support to the Ministry of Women's Affairs and provincial Departments of Women's Affairs to strengthen their capacity to implement the law on Elimination of Violence against Women including through the establishment of a High Commission for the Prevention of Violence against Women and provincial commissions in compliance with the law and a June 2010 Council of Ministers decision. The provincial commissions are mandated to coordinate efforts between provincial authorities and NGOs to eliminate violence against women, through awareness-raising campaigns and monitoring and follow-up on individual cases of violence against women. Once commissions were set up, OHCHR/UNAMA supported their monitoring of police, prosecutors' and courts' implementation of the Law and coordination efforts.

26. OHCHR/UNAMA also conducted awareness-raising activities and training for women's groups, mullahs, judges, prosecutors, police and tribal elders, particularly in rural areas, on the practices the Law on Elimination of Violence against Women criminalizes and on the duties and obligations of law enforcement authorities. Training included presentations on the law and specific measures that can be taken by the law enforcement authorities to ensure its implementation.

27. Given critical events such as the National Consultative Peace Jirga, the Kabul International Conference on Afghanistan (Kabul Conference) and elections for the lower house of the Parliament of Afghanistan, women's participation in political processes assumed a central place on the agenda of human rights defenders in 2010. OHCHR/UNAMA worked to ensure that in all political processes aimed at restoring peace and economic prosperity in the country, women were physically represented and that women's rights remained firmly on the agenda of all discussions. OHCHR/UNAMA facilitated a more regular dialogue between women's groups and the UNAMA senior political leadership. OHCHR/UNAMA supported advocacy initiatives in line with Security Council resolution 1325 (2000) on women, peace and security, to promote women's participation in decision making and to ensure that the issue of women's rights remains a priority.

28. The participation of more than 300 women (25 per cent of the total number of participants) at the National Consultative Peace Jirga, held from 2 to 4 June, was widely viewed as a positive development largely attributed to the successful lobbying and advocacy of Afghan women's associations and NGOs. OHCHR/UNAMA supported civil society by raising the issue of female participation in all appropriate forums. Following the *jirga*, the Afghan Women's Network, an umbrella organization of Afghan women's groups, issued a statement calling for a minimum of 25 per cent female participation in all peace-making forums and international oversight to ensure that any peace deal does not violate women's rights under the Constitution.

29. In the communiqué issued following the Kabul Conference,² the Government of Afghanistan and its international partners reiterated the centrality of women's rights, including political, economic and social equality, to the future of the country. They committed to assist all national ministries and sub-national government bodies in implementing their respective responsibilities under the National Action Plan for the Women of Afghanistan, and to ensure that all training and civic education programmes contribute to practical advancements in its implementation. In addition, the Government of Afghanistan is to develop a strategy to implement the Law on Elimination of Violence against Women, including services for victims.

² Available from www.mfa.gov.af/FINAL%20Kabul%20Conference%20%20%20Communique.pdf.

30. OHCHR/UNAMA worked with Afghan partners to promote and guarantee women's representation in the parliamentary elections of 18 September 2010. Assurances were obtained from the Government that the 68 parliamentary seats constitutionally reserved for women (25 per cent) were a minimum and not a ceiling on female representation. In addition, the Government assured that where a female candidate won a non-reserved seat but was unable to take up elected office, the seat in question would go to the next female candidate who obtained the highest number of votes. More women contested the 2010 parliamentary election, as 16 per cent of all candidates were women, up 4 per cent from the 2005 parliamentary election. OHCHR/UNAMA documented reports of community resistance to their candidacies in addition to threats, harassment and attacks in some areas of the country. In Badakhshan province, for example, OHCHR/UNAMA received reports of religious leaders preaching against the participation of female candidates, urging people not to support females contesting the election. As the election date drew closer, OHCHR/UNAMA noted an increase in the incidents of threats and intimidation against female candidates, including the detonation of an IED outside a female candidate's campaign offices in Taloqan city in Takhar province. On 30 August, one female parliamentary candidate's five male campaign workers were abducted and killed in Herat province.

31. On 18 September, election day, intimidation tactics by AGEs contributed to reduce the participation of voters, especially women voters, in different parts of the country. In the south, the Taliban enforced restrictions on movement with oral threats, ad hoc road blocks and IEDs which prevented Afghans from exercising their right to vote. In the eastern region and in Wardak and Logar provinces in the central region, threats from AGEs, including the distribution of night letters, reportedly had a significant impact on voter turnout. With the exception of Bamyan, Day Kundi and Badakhshan provinces, and some cities, female voter turnout was medium to low. The International Election Commission reported that of the 4.3 million estimated ballots cast, about 1.6 million were thought to have been cast at female polling stations, representing 37 per cent of the total number of ballots cast. High security risks, the co-location of female and male polling centres, inadequate or absent female polling staff and related cultural constraints kept women away from the polls in the southern and south-eastern regions in particular. Notwithstanding these challenges, 69 women were elected to the lower house of the Afghan Parliament.

IV. Impunity and transitional justice

32. Impunity remains the rule in Afghanistan, serving as a major impediment to building rule of law and respect for human rights. While the Government committed to revising the Action Plan for Peace, Reconciliation and Justice at the Kabul Conference in July, it has sent mixed messages about its commitment to ensuring accountability for serious international crimes and violations of human rights. As the gazetting of the Law on Public Amnesty and National Stability became known at the end of 2009, the Afghan Independent Human Rights Commission (AIHRC) and civil society repeated calls for the Law to be revoked.

33. Questions about governmental commitment to end impunity were also raised during the initial stages of the Government's efforts to create a sustainable peace, reintegration and reconciliation process. Civil society activists and the AIHRC repeatedly stressed the need to ensure that the process respect victims' needs for justice as well as the imperative of consolidating gains made in the constitution and legal framework that protect human rights, particularly the rights of women. A Victim's Jirga for Justice, held in May 2010, provided a forum for those points to be made directly to the Government in advance of the Government's National Consultative Peace Jirga held in early June. Victims of serious

human rights violations and international crimes recounted stories of their suffering and made clear their need for justice and accountability to be addressed in the peace process in some form. While the National Consultative Peace Jirga explicitly recognized the need to protect and respect the rights of women and children in its final 16-article resolution and reconciliation road map, the document failed to stress the imperative of accountability and justice as part of that process.

34. While the Government's agreement to update the Action Plan for Peace, Reconciliation and Justice can be seen as a continued commitment to justice and combating impunity, the launching of the Afghan Peace and Reintegration Programme and establishment of the High Peace Council created concern about governmental priorities in this area. This programme and its supervisory implementing body stressed the need to end the conflict through a variety of incentives to disarm, demobilize and reintegrate anti-Government elements. While there is a vetting process envisioned in the document for assessing the suitability of combatants to take part in reintegration efforts, there is also frequent mention of "political amnesty" and "grievance resolution" to be extended to participants in the process. This amnesty is not explicitly defined in the document, but it is designed to allow combatants to leave the field of battle without fear of arrest or prosecution in the immediate term. Mention is made in the Afghan Peace and Reintegration Program text that the process is not a "framework for pardoning all crimes and providing blanket amnesty" without further elaboration.³ As a result many human rights advocates voiced their concerns that impunity was not being seriously addressed in the process and that, if successful, the resulting peace would be unsustainable, non-reflective of victims' concerns, and unjust.

35. Peace and reintegration initiatives designed to facilitate the release of detained combatants and the resolution of grievances raised human rights concerns. Prisoner release efforts began as part of the Government's commitments to develop a peace process after the June National Consultative Peace Jirga, and a special Prisoner Release Committee was established. OHCHR/UNAMA monitored the Committee's work and noted the release of more than 500 detainees. Human rights concerns included the non-transparent legal process involved in reviewing the cases of detainees and the grounds on which individuals are released. A core concern was that due process was not fully observed and that some suspected perpetrators of serious crimes and human rights violations were released for political reasons and not on strict legal grounds. Utilizing opaque or arbitrary grounds for release seriously further undermined rule of law and efforts to address impunity. The inclusion of "grievance resolution" mechanisms within the process of the Afghan Peace and Reintegration Programme also raised concerns that many suspects of serious international crimes and human rights violations could be absolved of criminal responsibility for political reasons or expediency. Uncertainty remains over how grievance resolution will work in practice in communities across the country. Vetting procedures, investigatory processes or related dispute resolution mechanisms have not been defined, but it is clear that this process will operate outside the formal justice system.

36. The creation of the High Peace Council in September 2010 raised concerns within civil society that the justice agenda was unlikely to feature prominently in the peace and reintegration process. President Hamid Karzai appointed 70 members to the High Peace Council on 28 September, a group that included only 10 women and only one member of civil society. Many members of the Council have been denounced as having been involved in serious human rights violations. As a result, Afghan civil society groups, including the Transitional Justice Coordination Group, a group of 20 representatives of human rights

³ Afghanistan, "Afghan Peace and Reintegration Program", programme document (Kabul, 2010), p. 9.

organizations in the country, the Afghan Women's Network and the Civil Society and Human Rights Network, representing 56 human rights NGOs, made repeated calls for the membership of the High Peace Council to be reviewed and revised to give greater representation to women, victims and civil society in general. These recommendations featured in public statements, press conferences and the conclusions of a conference on Peace, Reconciliation and Justice. UNAMA, the Civil Society and Human Rights Network, the International Centre for Transitional Justice and the Open Society Foundations office in Afghanistan sponsored this latter event on 10 November 2010 in Kabul, to highlight the need for civil society's active participation in the Afghan Peace and Reintegration Programme and for issues of justice to be among the Government's core priorities. This event resulted in recommendations to the Government and the international community, reiterating the need for justice and accountability to be reflected in the peace process, for a truth-seeking mechanism to be created that gives voice to the suffering of victims of serious international crimes, and for a mechanism to facilitate civil society's active participation in the peace and reintegration process as it moves forward.

37. On 31 October 2010, the Special Representative of the Secretary-General for Afghanistan established the Salaam Support Group, a group of experts tasked with providing technical assistance to the High Peace Council in implementing all aspects of its mandate. At the same time, OHCHR/UNAMA facilitated the effective participation of civil society in the peace and reconciliation process, particularly at the provincial and district levels as much of the Afghan Peace and Reintegration Programme process is to be implemented by committees at the local level.

38. Concerns persist regarding the ability of local authorities to secure and protect mass graves discovered over several years of conflict. OHCHR/UNAMA continued to work with the AIHRC and Physicians for Human Rights (PHR) to raise the importance of this issue for future investigations into serious international crimes. PHR held training sessions with prosecutors, police, investigators and other key justice sector actors during the year and a conference in Kabul in October to stress the need to protect such sites, to secure them for the long term and to develop the capacity to perform forensic investigations. Such investigations are critical not only to the process of identifying perpetrators, but also for confirming the identities of victims and establishing the truth of what happened for their families. PHR has previously reported several instances in which mass grave sites have been maliciously tampered with and evidence of serious crimes intentionally destroyed.

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

39. Detention remains a critical human rights concern in Afghanistan. Approximately 18,000 detainees are held in a range of facilities across the country. This number increased rapidly in recent years with demand for detention space far outstripping the capacity of the existing infrastructure and human resources of both the criminal justice and penal management systems. Widespread arbitrary detention has long been a consequence of this situation. Gross and common instances of arbitrary detention include individuals who remain in detention despite having served their sentences or having been found not guilty by lower courts. Detainees are not informed of their right to remain silent, and interrogations before cases reach the courts are systematically carried out without defence counsel.

40. Following a commitment made at the Kabul Conference in July, the Government has begun work on a number of steps which, if fully implemented, could have a positive impact on the detention situation, including revision of the Criminal Procedure Code, and

development and implementation of a database on prisoners - an important step forward to keep accurate records and prevent arbitrary detention, especially post-trial.

41. Many detainees lack meaningful access to defence counsel. There are not enough qualified lawyers or funded legal aid programmes to meet the demand of criminal cases. There is a need to identify realistic and innovative approaches to expanding legal aid and awareness for accused persons. Neither the legal aid department of the Ministry of Justice nor legal aid NGOs can meet the existing demand.

42. The current detention-related laws and policies used by national authorities and, to a lesser degree, international military forces, remain major causes for concern. Given the lack of a legal framework that complies with the obligations of Afghanistan under international human rights and humanitarian legal standards and national applicable law, the need for reform is urgent. In some cases, OHCHR/UNAMA has observed changes to existing policy or practice in the international military forces contingents with limited improvement in the overall situation of detention, particularly in cases of individuals held due to their suspected involvement in the conflict. Current ISAF counterinsurgency policies as set down in the 2006 ISAF Standard Operating Procedure on Detention of Non-ISAF Personnel, prescribes a 96-hour time limit for detaining persons in the conduct of military operations, after which time ISAF forces are required to either release or transfer detainees to Afghan authorities. Despite this 96-hour rule applying to all international military forces that are part of ISAF, several ISAF contributing countries, including the United States, the United Kingdom and Canada have introduced national caveats to the Standard Operating Procedure. These caveats prolong detention without proper due process and oversight from Afghan judicial authorities.

43. In addition, the de facto recipient of many of these detainees is the National Directorate of Security (NDS) which takes custody over individuals transferred either directly from ISAF or indirectly through the Afghan National Police or the Afghan National Army. Some ISAF countries have signed memorandums of understanding with the Government of Afghanistan regulating the transfer of detainees from their respective ISAF contingents and have obtained certain diplomatic assurances about the treatment of these detainees, including that no transferred detainee will be subject to the death penalty. It appears that the memorandums of understanding provide that the representatives of the relevant ISAF country, the AIHRC and the International Committee of the Red Cross have access to transferred detainees.

44. Limited information is available from the Afghan authorities on the conditions and treatment of detainees transferred by ISAF to the Afghan authorities, in particular to NDS. Reliance on this institution, in particular is of concern, as NDS continues to operate without an explicit, public legal framework stipulating its powers of investigation, arrest, and detention. The operational rules and procedures of NDS regulating detention facilities under its control are classified and are not available to the public, defence counsel or detainees.

45. In September, OHCHR/UNAMA began to implement a country-wide detention monitoring and advocacy project on the conditions of confinement and respect for judicial guarantees for detainees. This initiative examined fair trial guarantees to and humane treatment of general pretrial detainees and NDS detainees.

46. NDS continues to operate detention facilities where detainees are held for substantial periods of time without access to either relatives or defence counsel, sometimes resulting in these detentions becoming incommunicado. Many detainees reported forced confessions or having signed or thumb printed papers that they could not read or understand. The same documents were used later as evidence against them before courts. NDS also sometimes

refused to release detainees who had been found innocent by the courts claiming that those acquittals were based on intimidation of judges or corruption.

47. Of equal concern are individuals detained during counter-insurgency operations by United States forces in Afghanistan. UNAMA has been following reforms in United States military operational procedures since September 2009, including the implementation of revised detainee review procedures and broader detention reforms in Afghanistan. United States forces closed the Bagram Theater Internment Facility and transferred all detainees to a new facility inside Bagram known as the Detention Facility in Parwan. They introduced new policies that included the establishment of a Detainee Review Board (DRB) and revised procedures for reviewing detention at the new facility. New DRB procedures afford detainees a personal representative to assist them during the proceedings, improved notification procedures, and the ability to attend hearings and call witnesses that are “reasonably available”.

48. While the new United States military detention review procedures are a marked improvement on previous practices, many points of concern still remain regarding detainee access to fair trial guarantees. OHCHR/UNAMA observed how these new procedures are being implemented, including the monitoring of DRB hearings. This review body determines whether a detainee in United States custody meets the criteria for detention, including whether he or she shall be released without conditions or transferred to Afghan authorities for criminal prosecution or participation in a reconciliation program. Detainees have no right to defence counsel in these proceedings, but rather are represented by an assigned personal representative (usually a military officer), who assists them with preparing and presenting their case and with challenging evidence. While these individuals are supposed to act in the best interests of their assigned detainee, very few representatives are available - only nine personal representatives to process more than 1,000 cases per year - limiting the effectiveness of the representation. Also, there are extreme restrictions on the amount of information available to a detainee under review as the United States forces made a great deal of information classified and therefore not directly available to detainees. Such restrictions result in a process in which a detainee and his or her representatives have a very difficult time mounting a credible defence. Since January 2010, approximately 1,500 individuals have undergone DRB hearings with a full release occurring in only 8 per cent of cases, an indicator that effective assistance of counsel is at least questionable in the majority of these review cases. OHCHR/UNAMA has proposed to the military that efforts be made to guard against arbitrary detention and to allow detainees a more meaningful mechanism to challenge their detention.

VI. Support to national institutions

A. National Priority Programme for Human Rights and Civic Responsibility

49. OHCHR/UNAMA actively supported the participation of representatives of civil society and the AIHRC at the Kabul Conference held on 20 July. At the Kabul Conference, the Government pledged to implement, with civil society and the AIHRC, the National Priority Programme for Human Rights and Civic Responsibilities under the Governance Cluster. The Programme 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. The AIHRC is the lead in coordinating activities among line ministries and civil society groups. OHCHR/UNAMA has been playing a supporting role as a member of the Programme Working Group.

50. As per commitments made at the Kabul Conference, the AIHRC worked with line ministries and civil society to develop both a six-month action plan and a three-year work plan for implementation of the National Priority Programme for Human Rights and Civic Responsibilities. The Programme includes, inter alia, revised implementation timelines for the Action Plan for Peace, Reconciliation and Justice as well as planned activities to strengthen the technical capacity of the Human Rights Support Unit of the Ministry of Justice. As of September, the AIHRC had finalized its suggested revisions and submitted them to the Government for review, budgeting and further action.

B. Afghanistan Independent Human Rights Commission

51. OHCHR/UNAMA continued to provide technical support to the AIHRC both at the national and regional levels. OHCHR/UNAMA worked closely with the Special Investigation Team of the AIHRC on protection of civilians, and shared information on major cases that caused civilian casualties. In the 2010 Parliamentary election process, OHCHR/UNAMA provided technical assistance to the AIHRC by supporting the Commission's election-related activities and participating in awareness-raising programmes in particular on women's participation in the electoral process.

52. As part of its efforts to secure long-term sustainability and viability, the AIHRC, together with OHCHR/UNAMA and key donors, continued to urge the Government to provide State funding for AIHRC operations. The Government endorsed the need to provide funding for the AIHRC and to create a long-term independent budgetary mechanism that guarantees the Commission's full independence.

53. The AIHRC welcomed this decision as a first step by the Government towards fulfilling its commitment to provide the Commission with political and financial support. Progress to date in implementing the decision of 18 October 2010 has been slow and the Ministry of Finance has raised questions regarding whether the Law on Budget may need to be amended to create the independent budgetary unit for the AIHRC. OHCHR/UNAMA has been assisting the AIHRC to explore State funding modalities that would not compromise the Commission's independence, actual or perceived. An independent State funding mechanism is a core principle of legitimacy for national human rights institutions under the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) endorsed by the General Assembly in 1993.

C. Ministry of Justice

54. On 29 September, the Human Rights Support Unit within the Ministry of Justice was officially inaugurated. The Unit is responsible for strengthening the Government's capacity to fulfil its international human rights obligations in conformity with the Constitution. The further development of the Unit was one of the commitments made at the Kabul Conference.

55. As part of its support to the Human Rights Support Unit, OHCHR/UNAMA conducted training on the human rights-based approach for newly recruited staff of the Unit to enhance their understanding of human rights mainstreaming in development planning at line ministries. OHCHR/UNAMA also facilitated a seminar to support the action plan designed by the Unit, the Ministry of Foreign Affairs and other stakeholders to implement the Human Rights Council's universal periodic review recommendations in the Government. The Unit incorporated this into its annual work plan and has been seeking to synchronize its activities with the National Priority Programme for Human Rights and Civic Responsibilities endorsed at the Kabul Conference.

56. Responding to the Secretary-General's April 2010 finding that the Afghan National Police and several AGE groups were among "parties that recruit or use children, kill or maim children and/or commit rape and other forms of sexual violence against children in situations of armed conflict" (A/64/742-S/2010/181, annex I), the Government on 30 November finalized an action plan to address concerns.

VII. Conclusion

57. Longstanding human rights concerns including rising civilian casualties and decreased protection for civilians due to intensified armed conflict, deeply entrenched impunity, the lack of functioning and independent "rule of law" institutions, and widespread practices that harm, degrade and humiliate women and deny them their basic human rights continue to seriously undermine efforts to promote and protect human rights in Afghanistan. While Government authorities have taken steps to build peace and rule of law, institutions remain weak. Legal and policy frameworks require considerable review, and reform and existing laws and policies that promote and protect human rights require much greater and more effective implementation. Afghanistan's international partners should redouble support in these critical areas and ensure the protection of civilians and the rights of detainees in military and security operations.

VIII. Recommendations

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

(a) The Taliban and other anti-Government elements should withdraw all orders and statements calling for the killing of civilians and reduce civilian casualties by complying with international humanitarian law, rules and principles including those rules the Taliban publicly committed to in the Taliban Code of Conduct and other documents on preventing civilian casualties when planning suicide attacks and acts of perfidy;

(b) International military forces and Afghan National Security Forces should fully implement measures designed to reduce civilian casualties and further strengthen civilian protection. 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, and take appropriate disciplinary or criminal action against any individuals found responsible for violations of military or domestic criminal law. International military forces should provide timely, adequate and transparent compensation for civilians/victims of all military operations that result in death or injury of civilians or damage to civilian property;

(c) The Government of Afghanistan should reaffirm its commitment to justice and combating impunity for perpetrators of serious international crimes and human rights violations. The Public Amnesty and National Stability Law should be revoked as it clearly violates the Constitutional provisions and the Government's international treaty obligations;

(d) The Government of Afghanistan at the highest levels, including the President, should continue to publicly emphasize that promotion and protection of women's rights are an integral part and main priority of peace, reintegration and reconciliation and a central pillar of the country's political, economic, and security strategies. The Government should expedite implementation of the National Action

Plan for the Women of Afghanistan, in particular a national strategy to implement the Elimination of Violence against Women Act, and international donors should increase support for these initiatives. As an immediate step, the President could, by decree, release from detention any woman or girl arrested for “running away”, which is not a crime under Afghan law;

(e) The Supreme Court and the Office of the Attorney General should issue directives instructing the courts and prosecution offices to apply the Elimination of Violence against Women Act. Police and prosecutors should register all complaints of harmful traditional practices criminalized by the Act, and the Attorney General’s office should promptly investigate and prosecute such cases. The Ministry of Justice, in cooperation with the national High Commission for the Prevention of Violence against Women, should provide all law enforcement officials with training and capacity-building on the Act;

(f) Religious leaders, together with the Ministry of Hajj and Religious Affairs and the Ministry of Women’s Affairs, should develop and deliver training and awareness-raising programmes for mullahs, imams and religious teachers about women’s rights and the Elimination of Violence against Women Act. Religious leaders should speak out about harmful practices that are inconsistent with Islamic teaching and principles and hold open discussions among sharia experts on Islam and women’s rights.

(g) While the Afghan Peace and Reintegration Programme represents an important step forward in ending the conflict, the Government and its international partners should take all steps necessary to ensure that political amnesties are not used to exonerate suspected perpetrators of serious international crimes and human rights violations. Combatant vetting, grievance resolution and prisoner release mechanisms should not be used to circumvent the criminal law and procedure, but to reaffirm the need to strengthen the rule of law and judicial institutions;

(h) As a matter of the utmost urgency, the Government should take steps to ensure greater participation and representation of civil society, especially women’s groups, in the peace and reintegration process;

(i) The Government and its international partners should take immediate steps to address deficiencies in the protection of fair trial rights for detainees. In this respect, priority actions should include increasing and improving detainee access to legal aid throughout the country, ensuring full and unfettered access of the United Nations Assistance Mission in Afghanistan and the Afghanistan Independent Human Rights Commission to all detention facilities, especially those run by the National Directorate of Security, investigating all detainee allegations of ill-treatment and torture, and releasing all prisoners who remain in detention despite having served their full sentence or having been found innocent in the courts;

(j) To address inadequacies in the existing criminal justice framework, the Government and Parliament should expedite approval of the draft Criminal Procedure Code, as agreed at the Kabul International Conference on Afghanistan. The Government should establish a clear, public legal framework for National Directorate of Security operations of arrest and detention that removes the Directorate’s authority to operate separate detention facilities, reinforces the need for proper oversight of detainees and respect for their rights, and provides effective remedies for violations of such rights;

(k) International military forces present in Afghanistan, including those of the United States and other countries that contribute to the International Security Assistance Force, should expand or establish mechanisms that monitor and safeguard

those detainees transferred to the National Directorate of Security or Afghanistan National Security Forces to ensure such detainees are not subjected to torture, inhumane treatment and violations of fair trial rights. For detainees who remain in the custody of international military forces, procedural reforms should be consolidated and advanced that are designed to ensure detainee access to basic due process. Mechanisms, such as the United States military's Detention Review Board, should be more transparent and respect detainees' needs for effective legal support and assistance during the process of review. This includes increasing the number and quality of personal representatives available to individuals in United States custody.
